Draft Order laid before Parliament under section 429(1), (3), (4)(d) and (e), (7A) and (7B) of, and paragraph 26(2) of Schedule 2 to, the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2018 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018

Made - - - - ***

Coming into force in accordance with article 1(2) and (3)

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The Treasury make the following Order in exercise of the powers conferred by sections 21(5), (6), (10B) and (12A)(**a**), 22(1B)(**b**), 419A(4), 419B(**c**) and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(**d**) ("the 2000 Act").

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 of the 2000 Act) will become a regulated activity.

In accordance with section 429(1), (3), (4) (d) and (e), (7A) and (7B)(**e**) of, and paragraph 26(2) of Schedule 2 to, the 2000 Act, a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

PART 1
Introductory provisions

Citation, commencement, interpretation and extent

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.

(**a**) Subsections (10B) and (12A) of section 21 was inserted by section 27(3) of the Financial Guidance and Claims Act 2018 (c. 10) ("the 2018 Act"). See subsection (15) for the meaning of "specified".
(**b**) Subsection (1B) of section 22 was inserted by section 27(4) of the 2018 Act c. 10. See subsection (5) for the meaning of "specified".
(**c**) Sections 419A and 419B were inserted by section 27(11) of the 2018 Act.
(**d**) 2000 c. 8.
(**e**) In section 429, subsection (4)(e) was amended, and subsections (7A) and (7B) were inserted, by section 27(12) of the 2018 Act.

(2) This Order comes into force on the day after the day on which it is made for the purpose only of—

(a) enabling the Financial Conduct Authority—

(i) to make rules;

(ii) to give guidance;

(iii) to impose requirements or make directions;

(iv) to approve rules;

(v) to make a designating instrument pursuant to article 85;

(vi) to claim legal professional privilege or, in Scotland, confidentiality of communications pursuant to article 87; and

(b) enabling the Financial Ombudsman Service—

(i) to make rules;

(ii) to make standard terms; and

(iii) to claim legal professional privilege or, in Scotland, confidentiality of communications pursuant to article 87.

(3) This Order comes into force on 1st April 2019 for all other purposes.

(4) In this Order "the 2000 Act" means the Financial Services and Markets Act 2000.

(5) Subject to paragraph (6), this Order extends to England and Wales and Scotland.

(6) Articles 90, 93, 95, 96, 101, 102 and 103 extend to England and Wales only.

Carrying on a regulated claims management activity in Great Britain

2.—(1) A person is to be treated as carrying on a regulated claims management activity in Great Britain when the activity is carried on—

(a) by a person who is—

(i) an individual who is ordinarily resident in Great Britain; or

(ii) a person, other than an individual, who is constituted under the law of England and Wales or Scotland; or

(b) in respect of a claimant or pursuer, or potential claimant or potential pursuer who is—

(i) an individual who is ordinarily resident in Great Britain; or

(ii) a person, other than an individual, who is constituted under the law of England and Wales or Scotland.

(2) For the purposes of this article—

(a) a person is "ordinarily resident" in Great Britain if that person satisfies the requirements of the Statutory Residence Test as set out in Schedule 45 to the Finance Act 2013(**a**) either—

(i) at the time of the facts giving rise to the claim or potential claim; or

(ii) at the time when the regulated claims management activity is carried out in respect of that claimant or pursuer or potential claimant or potential pursuer;

(b) the references to the "the UK" in the Statutory Residence Test in Schedule 45 are to be read as if they were expressed as references to "Great Britain".

(**a**) 2013 c. 29.

PART 2

Amendments to secondary legislation made under the 2000 Act

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

3. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**a**) is amended as follows.

4. In article 4 (specified activities: general), after paragraph (2A)(**b**) insert—

"(2B) The kinds of activity specified in Part 3B are specified for the purposes of section 22(1B) of the Act (and accordingly any activity of one of those kinds, when carried on by way of business in Great Britain, is a regulated activity).".

5. In article 64 (agreeing to carry on specified kinds of activity) for "or Part 3A" substitute ", Part 3A or Part 3B".

6. In article 72A (information society services), after paragraph (1) insert—

"(1A) For the purposes of paragraph (1), "activity" includes regulated claims management activities of a kind specified by articles 89G to 89M.".

7. After Part 3A(**c**) insert—

"PART 3B

CLAIMS MANAGEMENT ACTIVITIES IN GREAT BRITAIN

The activities

89F. Specified kinds of claims management activity

(1) A claims management activity is a specified kind of activity when it is an activity specified in any of articles 89G to 89M.

(2) For the purposes of this Part—

(a) "claimant" includes, in civil proceedings in Scotland, a pursuer;

(b) "defendant" includes, in civil proceedings in Scotland, a defender;

(c) "personal injury claim" means a claim for personal injury within the meaning of the Civil Procedure Rules 1998(**d**) in England and Wales and an action for damages for, or arising from, personal injuries within the meaning set out in section 8(7) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018(**e**) in Scotland;

(d) "financial services or financial product claim" includes a claim made under section 75 of the Consumer Credit Act 1974(**f**);

(e) "housing disrepair claim" means a claim under section 11 of the Landlord and Tenant Act 1985(**g**) or section 4 of the Defective Premises Act 1972(**h**) in England and Wales or an application in respect of the repairing standard under section 22 of the Housing (Scotland) Act 2006(**i**), or claims in relation to the disrepair of

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(**a**) S.I. 2001/544.
(**b**) Article 4(2A) was inserted by S.I. 2013/1881.
(**c**) Part 3A was inserted by S.I. 2013/1881.
(**d**) S.I. 1998/3132.
(**e**) 2018 asp 10.
(**f**) 1974 c. 39. Section 75 was amended by S.I. 1983/1878 and 2010/1010.
(**g**) 1985 c. 70.
(**h**) 1972 c. 35.
(**i**) 2006 asp 1.

premises under a term of a tenancy agreement or lease or under the common law relating to nuisance or negligence, but does not include claims for statutory nuisance under section 82 of the Environmental Protection Act 1990(**a**);

(f) "a claim for a specified benefit" means a claim for one of the following benefits—

(i) industrial injuries benefit, within the meaning given by section 94 of the Social Security Contributions and Benefits Act 1992(**b**);

(ii) any supplement or additional allowance, or increase of benefit or allowance to which a recipient of an industrial injuries benefit may be entitled under that Act or any other Act;

(iii) a benefit under a scheme referred to in paragraph 2 or 4 of Schedule 8 to that Act; or

(iv) a benefit under the Pneumoconiosis etc. (Workers' Compensation) Act 1979(**c**).

(g) "criminal injury claim" means a claim under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995(**d**);

(h) "employment related claim" includes a claim in relation to wages and salaries and other employment related payments and claims in relation to wrongful or unfair dismissal, redundancy, discrimination and harassment;

(i) "investigating" means carrying out an investigation into, or commissioning the investigation of, the circumstances, merits or foundation of a claim; and

(j) "representing" means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made.

(3) A person is to be treated as carrying on a regulated claims management activity in Great Britain when the activity is carried on—

(a) by a person who is—

(i) an individual who is ordinarily resident in Great Britain; or

(ii) a person, other than an individual, who is constituted under the law of England and Wales or Scotland; or

(b) in respect of a claimant or potential claimant who is—

(i) an individual who is ordinarily resident in Great Britain; or

(ii) a person, other than an individual, who is constituted under the law of England and Wales or Scotland.

(4) For the purposes of this article—

(a) a person is "ordinarily resident" in Great Britain if that person satisfies the requirements of the Statutory Residence Test as set out in Schedule 45 to the Finance Act 2013(**e**) either—

(i) at the time of the facts giving rise to the claim or potential claim; or

(ii) at the time when the regulated claims management activity is carried out in respect of that claimant or potential claimant;

(b) the references to the "UK" in the Statutory Residence Test in Schedule 45 are to be read as if they were expressed as references to "Great Britain".

89G. Seeking out, referrals and identification of claims or potential claims

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(**a**) 1990 c. 43.
(**b**) 1992 c. 4.
(**c**) 1979 c. 41.
(**d**) 1995 c. 53.
(**e**) 2013 c. 29.

(1) Each of the following is a specified kind of activity when carried on in relation to a claim of a kind specified in paragraph (2)—

(a) seeking out persons who may have a claim, unless that activity constitutes the communication of an invitation or inducement to engagement in claims management activity within the meaning of section 21 (restrictions on financial promotion)(**a**) of the Act;

(b) referring details of—

(i) a claim or potential claim; or

(ii) a claimant or potential claimant

to another person (including to a person having the right to conduct litigation); and

(c) identifying—

(i) a claim or potential claim; or

(ii) a claimant or potential claimant.

(2) The kinds of claim are—

(a) a personal injury claim;

(b) a financial services or financial product claim;

(c) a housing disrepair claim;

(d) a claim for a specified benefit;

(e) a criminal injury claim; and

(f) an employment related claim.

89H. Advice, investigation or representation in relation to a personal injury claim

Each of the following activities is a specified kind of activity when carried on in relation to a personal injury claim—

(a) advising a claimant or potential claimant;

(b) investigating a claim; and

(c) representing a claimant.

89I. Advice, investigation or representation in relation to a financial services or financial product claim

Each of the following activities is a specified kind of activity when carried on in relation to a financial services or financial product claim—

(a) advising a claimant or potential claimant;

(b) investigating a claim; and

(c) representing a claimant.

89J. Advice, investigation or representation in relation to a housing disrepair claim

Each of the following activities is a specified kind of activity when carried on in relation to a housing disrepair claim—

(a) advising a claimant or potential claimant;

(b) investigating a claim; and

(c) representing a claimant.

89K. Advice, investigation or representation in relation to a claim for a specified benefit

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(**a**) Section 21 was amended by the 2018 Act, section 27(4). There are other amendments, but none is relevant.

Each of the following activities is a specified kind of activity when carried on in relation to a claim for a specified benefit—

(a) advising a claimant or potential claimant;

(b) investigating a claim; and

(c) representing a claimant.

89L. Advice, investigation or representation in relation to a criminal injury claim

Each of the following activities is a specified kind of activity when carried on in relation to a criminal injury claim—

(a) advising a claimant or potential claimant;

(b) investigating a claim; and

(c) representing a claimant.

89M. Advice, investigation or representation in relation to an employment related claim

Each of the following activities is a specified kind of activity when carried on in relation to an employment related claim—

(a) advising a claimant or potential claimant;

(b) investigating a claim; and

(c) representing a claimant.

Exclusions

89N. Claims management activity conducted by legal professionals

(1) There is excluded from articles 89G to 89M any activity which is carried on in England and Wales by—

(a) a legal practitioner;

(b) a firm, organisation or body corporate that carries on the claims management activity through a legal practitioner; or

(c) an individual who carries on the claims management activity at the direction of, and under the supervision of, a legal practitioner who is—

(i) that individual's employer or fellow employee; or

(ii) a director of a company, or a member of a limited liability partnership, that provides the service and is that individual's employer.

(2) For the purposes of paragraph (1) "legal practitioner" means—

(a) a solicitor or barrister of any part of England and Wales or Northern Ireland;

(b) a Fellow of the Chartered Institute of Legal Executives;

(c) a European lawyer, as defined in the European Communities (Services of Lawyers) Order 1978(**a**) or the European Communities (Lawyer's Practice) Regulations 2000(**b**);

(d) a registered foreign lawyer, as defined in section 89(9) of the Courts and Legal Services Act 1990(**c**);

(e) any other member of a legal profession, of a jurisdiction other than England and Wales, that is recognised by the Law Society of England and Wales or the General Council of the Bar as a regulated legal profession.

(**a**) S.I. 1978/1910.
(**b**) S.I. 2000/1119.
(**c**) 1990 c. 41.

(3) There is excluded from articles 89G to 89M any activity which is carried on in Scotland by—

(a) a legal practitioner;

(b) a firm, organisation or body corporate that carries on the claims management activity through or under the supervision of a legal practitioner where that firm, organisation or body corporate is—

(i) a firm of solicitors;

(ii) an incorporated practice; or

(iii) a licensed legal services provider and the activity is a legal service as defined within section 3 of the Legal Services (Scotland) Act 2010(**a**).

(4) For the purposes of paragraph (3) "legal practitioner" means—

(a) a person who is qualified to practise as a solicitor under section 4 of the Solicitors (Scotland) Act 1980(**b**);

(b) an advocate who is a member of the Faculty of Advocates;

(c) a European lawyer as defined in the European Communities (Services of Lawyers) Order 1978 or the European Communities (Lawyer's Practice) (Scotland) Regulations 2000(**c**); or

(d) a registered foreign lawyer within the meaning of section 65 of the Solicitors (Scotland) Act 1980.

(5) But an activity mentioned in paragraph (1) or (3) is only excluded from articles 89G to 89M if the legal practitioner concerned carries on the claims management activity in the ordinary course of legal practice pursuant to the professional rules to which that legal practitioner is subject.

(6) The exclusions in this article are to be read as if they were expressed as exemptions for the purposes of the following provisions of the Financial Guidance and Claims Act 2018—

(a) section 32(5)(b) (PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to the FCA); and

(b) section 33(11) (legal services regulators' rules: charges for claims management services).

89O. Claims management activity conducted by a charity or not-for-profit agency

(1) There is excluded from articles 89G to 89M any activity carried on by a charity or a not-for-profit agency.

(2) In this article "charity" means—

(a) a charity as defined by section 1(1) of the Charities Act 2011(**d**) or the Charities and Trustee Investment (Scotland) Act 2005(**e**); or

(b) a body registered in the Scottish Charity Register.

(3) In this article "not-for-profit agency" means a body that by or under its constitution—

(a) is required to apply the whole of its net income, and any expendable capital, after payment of outgoings for charitable or public purposes; and

(b) is prohibited from distributing, directly or indirectly, any part of its net income by way of profits or its assets among any of its members.

(**a**) 2010 asp 16.
(**b**) 1980 c. 46.
(**c**) S.S.I. 2000/121.
(**d**) 2011 c. 25.
(**e**) 2005 asp 10.

(4) But a body is not prevented from being a not-for-profit agency for the purposes of paragraph (3) if its constitution permits—

(a) the payment, out of the body's funds, of reasonable and proper remuneration for goods or services supplied to the body by a member; or

(b) in the case of a not-for-profit body that is a charity, the payment to a member to which the member is eligible because that member is a beneficiary of the charity; or

(c) the purchase, out of the body's funds, of indemnity insurance for trustees of the body.

89P. Claims management activity conducted by a person appointed by a statutory or other public body

There is excluded from articles 89G to 89M any activity carried on by—

(a) any person established or appointed by virtue of an enactment;

(b) an Independent Complaints Reviewer; or

(c) an Independent Case Examiner

in the course of carrying out that individual's duties.

89Q. Claims management activity conducted by the Motor Insurers' Bureau

There is excluded from articles 89G to 89M any activity carried on by the Motor Insurers' Bureau in the course of carrying on its functions (being the company limited by guarantee mentioned in section 95(2) (notification of refusal of insurance on grounds of health) of the Road Traffic Act 1988(**a**)).

89R. Claims management activity conducted by a medical defence union

There is excluded from articles 89G to 89M any activity carried on by—

(a) the Medical Protection Society Limited for its members;

(b) the Medical Defence Union Limited for its members; or

(c) the Medical and Dental Defence Union of Scotland Limited for its members.

89S. Claims management activity conducted an independent trade union

(1) There is excluded from articles 89G to 89M any activity carried on by an independent trade union for –

(a) a member (including a retired member or a student member) of an independent trade union;

(b) a member of the family of a member referred to in sub-paragraph (a); or

(c) a former member of the trade union to whom the trade union may, under its rules, provide claims management services, or a member of the family of such a former member.

(2) In paragraph (1), "independent trade union" has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992(**b**).

(3) For the purposes of paragraph (1) –

(a) subject to sub-paragraph (b), whether a person is or has been a member (including a retired member or a student member) of a trade union is to be decided in accordance with the rules of that trade union;

(b) "member" of a trade union does not include a person who, under those rules, is a member only for the purpose of pursuing a claim or claims; and

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(**a**) 1988 c. 52.
(**b**) 1992 c. 52.

(c) whether a person is a member of the family of a member of a trade union is to be decided in accordance with the rules of that trade union.

(4) An exemption of a trade union under this article is subject to compliance by the trade union with the condition that the trade union, in carrying on a regulated claims management activity, must act in accordance with the code of practice for the provision of regulated claims management activities by trade unions issued by the Treasury.

89T. Claims management activity conducted by a students' union

(1) There is excluded from articles 89G to 89M any activity carried on by a students' union for a member of that students' union or a member of a constituent or affiliated association or body.

(2) In this article "students' union" has the meaning given by section 20 (meaning of "students' union") of the Education Act 1994(**a**).

89U. Claims management activity conducted by an insurance intermediary

There is excluded from articles 89G to 89M any regulated activity of the kind specified in article 21, 25, 39A, 53 or 64 carried on by a person who has permission to carry on that activity in relation to a contract of insurance.

89V. Certain providers of referrals

(1) There is excluded from article 89G the activity of referring details of a potential claim or potential claimant to another person if—

(a) the person who refers those details ("the introducer") carries on no other regulated claims management activity;

(b) the activity is incidental to the introducer's main business;

(c) the details are only referred to authorised persons, legal practitioners, or a firm, organisation or body corporate that provides the service through legal practitioners;

(d) of the claims that the introducer refers to such persons, that introducer is paid, in money or money's worth, for no more than 25 claims per calendar quarter; and

(e) the introducer, in obtaining and referring those details, has complied with the provisions of the Data Protection Act 2018(**b**), the Privacy and Electronic Communications (EC Directive) Regulations 2003(**c**), the General Data Protection Regulation (EU) of the European Parliament and of the Council 2016/679(**d**) and the Consumer Protection from Unfair Trading Regulations 2008(**e**).

(2) Paragraph (1)(e) does not apply in the case of a referral to a legal practitioner or firm, organisation or body corporate that carries on the activity through legal practitioners.

(3) In this article "legal practitioner" has the meaning given by article 89N(2) or (4).

89W. Services in connection with counterclaims and claims against third parties

There is excluded from articles 89G to 89M any activity carried on in circumstances where—

(a) a claim has been made by a person ("the claimant") against another person ("the defendant"); and

(b) the activity being carried on consists of the provision of a service to the defendant in connection with—

(**a**) 1994 c. 30.
(**b**) 2018 c. 12.
(**c**) S.I. 2003/2426.
(**d**) Regulation (EU) 2016/679.
(**e**) S.I. 2008/1277.

(i) the making of a counterclaim against the claimant arising out of the same set of facts as the claim referred to in sub-paragraph (a); or

(ii) the making of a claim against a third party (whether for contribution, as a subrogated claim, or otherwise) which is incidental to, or consequent on, the claim referred to in sub-paragraph (a).".

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

8. The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(**a**) is amended as follows.

9. In article 2 (interpretation: general), in the appropriate place, insert—

""controlled claims management activity" has the meaning given in article 4(3);".

10. In article 4—

(a) in the heading of the article, after "controlled activities" insert ", controlled claims management activities";

(b) after paragraph (2) insert—

"(3) For the purposes of section 21(10B)(**b**) of the Act, a controlled claims management activity is an activity carried on in Great Britain of a kind specified in paragraph 11A of Schedule 1.".

11. In article 8 (interpretation: solicited and unsolicited real time communications)—

(a) in paragraph (3), in sub-paragraph (b) after "controlled activities or investments" insert "or controlled claims management activities"; and

(b) in paragraph (4), in sub-paragraph (b) after "any investment activity" insert "or any claims management activity".

12. In paragraph (1) of article 11 (combination of different exemptions) in sub-paragraph (b) for "11" substitute "11A".

13. In article 12 (communications to overseas recipients)—

(a) in paragraph (1) for "paragraphs (2) and (7)" substitute "paragraphs (2), (7) and (8)"; and

(b) after paragraph (7) insert—

"(8) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.".

14. In paragraph (1) of article 13 (communications from customers and potential customers)—

(a) in sub-paragraph (a)—

(i) after "controlled investment" insert "or controlled claims management activity";

(ii) omit "or";

(b) at the end of sub-paragraph (b) insert "; or"; and

(c) after sub-paragraph (b) insert—

"(c) in order that the customer can be supplied with services in respect of a controlled claims management activity by that supplier.".

15. In paragraph (2) of article 14 (follow up non-real time communications and solicited real time communications) in sub-paragraph (d) after "and the same controlled investment" insert "or relates to the same controlled claims management activity".

(**a**) S.I. 2005/1529.

(**b**) Section 21(10B) was inserted by Financial Guidance and Claims Act 2018 (c. 10) section 27(3)(b).

16. In paragraph (1A) of article 15 (introductions) after sub-paragraph (c) insert—

"(d) paragraph 11A of that Schedule.".

17. In article 16 (exempt persons) in paragraph (1) sub-paragraph (c) after "controlled activity" insert "or controlled claims management activity".

18. In article 17 (generic promotions)—

(a) at the end of sub-paragraph (a) omit "and";

(b) at the end of sub-paragraph (b) insert "; and";

(c) after sub-paragraph (b) insert—

"(c) does not identify (directly or indirectly) any person as a person who carries on a controlled claims management activity.".

19. In article 19 (investment professionals) after paragraph (6) insert —

"(7) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.".

20. In article 20 (communications by journalists) in paragraph (3)—

(a) in sub-paragraph (b) after "paragraph (4)" insert "or to a controlled claims management activity";

(b) in sub-paragraph (c) after "controlled investment" insert "or who carries on or engages in the controlled claims management activity".

21. In article 27 (application of exemptions in Part 6) after sub-paragraph (b) insert—

"(c) a controlled claims management activity.".

22. In article 28 (one off non-real time communications and solicited real time communications) in paragraph (3) sub-paragraph (a) after "investment activity" insert "or controlled claims management activity".

23. In article 28A (one off unsolicited real time communications) after paragraph (3) insert—

"(4) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.".

24. In article 30 (overseas communicators: solicited real time communications) after paragraph (2) insert—

"(3) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.".

25. In article 31 (overseas communicators: non-real time communications to previously overseas customers) after paragraph (3) insert—

"(4) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.".

26. In article 32 (overseas communicators: unsolicited real time communications to previously overseas customers) after paragraph (3) insert—

"(4) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.".

27. In article 33 (overseas communicators: unsolicited real time communications to knowledgeable customers) after paragraph (4) insert—

"(5) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.".

28. Article 36 (nationals of EEA States other than United Kingdom) is renumbered as paragraph (1) of that article and after the renumbered paragraph (1) insert—

"(2) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.".

29. In article 39 (joint enterprises) in paragraph (2) after "controlled activity" insert "or controlled claims management activity".

30. In article 47 (persons in the business of disseminating information) in paragraph (2)(a) after "controlled activities" insert "or controlled claims management activities".

31. In article 49 (high net worth companies, unincorporated associations etc) after paragraph (7) insert—

"(8) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.".

32. In article 55A (non-real time communication by members of professions)—

(a) in paragraph (2) after "investment and consumer credit-related" insert "and claims management-related";

(b) in paragraph (3) after "investment and consumer credit-related" insert "and claims management-related".

33. In article 59 (annual accounts and directors' report) in paragraph (3) in sub-paragraph (a) for "11" substitute "11A".

34. In article 61 (sale of goods and supply of services) in paragraph (1) in the definition of "supplier"—

(a) after "controlled activities" insert "or controlled claims management activities";

(b) for "and 10BB" substitute ", 10BB and 11A".

35. In article 73 (advice centres) in paragraph (2)—

(a) at the end of sub-paragraph (e) omit "or";

(b) at the end of sub-paragraph (f) insert—

"; or

(g) a controlled claims management activity.".

36. After article 73 (advice centres) insert—

"PART 6A

EXEMPT COMMUNICATIONS: CONTROLLED CLAIMS MANAGEMENT ACTIVITIES

73A. Application of exemptions in this Part

The exemptions in this Part apply to any communication which relates to a controlled claims management activity of a kind specified in paragraph 11A of Schedule 1.

73B. Communications made by legal professionals

(1) The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made in England and Wales by—

(a) a legal practitioner;

(b) a firm, organisation or body corporate that carries on the controlled claims management activity through a legal practitioner; or

(c) an individual who carries on the controlled claims management activity at the direction of, and under the supervision of, a legal practitioner who is—

(i) that individual's employer or fellow employee; or

(ii) a director of a company, or a member of a limited liability partnership, that provides the service and is that individual's employer.

(2) In paragraph (1) "legal practitioner" means—

(a) a solicitor or barrister of any part of England and Wales or Northern Ireland;

(b) a Fellow of the Chartered Institute of Legal Executives;

(c) a European lawyer, as defined in the European Communities (Services of Lawyers) Order 1978(**a**) or the European Communities (Lawyer's Practice) Regulations 2000(**b**);

(d) a registered foreign lawyer, as defined in section 89(9) of the Courts and Legal Services Act 1990(**c**);

(e) any other member of a legal profession, of a jurisdiction other than England and Wales, that is recognised by the Law Society of England and Wales or the General Council of the Bar as a regulated legal profession.

(3) The financial promotion restriction does not apply to a communication which relates to a controlled claims management activity when that communication is made in Scotland by—

(a) a legal practitioner;

(b) a firm, organisation or body corporate that carries on the controlled claims management activity through or under the supervision of a legal practitioner where that firm, organisation or body corporate is—

(i) a firm of solicitors;

(ii) an incorporated practice; or

(iii) a licensed legal services provider and the activity is a legal service as defined within section 3 of the Legal Services (Scotland) Act 2010(**d**).

(4) In paragraph (3) "legal practitioner" means—

(a) a person who is qualified to practise as a solicitor under section 4 of the Solicitors (Scotland) Act 1980(**e**);

(b) an advocate who is a member of the Faculty of Advocates;

(c) a European lawyer as defined in the European Communities (Services of Lawyers) Order 1978 or the European Communities (Lawyer's Practice) (Scotland) Regulations 2000(**f**); or

(d) a registered foreign lawyer within the meaning of section 65 of the Solicitors (Scotland) Act 1980.

(5) A communication mentioned in paragraph (1) or (3) is only excluded from the financial promotion restriction if the legal practitioner concerned carries on the controlled claims management activity in the ordinary course of legal practice pursuant to the professional rules to which that legal practitioner is subject.

73C. Communications made by a charity or not-for-profit agency

(1) The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made by a charity or not-for-profit agency.

(2) In this article "charity" means—

(**a**) S.I. 1978/1910.
(**b**) S.I. 2000/1119.
(**c**) 1990 c. 41.
(**d**) 2010 asp 16.
(**e**) 1980 c. 46.
(**f**) S.S.I. 2000/121.

(a) a charity as defined by section 1(1) of the Charities Act 2011(**a**) or the Charities and Trustee Investment (Scotland) Act 2005(**b**); or

(b) a body registered in the Scottish Charity Register.

(3) In this article "not-for-profit agency" means a body that by or under its constitution–

(a) is required to apply the whole of its net income, and any expendable capital, after payment of outgoings for charitable or public purposes; and

(b) is prohibited from distributing, directly or indirectly, any part of its net income by way of profits or its assets among any of its members.

(4) But a body is not prevented from being a not-for-profit agency for the purposes of paragraph (3) if its constitution permits—

(a) the payment, out of the body's funds, of reasonable and proper remuneration for goods or services supplied to the body by a member; or

(b) in the case of a not-for-profit body that is a charity, the payment to a member to which the member is eligible because that member is a beneficiary of the charity; or

(c) the purchase, out of the body's funds, of indemnity insurance for trustees of the body.

73D. Communications made by a person appointed by a statutory or other public body

The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made by—

(a) any person established or appointed by virtue of an enactment;

(b) an Independent Complaints Reviewer; or

(c) an Independent Case Examiner

when the communication is made in the course of carrying out that individual's duties.

73E. Communications made by the Motor Insurers' Bureau

The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made by the Motor Insurers' Bureau in the course of carrying its functions (being the company limited by guarantee mentioned in section 95(2) (notification of refusal of insurance on grounds of health) of the Road Traffic Act 1988(**c**)).

73F. Communications made by a medical defence union

The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made by—

(a) the Medical Protection Society Limited for its members;

(b) the Medical Defence Union Limited for its members; or

(c) the Medical and Dental Defence Union of Scotland Limited for its members.

73G. Communications made by an independent trade union

(1) The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made by an independent trade union for —

(a) a member (including a retired member or a student member) of an independent trade union;

(**a**) 2011 c. 25.
(**b**) 2005 asp 10.
(**c**) 1988 c. 52.

(b) a member of the family of a member referred to in sub-paragraph (a); or

(c) a former member of the trade union to whom the trade union may, under its rules, provide claims management services, or a member of the family of such a former member.

(2) In paragraph (1) "independent trade union" has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992(**a**).

(3) For the purposes of paragraph (1)—

(a) subject to sub-paragraph (b), whether a person is or has been a member (including a retired member or a student member) of a trade union is to be decided in accordance with the rules of that trade union;

(b) "member" of a trade union does not include a person who, under those rules, is a member only for the purpose of pursuing a claim or claims; and

(c) whether a person is a member of the family of a member of a trade union is to be decided in accordance with the rules of that trade union.

(4) An exemption of a trade union under this article is subject to compliance by the trade union with the condition that the trade union, in making a communication which relates to a controlled claims management activity, must act in accordance with the code of practice for the provision of regulated claims management activities by trade unions issued by the Treasury.

73H. Communications made by a students' union

(1) The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made by a students' union for a member of that students' union or a member of a constituent or affiliated association or body.

(2) In this article "students' union" has the meaning given by section 20 (meaning of "students' union") of the Education Act 1994(**b**).

73I. Communications made by an insurance intermediary

The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made by a person who has permission to carry out a regulated activity of the kind specified in article 21, 25, 39A, 53 or 64 of the Regulated Activities Order in relation to a contract of insurance.

73J. Communications made by certain providers of referrals

(1) The financial promotion restriction does not apply to any communication which relates to the controlled claims management activity falling within paragraph 11A(2) of Schedule 1 of referring the details of a potential claim or potential claimant to another person if –

(a) the person who refers those details ("the introducer") carries on no other regulated claims management service;

(b) the activity is incidental to the introducer's main business;

(c) the details are only referred to authorised persons, legal practitioners, or a firm, organisation or body corporate that provides the service through legal practitioners;

(d) of the claims that the introducer refers to such persons, that introducer is paid, in money or money's worth, for no more than 25 claims per calendar quarter; and

(**a**) 1992 c. 52.
(**b**) 1994 c. 30.

(e) the introducer, in obtaining and referring those details has complied with the provisions of the Data Protection Act 2018(**a**), the Privacy and Electronic Communications (EC Directive) Regulations 2003(**b**), the General Data Protection Regulation (EU) of the European Parliament and of the Council 2016/679(**c**) and the Consumer Protection from Unfair Trading Regulations 2008(**d**).

(2) Paragraph 1(e) does not apply in the case of a referral to a legal practitioner or firm, organisation or body corporate that carries on the activity through legal practitioners.

(3) In this article "legal practitioner" has the meaning given by article 73B(2) or (4).".

37. After article 73J (inserted by article 36) insert—

"PART 7

REVOCATIONS"

38. After paragraph 11 of Schedule 1 (controlled activities) insert—

"PART 1A

CONTROLLED CLAIMS MANAGEMENT ACTIVITY

11A.—(1) A claims management activity carried out in Great Britain is a controlled claims management activity.

(2) For the purposes of this paragraph, a claims management activity is one of the following activities:

(a) seeking out persons who may have a claim, referring details of a claim or potential claim or a claimant or potential claimant to another person (including a person having the right to conduct litigation), or identifying a claim or potential claim or a claimant or potential claimant in respect of—

(i) a personal injury claim;

(ii) a financial services or financial product claim;

(iii) a housing disrepair claim;

(iv) a claim for a specified benefit;

(v) a criminal injury claim; or

(vi) an employment related claim.

(b) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a personal injury claim;

(c) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a financial services or financial product claim;

(d) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a housing disrepair claim;

(e) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a claim for a specified benefit;

(**a**) 2018 c. 12.
(**b**) S.I. 2003/2426.
(**c**) Regulation (EU) 2016/679.
(**d**) S.I. 2008/1277.

(f) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a criminal injury claim; or

(g) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of an employment related claim.

(3) In this paragraph—

(a) "claimant" includes, in civil proceedings in Scotland, a pursuer;

(b) "defendant" includes, in civil proceedings in Scotland, a defender;

(c) "personal injury claim" means a claim for personal injury within the meaning of the Civil Procedure Rules 1998(**a**) in England and Wales and an action for damages for, or arising from, personal injuries within the meaning set out in section 8(7) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018(**b**) in Scotland;

(d) "financial services or financial product claim" includes a claim made under section 75 of the Consumer Credit Act 1974(**c**);

(e) "housing disrepair claim" means a claim under section 11 of the Landlord and Tenant Act 1985(**d**) or section 4 of the Defective Premises Act 1972(**e**) in England and Wales or an application in respect of the repairing standard under section 22 of the Housing (Scotland) Act 2006(**f**), or claims in relation to the disrepair of premises under a term of a tenancy agreement or lease or under the common law relating to nuisance or negligence but does not include claims for statutory nuisance under section 82 of the Environmental Protection Act 1990(**g**);

(f) "a claim for a specified benefit" means a claim for one of the following benefits—

(i) industrial injuries benefit, within the meaning given by section 94 of the Social Security Contributions and Benefits Act 1992(**h**);

(ii) any supplement or additional allowance, or increase of benefit or allowance to which a recipient of an industrial injuries benefit may be entitled under that Act or any other Act;

(iii) a benefit under a scheme referred to in paragraph 2 or 4 of Schedule 8 to that Act; or

(iv) a benefit under the Pneumoconiosis etc. (Workers' Compensation) Act 1979(**i**).

(g) "criminal injury claim" means a claim under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995(**j**);

(h) "employment related claim" includes a claim in relation to wages and salaries and other employment related payments and claims in relation to wrongful or unfair dismissal, redundancy, discrimination and harassment;

(i) "investigating" means carrying out an investigation into, or commissioning the investigation of, the circumstances, merits or foundation of a claim; and

(j) "representing" means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made.

(4) In this paragraph, a person is to be treated as carrying on a controlled claims management activity in Great Britain when the activity is carried on—

(**a**) S.I. 1998/3132.
(**b**) 2018 asp 10.
(**c**) 1974 c. 39. Section 75 was amended by S.I. 1983/1878 and 2010/1010.
(**d**) 1985 c. 70.
(**e**) 1972 c. 35.
(**f**) 2006 asp 1.
(**g**) 1990 c. 43.
(**h**) 1992 c. 4.
(**i**) 1979 c. 41.
(**j**) 1995 c. 53.

(a) by a person who is—

(i) an individual who is ordinarily resident in Great Britain; or

(ii) a person, other than an individual, who is constituted under the law of England and Wales or Scotland; or

(b) in respect of a claimant or potential claimant who is—

(i) an individual who is ordinarily resident in Great Britain; or

(ii) a person, other than an individual, who is constituted under the law of England and Wales or Scotland.

(5) For the purposes of sub-paragraph (4) a person is "ordinarily resident" in Great Britain if that person satisfies the requirements of the Statutory Residence Test as set out in Schedule 45 to the Finance Act 2013(**a**) either—

(a) at the time of the facts giving rise to the claim or potential claim; or

(b) at the time when the controlled claims management activity is carried out in respect of that claimant or potential claimant.".

PART 3

Transitional provisions

CHAPTER 1

Interpretation

Interpretation

39.—(1) In this Part—

"the 2006 Act" means the Compensation Act 2006(**b**);

"the 2007 Act" means the Legal Services Act 2007(**c**);

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

"the 2006 Regulations" means the Compensation (Claims Management Services) Regulations 2006(**e**);

"a 2000 Act authorised person" means a person given a Part 4A permission;

"a 2006 Act authorised person" means an authorised person within the meaning given by section 4(2)(a) of the 2006 Act;

"Part 4A permission" means a permission given under Part 4A of the 2000 Act (permission to carry on regulated activities);

"the Regulator" means the Secretary of State(**f**).

(2) A reference to the Regulator includes a reference to a person acting on behalf of the Regulator or with the Regulator's authority.

(3) An appeal submitted to the First-tier Tribunal under section 13 of the 2006 Act has not been determined when—

(**a**) 2013 c. 29.
(**b**) 2006 c. 29.
(**c**) 2007 c. 29.
(**d**) S.I. 2001/544.
(**e**) S.I. 2006/3322.
(**f**) For the purposes of Part 6 (legal complaints) of the 2007 Act (see section 161(1)(a) (extension of Part 6 to claims management services)), the Secretary of State (exercising the functions of the Regulator through the Claims Management Regulation Unit under section 5(9) of the 2006 Act), is to be treated as an approved regulator.

(a) such an appeal is awaiting determination by the First-tier Tribunal;

(b) an application for permission to appeal under section 11, 13, 14A or 14B of the Tribunals, Courts and Enforcement Act 2007(**a**) ("the Tribunals Act 2007") could be made or is awaiting determination (other than an application out of time with permission);

(c) an appeal under section 11, 13, 14A or 14B of the Tribunals Act 2007 is awaiting determination; or

(d) an appeal decision has been reviewed by the First-tier Tribunal under section 9 or by the Upper Tribunal under section 10 of the Tribunals Act 2007 and is awaiting a further determination.

CHAPTER 2

Authorisation and regulation of 2006 Act authorised persons

Meaning of "relevant person"

40.—(1) In this Chapter "relevant person" means a person who—

(a) immediately before 1st April 2019, was a 2006 Act authorised person; and

(b) on 1st April 2019, is treated, by virtue of article 80(5), as having a Part 4A permission to carry on a regulated claims management activity.

(2) Where the conditions set out in paragraph (3) are met, the reference in paragraph (1)(a) to a 2006 Act authorised person includes a person ("P") who received from the Regulator written notice given under regulation 47 of the 2006 Regulations of a decision to cancel P's authorisation ("the cancellation decision").

(3) The conditions are that the cancellation decision had effect before 1st April 2019, and—

(a) where, before 1st April 2019, P submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act with respect to the cancellation decision, the appeal—

(i) has not been determined; or

(ii) has been determined by a remittal of the cancellation decision to the Regulator under section 13(3)(e) of the 2006 Act but a further decision by the Regulator in relation to the cancellation decision has not been taken; or

(b) where, before 1st April 2019, P did not submit such notice of appeal, the period within which an appeal may be made has not ended on that date.

Applications for authorisation made to the Regulator: authorisation by the FCA

41.—(1) This article applies to an application under regulation 8 of the 2006 Regulations (application for authorisations) received by the Regulator before 1st April 2019, where on 1st April 2019—

(a) the applicant ("A") has not withdrawn the application; and

(b) the Regulator has not given A a written instrument of authorisation in accordance with regulation 13(1) of the 2006 Regulations.

(2) Paragraphs (3) to (8) apply where the Regulator has not approved the grant of an authorisation to A.

(3) Where—

(a) the conditions set out in paragraph (5) are met; and

(b) immediately before 1st April 2019, A is a 2000 Act authorised person,

A's application to the Regulator is to be treated as an application to the FCA under section 55H(**b**) of the 2000 Act (variation by FCA at request of authorised person) to vary A's Part 4A

(**a**) 2007 c. 15.
(**b**) Section 55H was inserted by the Financial Services Act 2012 (c. 21), section 11(2).

permission by adding regulated claims management activity to the activities to which the permission relates.

(4) Where—

(a) the conditions set out in paragraph (5) are met; and

(b) immediately before 1st April 2019, A is not a 2000 Act authorised person,

A's application to the Regulator is to be treated as an application to the FCA under section 55A(**a**) (application for permission) of the 2000 Act for permission to carry on regulated claims management activity.

(5) The conditions are that A—

(a) submits to the FCA such further application form as may be specified in a direction given by the FCA; and

(b) pays to the FCA any further fee payable under its rules by any person making an application of a kind specified in paragraphs (3) or (4).

(6) If, before 1st April 2019, the Regulator notified A that the Regulator was minded to grant or refuse A's application, that fact is immaterial for the purposes of the determination of the application by the FCA.

(7) Section 55U(1) to (4)(**b**) of the 2000 Act (applications under Part 4A) does not apply to A's application.

(8) For the purposes of section 55V(**c**) of the 2000 Act (determination of applications) A's application is to be treated as if it had been received by the FCA on the date on which A met the conditions set out in paragraph (5).

(9) Paragraph (10) applies where—

(a) the Regulator has on A's application approved the grant of an authorisation to A; and

(b) A has not paid to the Regulator the fee referred to in regulation 13(1) of the 2006 Regulations.

(10) That fee is payable to the FCA, and on payment of that fee A is to be treated for the purposes of article 80 as if—

(a) immediately before 1st April 2019, A was a 2006 Act authorised person; and

(b) during the period referred to in paragraph (1)(b) of that article, A had notified the FCA of A's desire to be registered for temporary permission under that article and paid the fee payable by any person desiring to be so registered.

Applications for authorisation made to the Regulator: appeal of decision

42.—(1) This article applies where—

(a) the Regulator gave notice to a person ("A") under regulation 13(5) of the 2006 Regulations of the Regulator's decision—

(i) to refuse to grant an authorisation to A; or

(ii) to grant an authorisation to A subject to a condition not sought by A; and

(b) on 1st April 2019, the period within which an appeal relating to that decision may be made has not ended.

(2) The Regulator's notice is to be treated as a decision notice given under section 55X(4)(f) of the 2000 Act(**d**), and the notice is to be read for that purpose—

(a) as if any reference to the Regulator were a reference to the FCA; and

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(**a**) Section 55A was inserted by the Financial Services Act 2012, section 11(2).
(**b**) Section 55U was inserted by the Financial Services Act 2012, section 11(2).
(**c**) Section 55V was inserted by the Financial Services Act 2012, section 11(2).
(**d**) Section 55X was inserted (together with the rest of Part 4A of the 2000 Act) by the Financial Services Act 2012 (c. 21), section 11(2).

(b) with any other necessary modifications.

(3) If, before 1st April 2019, A submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act in respect of the Regulator's decision, section 55Z3(1) of the 2000 Act(**a**) (right to refer matters to the Tribunal) does not apply.

Proposal by the Regulator to vary authorisation: determination by the FCA

43.—(1) This article applies where the Regulator—

(a) gave written notice to a relevant person ("A") under regulation 46(4) of the 2006 Regulations (cancellation, suspension and variation of authorisations) that the Regulator proposed to vary A's authorisation; and

(b) did not, on or before 1st April 2019, give written notice under regulation 47(1) of the 2006 Regulations (procedure for cancellation etc) of a decision to vary A's authorisation.

(2) The Regulator's notice is to be treated as written notice given by the FCA under section 55Y(4) of the 2000 Act(**b**), and for this purpose—

(a) subsection (2) of that section does not apply to the notice;

(b) the notice is taken to comply with subsection (5) of that section;

(c) the notice is to be read—

(i) as if the period specified in it for making a written submission (including any further period allowed under regulation 46(5) of the 2006 Regulations) were the period for making representations specified in accordance with section 55Y(5)(c) of the 2000 Act;

(ii) as if a reference to the Regulator were a reference to the FCA; and

(iii) with any other necessary modifications.

Variation of authorisation by the Regulator: appeal of decision

44.—(1) This article applies where—

(a) the Regulator gave written notice to a relevant person ("B") under regulation 47(1) of the 2006 Regulations of a decision to vary B's authorisation; and

(b) on 1st April 2019—

(i) the period within which an appeal relating to that decision may be made has not ended; or

(ii) an appeal submitted to the First-tier Tribunal by B before that date has not been determined.

(2) The Regulator's notice is to be treated as written notice given by the FCA under section 55Y(7) of the 2000 Act, and for this purpose—

(a) it is immaterial that the notice does not comply with subsection (9) of that section; and

(b) the notice is to be read—

(i) as if a reference to the Regulator were a reference to the FCA; and

(ii) with any other necessary modifications.

(3) If, before 1st April 2019, B submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act in respect of the Regulator's decision, section 55Z3(1) of the 2000 Act does not apply.

(**a**) Section 55Z3 was inserted by the Financial Services Act 2012, section 11(2) and amended by SI 2018/135.
(**b**) Section 55Y was inserted by the Financial Services Act 2012, section 11(2).

Proposal by the Regulator to cancel authorisation: determination by the FCA

45.—(1) This article applies where the Regulator—

(a) gave written notice to a relevant person ("A") under regulation 46(4) of the 2006 Regulations that the Regulator proposed to cancel A's authorisation; and

(b) did not, on or before 1st April 2019, give written notice under regulation 47(1) of the 2006 Regulations of a decision to cancel A's authorisation.

(2) Where, immediately before 1st April 2019, A is not a 2000 Act authorised person, the Regulator's notice is to be treated as a warning notice given under section 55Z(1)(**a**) of the 2000 Act, and for this purpose—

(a) the notice is taken to comply with section 387(1) (warning notices) of the 2000 Act;

(b) the notice is to be read—

(i) as if a reference to the Regulator were a reference to the FCA;

(ii) as if the period specified in it for making a written submission (including any further period allowed under regulation 46(5) of the 2006 Regulations) were the period for making representations specified in accordance with section 387(2) of the 2000 Act; and

(iii) with any other necessary modifications.

(3) Where, immediately before 1st April 2019, A is a 2000 Act authorised person, the Regulator's notice is to be treated as written notice given by the FCA under section 55Y(4) of the 2000 Act, and for this purpose—

(a) subsection (2) of that section does not apply to the notice;

(b) the notice is taken to comply with subsection (5) of that section; and

(c) the notice is to be read—

(i) as if a reference to the Regulator were a reference to the FCA;

(ii) as if the period specified in it for making a written submission (including any further period allowed under regulation 46(5) of the 2006 Regulations) were the period for making representations specified in accordance with section 55Y(5)(c) of the 2000 Act; and

(iii) with any other necessary modifications.

Cancellation of authorisation by the Regulator: appeal of decision

46.—(1) This article applies where—

(a) the Regulator gave written notice to a relevant person ("B") under regulation 47(1) of the 2006 Regulations of a decision to cancel B's authorisation; and

(b) on 1st April 2019—

(i) the period within which an appeal relating to that decision may be made has not ended; or

(ii) an appeal submitted to the First-tier Tribunal by B before that date has not been determined.

(2) For the purposes only of an appeal in respect of the Regulator's decision, the Regulator's notice is to be treated—

(a) where, immediately before 1st April 2019, B is not a 2000 Act authorised person, as a decision notice given under section 55Z(2) of the 2000 Act;

(b) where, immediately before 1st April 2019, B is a 2000 Act authorised person, as written notice given by the FCA under section 55Y(7) of that Act.

(**a**) Section 55Z was inserted by the Financial Services Act 2012, section 11(2).

(3) For the purposes of paragraph (2)—

(a) where the notice is treated as written notice under section 55Y(7) of the 2000 Act, it is immaterial that it does not comply with subsection (9) of that section; and

(b) the notice is to be read—

(i) as if any reference to the Regulator were a reference to the FCA; and

(ii) with any other necessary modifications.

(4) If, before 1st April 2019, B submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act in respect of the Regulator's decision, section 55Z3(1) of the 2000 Act does not apply.

Proposal by the Regulator to suspend authorisation: determination by the FCA

47.—(1) This article applies where the Regulator—

(a) gave written notice to a relevant person ("A") under regulation 46(4) of the 2006 Regulations that the Regulator proposed to suspend A's authorisation; and

(b) on 1st April 2019, has not given written notice under regulation 47(1) of the 2006 Regulations of a decision to suspend A's authorisation.

(2) The Regulator's notice is to be treated as a warning notice given by the FCA under section 207(1)(c) of the 2000 Act(**a**), and for this purpose—

(a) the notice is taken to comply with section 387(1) of the 2000 Act; and

(b) the notice is to be read—

(i) as if any reference to the Regulator were a reference to the FCA;

(ii) as if the period specified for making a written submission (including any further period allowed under regulation 46(5) of the 2006 Regulations) were the period for making representations specified in accordance with section 387(2) of the 2000 Act;

(iii) as if the period of the proposed suspension specified among the terms set out under regulation 46(4)(b) of the 2006 Regulations were the period for which the suspension is to have effect stated in accordance with section 207(4) of the 2000 Act(**b**); and

(iv) with any other necessary modifications.

Suspension of authorisation by the Regulator: appeal of decision

48.—(1) This article applies where—

(a) the Regulator gave written notice to a relevant person ("B") under regulation 47(1) of the 2006 Regulations of a decision to suspend B's authorisation; and

(b) on 1st April 2019—

(i) the period within which an appeal relating to that decision may be made has not ended; or

(ii) an appeal submitted to the First-tier Tribunal by B before that date has not been determined.

(2) For the purposes only of an appeal in respect of the Regulator's decision, the Regulator's notice is to be treated as a decision notice given by the FCA under section 208(1)(c) of the 2000 Act(**c**), and the notice is to be read for this purpose—

(a) as if any reference to the Regulator were a reference to the FCA; and

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(**a**) Paragraph (c) of section 207(1) was inserted by the Financial Services Act 2010 (c. 28), sections 24(1) and (2), paragraphs 1 and 18(1) and (3) of Schedule 2.

(**b**) Subsection (4) of section 207 was inserted by the Financial Services Act 2010, sections 24(1) and (2), paragraphs 1 and 18(1) and (3) of Schedule 2.

(**c**) Paragraph (c) of section 208(1) was inserted by the Financial Services Act 2010, sections 24(1) and (2), paragraphs 1 and 18((1) and (3) of Schedule 2.

(b) with any other necessary modifications.

(3) For the purposes of section 206A(3) of the 2000 Act, the suspension is treated as having taken effect on 1st April 2019.

(4) If, before 1st April 2019, B submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act in respect of the Regulator's decision, section 208(4) of the 2000 Act(**a**) (right to refer matters to the Tribunal) does not apply.

Notice by the Regulator of proposed direction

49.—(1) This article applies where the Regulator—

(a) notified a relevant person under regulation 29(4) of the 2006 Regulations(**b**) (directions of the Regulator about complaints handling and related matters) of a direction that the Regulator proposed to give under paragraph (3) of that regulation; and

(b) on 1st April 2019, has not given the proposed direction.

(2) The Regulator's notice is to be treated as written notice given by the FCA under section 55Y(4) of the 2000 Act, and for this purpose—

(a) subsection (2) of that section does not apply to the notice;

(b) the notice is taken to comply with subsection (5) of that section; and

(c) the notice is to be read—

(i) as if a reference to the Regulator were a reference to the FCA; and

(ii) with any other necessary modifications.

Compliance with information requirement imposed by the Regulator

50.—(1) This article applies where—

(a) the Regulator—

(i) gave notice in writing to a person under—

(aa) regulation 33 of the 2006 Regulations (requirements for information under section 8(4) of the 2006 Act); or

(bb) regulation 36 of the 2006 Regulations (breaches by authorised persons of condition: requirement to provide information etc); or

(ii) made a request to a person under rule 16 of the Conduct of Authorised Persons Rules 2018(**c**); and

(b) on 1st April 2019, the period specified in the notice or request within which the information or documents specified or described in the notice or request are to be given to the Regulator, including any extra time allowed under regulation 33(6) or 36(6) of the 2006 Regulations, has not expired.

(2) The Regulator's notice or request is to be treated as a notice in writing given by the FCA under section 165(1) of the 2000 Act(**d**) (regulators' power to require information: authorised persons etc).

(3) For the purposes of this article, section 165 of the 2000 Act has effect in relation to the Regulator's notice or request as if—

(**a**) Subsection (4) was amended by the Financial Services Act 2012 (c. 21), section 37(1), paragraphs 1 and 15 of Schedule 9; and the Financial Services Act 2010, section 24(1) and (2), paragraphs 1 and 19 of Schedule 2.

(**b**) Regulation 29(4) was amended by S.I. 2015/42.

(**c**) The Conduct of Authorised Persons Rules 2018 (https://www.gov.uk/government/publications/claims-management-regulation-conduct-of-authorised-person-rules-2018) are made by the Regulator under regulation 22 of the 2006 Regulations (Rules and Codes of Practice).

(**d**) Section 165(1) was amended by the Financial Services Act 2012 (c. 21), Schedule 12, paragraph 1(2).

(a) in subsection (2)(a), the reference to such reasonable period as may be specified is to be read as a reference to the period referred to in paragraph (1)(b) or such longer period as the FCA may allow; and

(b) in subsection (2)(b), the reference to such place as may be specified is to be read as a reference to the place specified in the Regulator's notice or request at which the information or documents specified or described in the notice or request are to be given to the Regulator.

Penalties for conduct for which the Regulator has not given notice of proposed penalty

51.—(1) This article applies where—

(a) the FCA is satisfied that, after 28th December 2014 but before 1st April 2019, a relevant person ("A")—

(i) failed to comply with any of the conditions of authorisation referred to in regulation 12(5)(a), (b), (d) or (i)(**a**) of the 2006 Regulations;

(ii) failed to comply with a notice in writing given by the Regulator under regulation 36 of the 2006 Regulations; or

(iii) in relation to a warrant issued under regulation 40 of the 2006 Regulations (issue of warrants generally)(**b**), obstructed an attempt to—

(aa) enter and search premises in accordance with the warrant;

(bb) take possession of written or electronic records in accordance with an authorisation under paragraph (4) of that regulation; or

(cc) take copies of written or electronic records in accordance with regulation 43(**c**) of the 2006 Regulations (copying of documents); and

(b) on 1st April 2019, the Regulator has not given written notice to A under regulation 51(**d**) of the 2006 Regulations (notice of proposed penalty and written submissions) that the Regulator proposed to impose a penalty on A for the failure or the obstruction concerned ("the relevant default").

(2) For the purposes of the following sections of the 2000 Act, the relevant default is to be treated as a contravention of a relevant requirement (within the meaning given by section 204A(2) of that Act)—

(a) section 206 (financial penalties);

(b) section 206A (suspending permission to carry on regulated activities etc);

(c) section 208 (decision notice).

(3) For the purposes of paragraph (2), sections 206 and 208 of the 2000 Act are to be read as if a reference to an authorised person included a person who was, at any time before 1st April 2019, a 2006 Act authorised person.

(4) In determining what, if any, financial penalty to impose on A, the FCA must have regard to—

(a) any penalty or fine that has been imposed on A for the relevant default by another body;

(b) any other steps that the Regulator or the FCA has taken, or that the FCA might take, in relation to the relevant default;

(c) the nature and seriousness of the relevant default; and

(d) the relevant turnover (within the meaning given by regulation 50(**e**)) of A's business.

(5) A financial penalty imposed by the FCA for the relevant default—

(**a**) Regulation 12(5) was amended by S.I. 2015/42.
(**b**) Regulation 40 was amended by S.I. 2008/1441.
(**c**) Regulation 42 was amended by S.I. 2008/1441.
(**d**) Regulation 51 was amended by S.I. 2008/1441.
(**e**) Regulation 50 was amended by S.I. 2014/3239.

(a) where the relevant turnover of A's business is less than £500,000, may not exceed £100,000;

(b) where the relevant turnover of A's business is £500,000 or more, may not exceed an amount equal to 20 per cent of that turnover.

Penalties for conduct for which the Regulator has given notice of proposed penalty

52.—(1) In this article—

(a) a reference to a numbered section is a reference to the section so numbered in the 2000 Act; and

(b) a reference to a numbered regulation is a reference to the regulation so numbered in the 2006 Regulations.

(2) This article applies where the Regulator—

(a) gave written notice to a person ("A") under regulation 51(1) that the Regulator proposed to impose a penalty on A for a failure or obstruction of a kind specified in article 51(1) ("the relevant default");

(b) none of the evidence on which the Regulator relies, as set out in the summary of evidence set out in the notice in accordance with regulation 51(1)(e), relates to conduct that occurred on or before 28th December 2014; and

(c) on 1st April 2019, the Regulator has not given written notice to A under regulation 52(**a**) (procedure for requiring an authorised person to pay a penalty) of a decision to require A to pay a penalty.

(3) The Regulator's notice is to be treated as a warning notice given by the FCA under section 207(1)(b) (proposal to take disciplinary measures)(**b**), and for this purpose—

(a) the notice is taken to comply with section 387(1); and

(b) the notice is to be read—

(i) as if a reference to the Regulator is a reference to the FCA;

(ii) as if the period specified in it for making a written submission (including any further period allowed under regulation 51(2)) is the period for making representations specified in accordance with section 387(2); and

(iii) with any other necessary modifications.

(4) For the purposes of the following sections of the 2000 Act, the relevant default is to be treated as a contravention of a relevant requirement (within the meaning given by section 204A(2))—

(a) section 206 (financial penalties);

(b) section 206A (suspending permission to carry on regulated activities etc);

(c) section 207 (proposal to take disciplinary measures);

(d) section 208 (decision notice).

(5) For the purposes of paragraph (4), sections 206, 207 (except subsection (1)(c)), and 208 are to be read as if a reference to an authorised person included a person who was, at any time before 1st April 2019, a 2006 Act authorised person.

(6) In determining what, if any, financial penalty to impose on A, the FCA must have regard to—

(a) the considerations specified in article 51(4); and

(**a**) Regulation 52 was amended by S.I. 2014/3239.
(**b**) Section 207(1) was amended by the Financial Services Act 2012 (c. 21), section 37(1), paragraphs 1 and 14 of Schedule 9.

(b) any written submissions made by A in relation to the matters in the Regulator's notice within the period allowed under regulation 51(1)(g)(**a**) or any further period allowed by the Regulator.

(7) A financial penalty imposed by the FCA for the relevant default—

(a) where the relevant turnover of A's business is less than £500,000, may not exceed £100,000;

(b) where the relevant turnover of A's business is £500,000 or more, may not exceed an amount equal to 20 per cent of that turnover.

Penalties for conduct for which the Regulator has given penalty decision: appeal of decision

53.—(1) This article applies where—

(a) the Regulator gave written notice to a person ("A") under regulation 52 of the 2006 Regulations of a decision to require A to pay a penalty; and

(b) on 1st April 2019—

(i) the period within which an appeal relating to that decision may be made has not ended; or

(ii) an appeal submitted to the First-tier Tribunal by A before that date has not been determined.

(2) The Regulator's notice is to be treated as a decision notice given by the FCA under section 208(1)(b) of the 2000 Act, and is to be read for this purpose—

(a) as if any reference to the Regulator were a reference to the FCA; and

(b) with any other necessary modifications.

(3) If, before 1st April 2019, A submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act, section 208(4) of the 2000 Act(**b**) does not apply.

Penalties for conduct for which the Regulator has given penalty decision: penalty due

54.—(1) This article applies where, before 1st April 2019—

(a) the Regulator gave written notice to a person ("A") under regulation 52 of the 2006 Regulations of a decision to require A to pay a penalty; and

(b) on 1st April 2019—

(i) the period within which an appeal relating to that decision may be made has ended, or an appeal has been withdrawn or determined otherwise than in A's favour; and

(ii) the penalty specified in the Regulator's notice, or any part of it, is unpaid.

(2) The penalty or unpaid part of the penalty is payable to the FCA rather than to the Regulator.

(3) Where the penalty, or any part of it, is not paid by the date specified in the Regulator's notice as the date by which it is required to be paid, the FCA may enforce the penalty or that part of it as a debt due to the FCA.

(4) For the purposes of Part 3 of Schedule 1ZA to the 2000 Act (penalties and fees)—

(a) any amounts received by the FCA by virtue of paragraph (2) are to be treated as amounts received by way of penalties imposed under the 2000 Act;

(b) any expenses incurred by the FCA in connection with the recovery of penalties payable to it by virtue of this article are to be treated as expenses incurred in connection with the recovery of penalties imposed under the 2000 Act.

(**a**) Regulation 51 was amended by S.I. 2013/3239.

(**b**) Section 208(4) was amended by the Financial Services Act 2012 (c. 21), section 37(1) and paragraphs 1 and 15 of Schedule 9 and the Financial Services Act 2010 (c. 28), section 24(1) and (2), and paragraphs 1 and 19(1) and (4).

Investigation and prosecution after 1st April 2019 in relation to conduct before that date

55.—(1) This article applies for the purposes of—

(a) an investigation on or after 1st April 2019 ("a relevant investigation")—

(i) to determine whether an offence was committed by a person before that date under Part 2 of the 2006 Act;

(ii) of a complaint about the activities or professional conduct of a relevant person before that date;

(iii) into the professional conduct of a relevant person before that date otherwise than as a result of a complaint, where the FCA is satisfied that the Regulator could reasonably have made a decision to carry out such an investigation under regulation 35(2) of the 2006 Regulations; and

(b) the prosecution on or after 1st April 2019 of an offence committed before that date under Part 2 of the 2006 Act ("a relevant offence").

(2) The FCA may—

(a) conduct any relevant investigation; or

(b) institute and prosecute criminal proceedings in respect of any relevant offence.

(3) Paragraphs (4) to (9) apply for the purposes of paragraph (2).

(4) The following sections of the 2000 Act are to be read as if a reference to an authorised person included a person who was, at any time before 1st April 2019, a 2006 Act authorised person—

(a) section 165 (regulators' power to require information), except subsection (7);

(b) section 166 (reports by skilled persons); and

(c) section 167(**a**) (appointment of persons to carry out general investigations).

(5) Section 168 of the 2000 Act(**b**) is to be read as if, in subsection (4), after paragraph (a) there were inserted—

"(ab) a person may be guilty of an offence under section 10, 11(1) or (2) of the Compensation Act 2006;

(ac) a person may have contravened section 4(1) of the Compensation Act 2006 or failed to comply with a requirement made under section 8(4) of that Act;".

(6) In section 175 (information and documents: supplemental provisions), subsections (2), (2A) and (2B)(**c**) have effect as if a reference to a document produced in response to a requirement imposed under Part 11 of the 2000 Act ("Part 11") included a document given to the Regulator in compliance with a requirement made under—

(a) regulation 33(1) (requirements for information under section 8(4) of the 2006 Act) of the 2006 Regulations; or

(b) regulation 36(1) (breaches by authorised persons of condition: requirement to provide information etc) of the 2006 Regulations.

(7) In section 177 (offences)—

(a) subsection (3) is to be read as if the reference to an investigation being or likely to be conducted under Part 11 included a relevant investigation; and

(b) subsections (1) and (4) are to be read as if the references to a requirement imposed under Part 11 included a requirement made under—

(i) regulation 33(1) of the 2006 Regulations; or

(**a**) Section 167 was amended by the Financial Services Act 2012 (c. 21), section 41.

(**b**) Section 168 was amended by the Counter Terrorism Act 2008 (c. 28), section 100(2), the Financial Services Act 2010 (c. 28), section 26(1)(g)(i), the Financial Services Act 2012, section 41, the Financial Guidance and Claims Act 2018 (c. 10), section 25, S.I. 2007/126, 2012/2554 and 2013/1773. There are other amendments, but none are relevant.

(**c**) Section 175 was amended by the Financial Services Act 2012 (c. 21), section 41.

(ii) regulation 36(1) of the 2006 Regulations.

(8) In section 398 (misleading FCA: residual cases) subsection (1A)(a) is to be read as if the reference to a requirement imposed by the 2000 Act included a requirement imposed under Part 11 (information gathering and investigations) as that Part applies with the modifications in paragraphs (4) to (7).

(9) In section 400 (offences by bodies corporate etc) a reference to an offence under the 2000 Act includes an offence under section 177(3) or (4) as that section applies with the modifications in paragraph (7).

Unprofessional conduct: continuation of investigation commenced by the Regulator

56.—(1) This article applies where—

(a) the Regulator commenced the investigation of a complaint or suspicion of unprofessional conduct of a person under regulation 35(1) or (2) of the 2006 Regulations (Regulator to investigate complaints or suspicions of unprofessional conduct); and

(b) on 1st April 2019, the investigation has not been concluded.

(2) The FCA is deemed to have decided, immediately before 1st April 2019, that there is good reason for the appointment under section 167 of the 2000 Act of one or more competent persons to conduct an investigation on its behalf into the complaint or suspicion referred to in paragraph (1).

Offences under the 2006 Act: continuation of investigation commenced by the Regulator and institution of criminal proceedings

57.—(1) This article applies where, before 1st April 2019, the Regulator commenced the investigation of an offence under Part 2 of the 2006 Act alleged to have been committed by any person ("A").

(2) The FCA may continue the investigation and for that purpose—

(a) section 168 of the 2000 Act (appointment of persons to carry out investigations in particular cases) applies in relation to the investigation with the modification set out in paragraph (3); and

(b) for the purposes of that section as applied, the FCA is deemed to have decided, immediately before 1st April 2019, that there are circumstances suggesting that A may be guilty of an offence under Part 2 of the 2006 Act.

(3) For the purposes of paragraph (2), section 168 of the 2000 Act is to be read as if, in subsection (1)(b), at the end there were inserted "or under Part 2 of the Compensation Act 2006".

(4) The FCA may institute criminal proceedings in respect of an offence under Part 2 of the 2006 Act in relation to which an investigation was continued by the FCA under paragraph (2).

Continuation of criminal proceedings instituted by the Regulator

58.—(1) This article applies to criminal proceedings ("relevant proceedings") which—

(a) were instituted by the Regulator under section 8(3)(b) of the 2006 Act in respect of an offence under section 7(1), 10(1) or 11(1) or (2) of that Act; and

(b) on 1st April 2019, have not been concluded by acquittal or upon conviction and sentencing.

(2) The FCA may continue the prosecution of the defendant in relevant proceedings, and is for that purpose substituted for the Regulator as a party to the proceedings.

Continuation of injunction applications made by the Regulator

59.—(1) This article applies to an application for an injunction ("a relevant application") which—

(a) was made by the Regulator under section 8(1) of the 2006 Act)(**a**); and

(b) on 1st April 2019, has not been determined by the court.

(2) The FCA may continue the relevant application and is for that purpose substituted for the Regulator as a party to that application.

Continuation of application made by the Regulator for a search warrant

60.—(1) This article applies to an application for a search warrant made by the Regulator—

(a) under section 8(5) of the 2006 Act (enforcement: the Regulator); or

(b) under regulation 37(1) or (2) of the 2006 Regulations (search warrants for purposes of investigation of professional conduct).

(2) The FCA may continue the search warrant application and is for that purpose substituted for the Regulator as a party to that application.

Retention of records seized by an officer of the Regulator

61.—(1) This article applies where, before 1st April 2019, an officer of the Regulator took possession of any written or electronic records in accordance with an authorisation given by a judicial officer under regulation 40(4) of the 2006 Regulations.

(2) Section 176A(**b**) (retention of documents taken under section 176) of the 2000 Act has effect in relation to the written or electronic records concerned as if they were documents of which possession had been taken under section 176 of that Act.

Decision notices

62. In relation to any notice given by the Regulator to a person which, by virtue of this Chapter, is to be treated as a decision notice given under the 2000 Act—

(a) it is immaterial that the notice does not meet the requirements specified in subsection (1)(b) to (e) of section 388 of that Act (decision notices); and

(b) that section is to be read as if—

(i) subsection (2) were omitted;

(ii) in subsection (3) the words from "which relates" to the end were omitted;

(iii) for subsections (4) and (5) there were substituted—

"(4) A further decision notice given under subsection (3) may vary the original notice.

(5) If the person to whom a decision notice is given under subsection (3) had the right to refer the matter to which the original decision notice related to the First-tier Tribunal under section 13 of the Compensation Act 2006, that person has the right to refer the matter to which the decision notice under subsection (3) relates to the Tribunal.".

Conditions and directions

63.—(1) This article applies where, in relation to a relevant person—

(a) the Regulator—

(i) granted an authorisation under regulation 12(1) of the 2006 Regulations subject to a condition ("relevant condition");

(**a**) Section 8(1) was amended by the Legal Services Act 2007 (c. 29) and the Crime and Courts Act 2013 (c. 22).
(**b**) Section 176A was inserted by the Financial Services Act 2012 (c. 21), section 41 and paragraph 15 of Schedule 12.

(ii) in relation to an authorisation under regulation 12(1) of the 2006 Regulations—

(aa) made a variation of the authorisation under regulation 46(2)(b) of the 2006 Regulations ("relevant variation") by limiting the classes of claims management services that the person authorised by the authorisation may undertake or provide or otherwise varying the conditions of the authorisation; or

(bb) suspended the authorisation for a period under regulation 46(2)(a) of the 2006 Regulations ("relevant suspension"); or

(iii) gave a direction ("relevant direction") to the relevant person under regulation 29(3) of the 2006 Regulations; and

(b) immediately before 1st April 2019, the relevant condition, the relevant variation, the relevant suspension or the relevant direction still has effect.

(2) A relevant condition is to be treated as a requirement imposed by the FCA under section 55L(1) of the 2000 Act(**a**) which took effect on the date on which the authorisation was granted, and for that purpose the grant of the authorisation is to be treated as the giving by the FCA of a Part 4A permission.

(3) A relevant suspension is to be treated as a suspension imposed by the FCA under section 206A(1) of the 2000 Act which took effect—

(a) on 1st April 2019 for the purposes of section 206A(3) of the 2000 Act; and

(b) on the date on which the authorisation was suspended for all other purposes.

(4) A relevant direction is to be treated as a requirement imposed by the FCA under section 55L(3) of the 2000 Act which took effect on the date on which the direction was given.

(5) Where a relevant variation imposed a limitation or, by varying conditions (including imposing any additional condition), imposed a new or revised requirement, the limitation or the requirement is to be treated as a requirement imposed by the FCA under section 55L(3) of the 2000 Act which took effect on the date on which the variation was made.

(6) For the purposes of paragraphs (4) and (5) the relevant person is to be treated as having had, on the date on which the direction was given or the variation was made, a Part 4A permission to carry on a regulated claims management activity.

Fees and invoices

64.—(1) This article applies where—

(a) the Regulator issued an invoice to a person under regulation 15(1)(b) of the 2006 Regulations (determinations of fees); and

(b) on 1st April 2019, that person has not paid the Regulator the amount of the annual fee in accordance with the invoice.

(2) The amount payable under the invoice is payable to the FCA.

(3) If the whole or any part of the amount payable under the invoice has not been paid within one month after the date on which the invoice was issued, the FCA may recover the amount outstanding as a civil debt.

CHAPTER 3

Appeals and references

Continuation of appeals commenced before 1st April 2019

65.—(1) This article applies where, on or before 1st April 2019—

(**a**) Section 55L was inserted by the Financial Services Act 2012 (c. 21), section 11(2).

(a) a person has submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act (appeals and references to Tribunal) against a decision of the Regulator ("the relevant decision"); and

(b) the appeal has not been determined.

(2) The appeal is to continue as if the FCA had made the relevant decision, and for that purpose the FCA is substituted for the Regulator as a party to the appeal.

Right to appeal after 1st April 2019 against a decision of the Regulator

66.—(1) This article applies where—

(a) before 1st April 2019, a person ("A") had a right to appeal to the First-tier Tribunal under section 13 of the 2006 Act against a decision of the Regulator ("the relevant decision");

(b) A had not exercised that right on or before 1st April 2019; and

(c) on 1st April 2019, the period within which, in the absence of this Order, the appeal could have been made has not ended.

(2) A may appeal to the Tribunal in respect of the relevant decision before the end of the period within which, in the absence of this Order, an appeal to the First-tier Tribunal could have been made.

(3) Section 133 of the 2000 Act(**a**) (proceedings before Tribunal: general provision) applies in the case of an appeal to the Tribunal under paragraph (2).

(4) For the purposes of that section, in relation to such an appeal, the relevant decision is to be treated as a decision of the FCA and a disciplinary reference.

Continuation of references made by the Regulator to the First-tier Tribunal

67.—(1) This article applies to any reference of a complaint or question ("the relevant reference") which—

(a) was made by the Regulator to the First-tier Tribunal under section 13(2) of the 2006 Act; and

(b) has not resulted, on or before 1st April 2019, in any decision or action taken by that tribunal under section 13(3) of that Act.

(2) The FCA may continue to refer the complaint or question which is the substance of the relevant reference, and is for that purpose substituted for the Regulator as a party to the reference.

CHAPTER 4

Complaints: the Legal Ombudsman and the Financial Ombudsman Service

Interpretation

68. In this Chapter—

"compulsory jurisdiction" has the same meaning as it has in the 2000 Act(**b**);

"former scheme" means the scheme operated by the Office for Legal Complaints under Part 6 of the 2007 Act (legal complaints)(**c**);

(**a**) Section 133 was substituted by S.I. 2010/22 and amended by the Financial Services Act 2012 (c. 21), section 23, the Financial Services (Banking Reform) Act 2013 (c. 33), section 4(2), the Crime and Courts Act 2013 (c. 22), section 17(5) and S.I. 2013/1388, 2014/3329, 2016/680 and 2017/1064.

(**b**) For the meaning of "compulsory jurisdiction" see the 2000 Act, section 226(8).

(**c**) Section 115 of the 2007 Act provides that the scheme is to be operated under a name (which must include the word "ombudsman") chosen by the Office for Legal Complaints. The chosen name is "The Legal Ombudsman Scheme". Section 161 of the 2007 Act extends Part 6 of the 2007 Act to claims management services, and is repealed by this Order subject to saving provisions.

"new scheme" means the scheme for which provision is made in Part 16 of the 2000 Act (the ombudsman scheme);

"relevant complaint" means a relevant existing complaint or a relevant new complaint;

"relevant existing complaint" means a complaint of a kind specified in article 69(1);

"relevant new complaint" means a complaint of a kind specified in article 70(1); and

"scheme operator" has the same meaning as it has in Part 16 of the 2000 Act(**a**).

Complaints made before 1st April 2019 not concluded by that date

69.—(1) This article applies to a complaint which—

(a) was referred under the former scheme before 1st April 2019 by a person who was at that time entitled under the terms of the former scheme to refer the complaint;

(b) relates to the provision of claims management services (within the meaning given in section 4(2) of the 2006 Act); and

(c) was not concluded on 1st April 2019.

(2) Subject to articles 71 and 72, a relevant existing complaint is to be dealt with as if it had been referred under the new scheme in compliance with rules made by the FCA under paragraph 13 of Schedule 17(**b**) to the 2000 Act.

(3) For the purposes of paragraph (1), except where paragraph (5) applies, a complaint is to be treated as concluded on 1st April 2019 where, before that date—

(a) the complainant notified the ombudsman of the complainant's rejection of a determination under section 137 of the 2007 Act (determination of complaints);

(b) the complainant accepted a determination under that section, and any direction contained in the determination was fully complied with;

(c) the complaint was resolved otherwise than by a determination under that section, and any direction or agreement forming part of the resolution was fully complied with;

(d) the complaint was dismissed in accordance with provision made in scheme rules under section 133(3)(a) of the 2007 Act; or

(e) the complaint was referred with the consent of the complainant to another body in accordance with provision made in scheme rules under section 133(3)(b) of the 2007 Act.

(4) For the purposes of paragraph (3)(b) the cases in which a direction contained in the determination of a complaint was fully complied with include a case where, in relation to such a direction, the court has not yet heard an application under section 141(2) or (3) of the 2007 Act (enforcement by complainant of directions under section 137 of that Act).

(5) This paragraph applies where, in relation to a complaint referred under the former scheme—

(a) an ombudsman did not decide, before 1st April 2019, whether the respondent would be required to pay a charge under rules made in compliance with section 136(1) of the 2007 Act; or

(b) an ombudsman did, before that date, require the respondent to pay such a charge and the charge has not been paid.

(6) For the purposes of paragraph (2) it is immaterial that the condition set out in section 226(2)(c) of the 2000 Act (compulsory jurisdiction) is not met in relation to the complaint.

Complaints made on or after 1st April 2019 about acts or omissions before that date

70.—(1) This article applies to a complaint—

(**a**) For the meaning of "scheme operator" see the 2000 Act, section 225(2).

(**b**) Paragraph 13 of Schedule 17 was amended by the Financial Services Act 2012 (c. 21), section 39 and by S.I. 2009/209, 2011/99, 2015/542, and 2017/752.

(a) about an act or omission which occurred before 1st April 2019 in relation to the provision of claims management services (within the meaning given in section 4(2) of the 2006 Act);

(b) which had not, before that date, been referred under the former scheme by a person who was entitled under the terms of the former scheme to refer the complaint; and

(c) in relation to which the conditions set out in paragraph (2) are met.

(2) The conditions are that—

(a) in relation to the compulsory jurisdiction, the complainant falls within a class of person specified as eligible in the compulsory jurisdiction rules (within the meaning given by section 226(3) of the 2000 Act); and

(b) the complainant wishes to have the complaint dealt with under the new scheme.

(3) Where the condition set out in paragraph (2)(a) is not met in relation to a complaint, an ombudsman may nonetheless treat the complaint as if it does meet that condition if the complainant would have been entitled, immediately before 1st April 2019, to refer the complaint under the former scheme.

(4) A relevant new complaint—

(a) may be referred under the new scheme; and

(b) upon referral, subject to articles 71 and 73, is to be dealt with in the same way as any other complaint referred under the new scheme.

(5) For the purposes of paragraph (4), it is immaterial that the conditions set out in section 226(2)(b) and (c) of the 2000 Act are not met in relation to the complaint.

Procedure for dealing with relevant complaints

71.—(1) In this article "scheme rules" means rules made under paragraph 14(1) of Schedule 17 to the 2000 Act (the scheme operator's rules).

(2) A relevant existing complaint is to be treated as if it had been referred in accordance with any applicable procedure for reference of complaints set out in scheme rules.

(3) Relevant complaints are to be dealt with in accordance with the procedure for the investigation, consideration and determination of complaints set out in scheme rules, and for those purposes scheme rules apply with the modifications in paragraphs (4) to (7).

(4) In determining a relevant existing complaint, an ombudsman is to have no regard to rules made under paragraph 14(2)(a) of Schedule 17 to the 2000 Act (rules specifying matters to be taken into account in determining whether an act or omission was fair and reasonable).

(5) Where an ombudsman is deciding whether to dismiss a complaint without a consideration of its merits in accordance with rules made under paragraph 14(2)(b) and (3) of Schedule 17 to the 2000 Act ("relevant rules")—

(a) paragraph (6) applies if the complaint is a relevant existing complaint; and

(b) paragraphs (6) and (7) apply if the complaint is a relevant new complaint.

(6) An ombudsman must consider whether the complaint would have been dismissed under the rules of the former scheme, if the decision were being made immediately before 1st April 2019, and if the ombudsman considers that the complaint—

(a) would have been dismissed under the rules of the former scheme; or

(b) should be dismissed under the relevant rules,

the ombudsman may dismiss the complaint.

(7) The corresponding rules of the former scheme are to be read as if they were subject to paragraph 13 of Schedule 3 to the Alternative Dispute Resolution for Consumer Disputes

(Competent Authorities and Information) Regulations 2015(**a**) (grounds to refuse to deal with a dispute).

(8) Paragraph (9) applies to a relevant existing complaint where—

(a) the complainant accepted a determination under section 137 of the 2007 Act before 1st April 2019; and

(b) a direction contained in that determination had not been complied with on or before that date.

(9) A direction made under—

(a) section 137(2)(c) of the 2007 Act is to be treated as a money award (within the meaning given by section 229(2)(a) of the 2000 Act) for the purposes of section 229(8)(b) and paragraph 16 of Schedule 17 to the 2000 Act; and

(b) any other sub-paragraph of section 137(2) of the 2007 Act is to be treated as a direction under section 229(2)(b) of the 2000 Act for the purposes of section 229(9) and (10) of the 2000 Act.

Determination of relevant existing complaints

72.—(1) In this article, except for the references in paragraphs (2) and (4) to sections of the 2007 Act, a reference to a numbered section is a reference to the section so numbered in the 2000 Act.

(2) Where a relevant existing complaint is to be determined under the new scheme, the complaint must, so far as practicable, be determined by reference to such criteria as would have applied to the determination of the complaint under the former scheme immediately before 1st April 2019 by virtue of scheme rules under section 133 of the 2007 Act.

(3) Sections 228(**b**) (determination under the compulsory jurisdiction) and 230A (reports of determinations) apply in relation to the determination of a relevant existing complaint with the following modifications—

(a) section 228 is to be read as if subsection (2) were omitted; and

(b) section 230A(1)(**c**) is to be read as if the reference to any determination made under Part 16 included the determination of the relevant existing complaint.

(4) The determination of a relevant existing complaint may contain any one or more of the directions set out in subsection (2) of section 137 of the 2007 Act, and for those purposes—

(a) a direction under subsection (2)(c) of that section, is to be treated as a money award (within the meaning given by section 229(2)(a)(**d**)) for the purposes of paragraph 16 of Schedule 17 to the 2000 Act; and

(b) any other direction is to be treated as a direction under section 229(2)(b) for the purposes of section 229(9) and (10).

(5) An ombudsman may, on determining a relevant existing complaint, award costs having regard to provision for the award of costs made in rules of the former scheme, and for those purposes—

(a) it does not matter whether the award is attributable to an act or omission which occurs before 1st April 2019 or to an act or omission which occurs on or after that date; and

(b) section 230(7) of, and paragraph 16 of Schedule 17 to, the 2000 Act apply in relation to the award as they apply in relation to an award of costs made in accordance with rules under section 230(1).

(**a**) S.I. 2015/542.
(**b**) Section 228 was amended by the Financial Services Act 2012 (c. 21), section 39 and S.I. 2013/1881.
(**c**) Section 230A was inserted by the Financial Services Act 2012, section 39.
(**d**) Paragraph 16 of Schedule 17 was amended by the Crime and Courts Act 2013 (c. 22), section 17(5) and the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 62(3).

Determination of relevant new complaints

73.—(1) In this article, except for the references in paragraph (5) to section 137 of the 2007 Act, a reference to a numbered section is a reference to the section so numbered in the 2000 Act.

(2) Subject to paragraphs (3) to (5), a relevant new complaint is to be determined by reference to the criteria applicable to the determination of any other complaint referred under the new scheme.

(3) The provisions specified in paragraph (4) apply in relation to a relevant new complaint with the modifications in paragraph (5).

(4) Paragraph (5) applies for the purposes of determining, in relation to a relevant new complaint—

(a) under section 228(2), what is fair and reasonable in all the circumstances of the case;

(b) under section 229(2)(a), what amount, if any, constitutes fair compensation for loss or damage suffered by the complainant; and

(c) under section 229(2)(b), what steps would be just and appropriate in any direction under that section.

(5) An ombudsman may take into account—

(a) what an ombudsman determining the complaint under the former scheme might reasonably have considered fair and reasonable in all the circumstances of the case;

(b) what amount an ombudsman determining the complaint under the former scheme might reasonably have directed the respondent to pay under section 137(2)(c) of the 2007 Act; and

(c) what other steps an ombudsman determining the complaint under the former scheme might reasonably have directed the respondent to take under section 137(2) of the 2007 Act.

Funding and charges

74.—(1) Paragraphs (2) and (3) apply to a complaint referred under the former scheme which is a relevant existing complaint by virtue only of article 69(5)(a).

(2) The ombudsman who is dealing with the complaint must decide under rules made in compliance with section 136(1) of the 2007 Act whether the respondent is to be required to pay a charge under those rules.

(3) Where the respondent is required to pay a charge under those rules, the charge is payable to the scheme operator.

(4) Paragraph (5) applies to a complaint referred under the former scheme which is a relevant existing complaint by virtue only of article 69(5)(b).

(5) The charge which the respondent was required to pay under rules made in compliance with section 136(1) of the 2007 Act is payable to the scheme operator.

Surplus fees

75.—(1) In this article, "relevant OLC expenditure"(**a**) has the meaning given in section 174A of the 2007 Act(**b**).

(2) Paragraph (3) applies to any periodic fees charged by the Lord Chancellor to 2006 Act authorised persons under section 174A of the 2007 Act for the purposes of meeting any costs incurred by the Lord Chancellor in respect of relevant OLC expenditure.

(**a**) The OLC is the Office for Legal Complaints established by section 114 of the Legal Services Act 2007 (c. 29).

(**b**) Section 174A was inserted by the Financial Services (Banking Reform) Act 2013 (c. 33), section 140(4) and (5) and is repealed by this Order.

(3) Where, immediately before 1st April 2019, the periodic fees held by the Lord Chancellor exceeded the Lord Chancellor's costs incurred in respect of relevant OLC expenditure, those fees may be paid—

(a) to the OLC for the purpose of funding applications under section 141(2) or (3) of the 2007 Act falling within article 69(4); or

(b) to the FCA or the scheme operator for the purpose of funding the operation of the new scheme under section 234(1)(b) of the 2000 Act (industry funding).

Exemption from liability in damages

76. Paragraph 10(1) of Schedule 17 to the 2000 Act(**a**) (exemption from liability in damages) applies to the discharge, or purported discharge, of any functions by virtue of this Chapter in relation to dealing with a relevant complaint ("relevant functions"), and is to be read for those purposes as if—

(a) the reference to functions under the 2000 Act included a reference to relevant functions; and

(b) the reference to the compulsory jurisdiction included a reference to the jurisdiction of the new scheme which results from this Chapter.

Privilege

77. Paragraph 11 of Schedule 17 to the 2000 Act(**b**) (privilege) applies to proceedings in relation to a relevant complaint, and is to be read for those purposes as if the reference to the compulsory jurisdiction included a reference to the jurisdiction of the new scheme enacted by this Chapter.

Record-keeping and reporting requirements relating to relevant complaints

78. The FCA may make rules applying to 2000 Act authorised persons with respect to the keeping of records and the making of reports in relation to relevant complaints.

Information and reports

79.—(1) Sections 230A, 231, 232 and 232A of the 2000 Act apply in relation to a relevant complaint as they apply in relation to a complaint which relates to an act or omission of a person in carrying on an activity to which compulsory jurisdiction rules (within the meaning given by section 226(3) of the 2000 Act) apply.

(2) This paragraph applies where—

(a) the ombudsman who was dealing with a relevant complaint under the former scheme certified to the court under section 149(2) of the 2007 Act a failure to comply with a requirement imposed under section 147(1) of that Act; and

(b) on 1st April 2019, the court had not concluded its enquiry into the case with a finding that the defaulter failed or did not fail without reasonable excuse to comply with the requirement.

(3) Where paragraph (2) applies—

(a) the court may continue its enquiry into the case under section 149(3) of the 2007 Act; and

(b) the ombudsman dealing with the complaint under the new scheme may continue to assist the court with that enquiry, and for that purpose is to be treated as having made the certification under section 149(2).

(**a**) Paragraph 10(1) of Schedule 17 was amended by the Consumer Credit Act 2006 (c. 14), section 61(10)(d) and S.I. 2013/1881.

(**b**) Paragraph 11 of Schedule 17 was amended by the Consumer Credit Act 2006, section 61(10)(d) and by S.I. 2013/1881.

CHAPTER 5

Temporary Permission

Temporary permission

80.—(1) In this article "relevant person" means a person who—

(a) immediately before 1st April 2019—

(i) was a 2006 Act authorised person;

(ii) was providing services which, if Part 2 of the 2006 Act had extended to Scotland, would have been regulated claims management services (within the meaning given by section 4 of the 2006 Act); or

(iii) in relation to a claim which a person has by virtue of section 75(1) of the Consumer Credit Act 1974, was providing services of a kind which, if performed on or after 1st April 2019, would constitute the carrying on of an activity of the kind specified by—

(aa) article 89G (seeking out, referrals and identification of claims or potential claims) of the 2001 Order; or

(bb) article 89I (advice, investigation or representation of a financial services or financial product claim) of the 2001 Order; and

(b) during the period beginning with the date specified by the FCA in a direction given under article 81 and ending on 31st March 2019—

(i) notifies the FCA of a desire to be registered for temporary permission under this article; and

(ii) pays to the FCA any fee payable under its rules by any person desiring to be so registered.

(2) Where the conditions set out in paragraph (3) are met, the reference in paragraph (1)(a) to a 2006 Act authorised person includes a person ("P") who received from the Regulator—

(a) written notice under regulation 13(5) of the 2006 Regulations of a decision to refuse to grant an authorisation ("refusal decision"); or

(b) written notice given under regulation 47 of the 2006 Regulations of a decision to cancel P's authorisation ("cancellation decision").

(3) The conditions are that—

(a) in the case of a notice under regulation 13(5) of the 2006 Regulations—

(i) where, before 1st April 2019, P submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act(**a**) (appeals and references to Tribunal) with respect to the refusal decision, the appeal—

(aa) was not determined before 1st April 2019; or

(bb) was determined before 1st April 2019 by way of a remittal of the refusal decision to the Regulator under section 13(3)(e) of the 2006 Act but a further decision by the Regulator in relation to the remittal has not been taken; or

(ii) where, before 1st April 2019, P did not submit such notice of appeal, the period within which an appeal may be made has not ended on that date;

(b) in the case of a notice under regulation 47 of the 2006 Regulations, the cancellation had effect before 1st April 2019, and—

(i) where, before 1st April 2019, P submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act with respect to the cancellation decision, the appeal—

(aa) was not determined before 1st April 2019; or

(**a**) Section 13 was amended by the Financial Services (Banking Reform) Act 2013 (c. 33) and by S.I. 2010/22.

(bb) was determined before 1st April 2019 by way of a remittal of the cancellation decision to the Regulator under section 13(3)(e) of the 2006 Act but a further decision by the Regulator in relation to the remittal has not been taken; or

(ii) where, before 1st April 2019, P did not submit such notice of appeal, the period within which an appeal may be made has not ended on that date.

(4) On and after 1st April 2019 a relevant person has a temporary permission to carry on—

(a) an activity of the kind specified by any of articles 89G to 89M of the 2001 Order (specified kinds of claims management activity); and

(b) so far as relevant to that activity, the activity specified by article 64 of the 2001 Order.

(5) Subject to article 83(2), a temporary permission to carry on the activities referred to in paragraph (4) has effect—

(a) in the case of P, as a Part 4A permission to carry on those activities which has been suspended by the FCA under section 206A of the 2000 Act; or

(b) in the case of any other relevant person, as a Part 4A permission to carry on those activities.

(6) For the purposes of paragraph (5)(a)—

(a) P's temporary permission is to be treated as if the period for which the suspension is to have effect were such period as ends on the date on which that permission is to be treated, under paragraph (8) or (10), as if its suspension had been withdrawn; and

(b) section 206A of the 2000 Act is to be read as if subsection (3) were omitted.

(7) "Relevant appeal" means—

(a) where paragraph (3)(a)(i) or (b)(i) applies, P's appeal to the First-tier Tribunal with respect to the refusal decision or the cancellation decision;

(b) where paragraph (3)(a)(ii) or (b)(ii) applies, an appeal by P to the Tribunal with respect to the refusal decision or the cancellation decision made before the end of the period within which, in the absence of this Order, an appeal to the First-tier Tribunal could have been made.

(8) Where the relevant appeal is determined in P's favour—

(a) by a decision of the First-tier Tribunal or Tribunal (or by a decision of a higher court or tribunal made on an appeal against a decision of either tribunal); or

(b) by a remittal of the refusal or cancellation decision under section 13(3)(e) of the 2006 Act which results in a reversal of that decision,

P's temporary permission is to be treated as if its suspension had, on the date of the determination, been withdrawn by the FCA under section 206A(6) of the 2000 Act.

(9) Where, before 1st April 2019, the First-tier Tribunal suspended the effect of the refusal decision or the cancellation decision under section 13(3A)(c) of the 2006 Act, P's temporary permission is to be treated as a Part 4A permission which is not subject to suspension by the FCA under section 206A of the 2000 Act.

(10) Where, at any time on or after 1st April 2019—

(a) the First-tier Tribunal suspends the effect of the refusal decision or the cancellation decision under section 13(3A)(c) of the 2006 Act; or

(b) the Tribunal suspends the effect of the refusal decision or the cancellation decision under rule 5(5) of the Tribunal Procedure (Upper Tribunal) Rules 2008(**a**),

P's temporary permission is to be treated as if its suspension by virtue of paragraph (5)(a) had, at that time, been withdrawn by the FCA under section 206A(6) of the 2000 Act.

(**a**) S.I. 2008/2698.

Procedure for notifying the FCA of a desire to be registered for temporary permission

81.—(1) The FCA may give a direction specifying—

(a) the manner in which a desire to be registered for temporary permission under article 80 is required to be notified to the FCA;

(b) the date on or after which notification of such a desire may be given; and

(c) such information as the FCA may reasonably require to be contained in, or supplied with, that notification.

(2) A direction under this article may impose different requirements for different circumstances or different categories of notification.

(3) At any time after receiving notification under this article, the FCA may require the person giving the notification to provide the FCA with such further information as it reasonably considers necessary to enable it to discharge its functions.

(4) The FCA may require information to be provided in such form, or verified in such manner, as the FCA may direct.

(5) A direction given under this article may be amended by further direction.

Duration of temporary permission

82.—(1) In this article a reference to a numbered section is a reference to the section so numbered in the 2000 Act.

(2) In this article—

"last application date" means the last date on which a person ("A") who has a temporary permission to carry on an activity referred to in article 80(4) (temporary permission) may make a relevant application; and

"relevant application" means—

(a) where, immediately before 1st April 2019, A is a 2000 Act authorised person, an application by A under section 55H (variation by FCA at request of authorised person) to vary A's Part 4A permission by adding regulated claims management activity to the activities to which the permission relates;

(b) where, immediately before 1st April 2019, A is not a 2000 Act authorised person, an application by A under section 55A (application for permission) for permission to carry on regulated claims management activity.

(3) The FCA must give a direction specifying the last application date.

(4) A's temporary permission ceases to have effect—

(a) where A makes a relevant application on or before the last application date, on the date on which that application is determined;

(b) where A does not make a relevant application on or before the last application date, on the date on which the period of 30 days, beginning with the day after the last application date, expires;

(c) on the date specified by the FCA in a notice of cancellation of A's temporary permission, which may be given where—

(i) by virtue of article 80(5)(a), A's temporary permission has effect as a Part 4A permission suspended by the FCA under section 206A of the 2000 Act; and

(ii) A's relevant appeal (within the meaning of article 80(7)) is determined otherwise than in A's favour.

(5) Paragraph (4) does not affect the exercise by the FCA, in relation to A's temporary permission, of the powers conferred on it by the 2000 Act to vary, cancel or suspend a Part 4A permission.

(6) For the purposes of paragraph (4)(a), the date on which a relevant application is determined is—

(a) where A withdraws the application by written notice under section 55V(4), the date on which the period of 30 days beginning with the date on which the notice is given expires;

(b) where the FCA grants the application, the date stated in its written notice under section 55V(5) as the date from which the permission has effect;

(c) where the FCA decides to—

(i) give or vary a Part 4A permission under section 55X(4)(a), (b), (c) or (d); or

(ii) refuse the application under section 55X(4)(f),

the date on which the period of 30 days, beginning with the date on which the FCA gives the decision notice under that section, expires.

(7) During the period of 30 days referred to in paragraphs (4)(b) and (6)(a) and (c), A may not enter, or offer to enter, into an agreement the making or performance of which would constitute regulated claims management activity.

(8) The prohibition in paragraph (7) has the same effect as a requirement imposed by the FCA under section 55L.

(9) A direction given under paragraph (3) may—

(a) specify different dates for different classes of person or for different descriptions of activities;

(b) specify a date before which a relevant application may not be made ("the opening date"), provided that the opening date is not less than two months before the last application date;

(c) be amended by further direction.

(10) Subject to article 83(7) and (8), a relevant application made before the opening date is to be treated as if it had not been made.

(11) Paragraphs (12) and (13) apply where—

(a) A's temporary permission ceases to have effect by virtue of paragraph (4) or the exercise by the FCA of the powers conferred on it by the 2000 Act to cancel a Part 4A permission; and

(b) A consequently ceases, on the date on which A's temporary permission ceases ("the cessation date"), to be a 2000 Act authorised person.

(12) Paragraph 13 applies in relation to—

(a) any act or omission by A which occurred before the cessation date; or

(b) the contravention by A of any requirement imposed on A under section 55L (imposition of requirements by FCA) or 404F(7) (other definitions) which—

(i) is in effect immediately before the cessation date; and

(ii) which continues to have effect in accordance with paragraph (14).

(13) Part 11(information gathering and investigations), Part 14 (disciplinary measures) and section 384 (power of the FCA to require restitution) of the 2000 Act are to be read as if a reference to an authorised person included a reference to A.

(14) The requirement referred to in paragraph 12(b) continues to have effect after the cessation date until such time as it is cancelled by the FCA, which the FCA must do when it is satisfied that it is no longer necessary for that requirement to continue to have effect.

Application of the 2000 Act to persons with a temporary permission

83.—(1) In this article a reference to a numbered section is a reference to the section so numbered in the 2000 Act.

(2) This article applies in relation to a person ("A") who has a temporary permission to carry on an activity referred to in article 80(4) ("temporary permission").

(3) A's temporary permission does not have effect as a Part 4A permission for the purposes of—

(a) section 38(2) (exemption orders);

(b) section 39(1C)(a) (exemption of appointed representatives);

(c) section 55A(3) (application for permission).

(4) For the purposes of section 327(7) and (9)(**a**) (exemption from the general prohibition), A is not to be treated as carrying on a regulated claims management activity where A carries on that activity pursuant to A's temporary permission.

(5) For the purposes of section 21(2) (restrictions on financial promotion), if A does not have permission other than a temporary permission, A may only approve the content of a communication if the communication invites or induces a person to enter into (or offer to enter into) an agreement in respect of a regulated activity for which A has temporary permission.

(6) For the purposes of section 39 (exemption of appointed representatives), A may be an appointed representative in relation to an activity which A does not have temporary permission to carry on.

(7) Where A applies to the FCA—

(a) under section 55A for permission to carry on a regulated activity which is not a regulated claims management activity; or

(b) under section 55H to vary A's Part 4A permission by adding to the activities to which the permission relates a regulated activity which is not a regulated claims management activity,

the application may be treated by the FCA as relating also to some or all of the regulated activities for which A has temporary permission.

(8) If the FCA treats the application as relating to some or all of the regulated activities for which A has temporary permission, article 82(10) does not apply in relation to the application.

(9) The duty imposed by section 55B(3) (satisfaction of threshold conditions) does not apply where the FCA exercises its power in relation to A under—

(a) section 55J(**b**) (variation or cancellation on initiative of regulator);

(b) section 55H (variation by FCA at request of authorised person) to remove a regulated activity from those for which A has temporary permission;

(c) section 55L (imposition of requirements by FCA).

(10) Where, immediately before 1st April 2019, A is not a 2000 Act authorised person, A is not to be treated, by virtue of article 80(5), as a 2000 Act authorised person for the purposes of Part 12 of the 2000 Act (control over authorised persons).

(11) For the purposes of the compensation scheme established under section 213, a claim made against A in connection with any activity which A's temporary permission permits A to carry on is to be treated as if it were not made in connection with regulated activities carried on by A.

(12) The activity which A's temporary permission permits A to carry on is to be treated as if it were not a regulated activity for the purposes of—

(a) construing the reference to the only regulated activities that a person carries on, or seeks to carry on, which is contained in paragraphs 2C(1A), 2D(3A) and 2F(3) of Schedule 6 to the 2000 Act (threshold conditions: Part 4A permission: authorised persons who are not PRA-authorised persons); and

(b) article 6A(1)(b) of the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009(**c**).

(**a**) Section 327(9) of the Financial Services and Markets Act 2000 (c. 8) is inserted by article 91(5) of this Order.

(**b**) Section 55J was inserted by the Financial Services Act 2012 (c. 21), section 11(2) and amended by S.I. 2013/1773 and 3115, 2015/575, 1882 and 910, 2016/225 and 680, and 2018/135.

(**c**) S.I. 2009/774.

PART 4

Rules and guidance

Claims management related rules and guidance made by the FCA

84.—(1) This article applies in respect of rules made or guidance given by the FCA which relate to regulated claims management activity or the carrying on of such activity.

(2) Section 1B(4) of the 2000 Act (competition duty) does not apply to the extent that—

(a) the claims management related rules are the same as, or substantially the same as, or have the same, or substantially the same, effect as any of the provisions in Part 2 of the Compensation Act 2006(**a**) provisions in force immediately before Part 2 of the Compensation Act 2006 was repealed; or

(b) the claims management related guidance is the same as, or substantially the same as, or has the same, or substantially the same, effect as any of the provisions in Part 2 of the Compensation Act 2006 provisions in force immediately before Part 2 of the Compensation Act 2006 was repealed.

(3) Any requirement imposed on the FCA—

(a) to publish a draft of rules, guidance or any other instrument or document and invite representations about it; or

(b) to consult particular persons,

may be satisfied by things done by the FCA before the date on which this article comes into force.

(4) The Compensation Act 2006 provisions are to be treated as if they had effect in Scotland for the purposes of—

(a) paragraph (2); and

(b) paragraph 7 of Schedule 5 to the Financial Guidance and Claims Act 2018(**b**).

(5) For the purposes of this article, the "Compensation Act 2006 provisions" are—

(a) the provisions of the Compensation Act 2006;

(b) any subordinate legislation or rules made or guidance or codes of practice issued under that Act in force immediately before Part 2 of the Compensation Act 2006 was repealed; and

(c) section 75 of the Consumer Credit Act 1974.

(6) For the purpose of rules that are made by the FCA in respect of the transfer of the regulation of claims management activity to the FCA, section 138I of the 2000 Act applies for the purpose of the FCA's cost benefit analysis in respect of the regulation of claims management activity as if for subsections (7) and (8) there were substituted –

"(7) "Cost benefit analysis" means—

(a) an analysis of the difference between the costs and benefits of the provisions set out in subsection (7A) and the costs and benefits that will arise in the application to England and Wales and Scotland –

(i) if the proposed rules are made, or

(ii) if subsection (5) applies, from the rules that have been made, and

(b) subject to subsection (8), an estimate of that difference.

(7A) For the purposes of subsection (7), the provisions applicable are—

(a) the provisions of the Compensation Act 2006 in force immediately before Part 2 of that Act was repealed; and

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(**a**) 2006 c. 29.
(**b**) 2018 c. 10.

(b) any subordinate legislation or rules made, or guidance or codes of practice issued, under that Act.

(7B) For the purposes of subsection (7), the provisions of the Compensation Act 2006 are to be treated as if—

(a) they had effect in Scotland; and

(b) they included section 75 of the Consumer Credit Act 1974.

(8) If, in the opinion of the FCA—

(a) the difference referred to in subsection (7) cannot reasonably be estimated; or

(b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate the difference but must include a statement of the FCA's opinion and an explanation of it.".

(7) The requirements of section 138I of the 2000 Act (as modified above) in so far as they apply to a proposal to make rules to which this article applies may be satisfied by things done (wholly or in part) before the date on which this article comes into force.

(8) It is immaterial for the purposes of paragraph (7) if, when the things were done, they were not compatible with section 138I of the 2000 Act.

Designation by the FCA of the Regulator's Rules

85.—(1) In this article, "the Regulator" has the meaning given in paragraph 2 of Schedule 4 to the Financial Guidance and Claims Act 2018(**a**) ("the 2018 Act").

(2) To designate or modify relevant rules for the purposes of paragraphs 8 and 9 of Schedule 5 to the 2018 Act (designation of Regulator's rules), the FCA must make an instrument in writing which specifies, or more than one instrument in writing which between them specify—

(a) the relevant rules;

(b) any modifications being made to the rules;

(c) the provision under Part 2 of the Compensation Act 2006 under which the relevant rules were made;

(d) the comparable provision in the 2000 Act by virtue of which the designated rule is to be treated as having been made; and

(e) the date on which the designation is to come into effect.

(3) An instrument which satisfies the requirements of paragraph (2) is a designating instrument.

(4) The FCA must publish each designating instrument in the way appearing to the designating body to be best calculated to bring it to the attention of the public.

(5) A person is not to be taken to have contravened a designating instrument if the person shows that, at the time of the alleged contravention, the designating instrument concerned had not been published.

(6) A designating instrument is to be treated as a rule-making instrument for the purposes of section 138H (verification of rules) of the 2000 Act.

(7) A designating instrument may contain provision other than that required by paragraph (2).

(8) The making of a designating instrument is a legislative function for the purposes of paragraph 8(2) of Schedule 1ZA to the 2000 Act (arrangements for discharging functions).

(**a**) 2018 c. 10.

PART 5

Miscellaneous

Interpretation

86. In this Part—

"the 2006 Act" means the Compensation Act 2006;

"the 2012 Act" means the Financial Services Act 2012(**a**);

"the 2018 Act" means the Financial Guidance and Claims Act 2018; and

"the OLC", "the FOS" and "the Regulator" have the meanings given in paragraph 2 of Schedule 4 to the 2018 Act.

Legal professional privilege

87.—(1) The FCA is entitled to claim legal professional privilege or, in Scotland, confidentiality of communications in respect of legally privileged information disclosed to the FCA by the Regulator under paragraph (4).

(2) The FOS is entitled to claim legal professional privilege or, in Scotland, confidentiality of communications in respect of legally privileged information disclosed to the FOS by the OLC under paragraph (4).

(3) In this article, "legally privileged information" means information received or generated by the Regulator or the OLC before 1st April 2019, in respect of which the Regulator or the OLC would have been able, before that date, to maintain a claim for legal professional privilege or confidentiality of communications in legal proceedings.

(4) For the purposes of this article legally privileged information is disclosed where—

(a) it is transferred to the FCA by the Regulator—

(i) under a transfer scheme made under paragraph 3 of Schedule 4 to the 2018 Act (Regulation of Claims Management Services: Transfer Schemes); or

(ii) otherwise in connection with functions of the FCA becoming exercisable in respect of an activity which—

(aa) ceases on 1st April 2019 to be an activity in respect of which an authorisation under section 4(1)(a) of the 2006 Act (provision of regulated claims management services) is required or would be required but for the exemption or waiver conferred by subsections (1)(b) or (c) of that section; and

(bb) becomes on that date a regulated activity for the purposes of the 2000 Act.

(b) it is transferred to the FOS by the OLC—

(i) under a transfer scheme made under paragraph 13 of Schedule 4 to the 2018 Act; or

(ii) otherwise in connection with functions of the FOS becoming exercisable in respect of an activity which—

(aa) ceases on 1st April 2019 to be an activity in respect of which an authorisation under section 4(1)(a) of the 2006 Act (provision of regulated claims management services) is required or would be required but for the exemption or waiver conferred by subsections (1)(b) or (c) of that section; and

(bb) becomes on that date a regulated activity for the purposes of the 2000 Act.

Complaints against the Regulator where no determination made before 1st April 2019

88.—(1) Paragraphs (2) and (3) apply if, before 1st April 2019—

(**a**) 2012 c. 21.

(a) a person ("A") had made a complaint against the Regulator about the service it had provided; and

(b) that complaint had not been finally determined by the Regulator in accordance with its complaint procedures.

(2) The complaint referred to in paragraph (1) is to be treated as a complaint made under the FCA's complaints scheme within the meaning of section 84(1)(a) of the 2012 Act whether or not it is made in relation to any of the FCA's relevant functions.

Definition of "consumer"

89.—(1) For the purposes of the provisions listed in paragraph (2), "consumer" includes a person—

(a) who before 1st April 2019 received services from persons authorised, or by any person providing services for which an authorisation was required, under section 5 of the 2006 Act;

(b) who has rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons;

(c) who has rights or interests which may be adversely affected by the use of any such services by a person acting on their behalf or in a fiduciary capacity in relation to them; or

(d) in respect of whom a person carries on an activity specified in article 89G of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**a**), whether that activity is a regulated activity or is, by reason of an exclusion provided for under the 2001 Order or under the 2000 Act, not a regulated activity.

(2) The provisions are—

(a) section 1G of the 2000 Act(**b**) (meaning of "consumer");

(b) section 404E of the 2000 Act(**c**) (meaning of "consumers"); and

(c) section 425A of the 2000 Act(**d**) (consumers: regulated activities etc carried on by authorised persons).

(3) For the purposes of this article—

(a) where a person provided a service mentioned in paragraph (1) as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used, or may use the service; and

(b) a person who deals, or dealt, with another person ("A") in the course of A providing a service mentioned in paragraph (1) is to be treated as using, or having used, the service.

(**a**) S.I. 2001/544.
(**b**) Section 1G was inserted by the Financial Services Act 2012, section 6.
(**c**) Section 404E was substituted by the by the Financial Services Act 2010 (c. 28).
(**d**) Section 425A was inserted by the Financial Services Act 2010, section 24(1).

PART 6

Consequential amendments, revocations and saving and supplemental provisions

CHAPTER 1

Amendment of primary legislation

Courts and Legal Services Act 1990

90. In section 58AA of the Courts and Legal Services Act 1990(**a**) (damages-based agreements), in subsection (7) for "Part 2 of the Compensation Act 2006 (see section 4(2) of that Act)" substitute "the Financial Services and Markets Act 2000 (see section 419A of that Act)"(**b**).

Financial Services and Markets Act 2000

91.—(1) The 2000 Act is amended as follows.

(2) In section 1G (meaning of "consumer"), in subsection 1—

(a) in the words before paragraph (a) omit "who";

(b) in each of the paragraphs (a) to (e), at the beginning insert "who";

(c) at the end of paragraph (d) omit "or";

(d) at the end of paragraph (e) insert—

"; or

(f) in respect of whom a person carries on an activity which is specified in article 89G of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (seeking out etc claims) whether that activity, as carried on by that person, is a regulated activity, or is, by reason of an exclusion provided for under the 2001 Order or the 2000 Act, not a regulated activity.".

(3) In section 1I (meaning of "the UK financial system") in paragraph (b) after "activities" insert "(including regulated claims management activities)".

(4) In section 63E (certification of employees by relevant authorised person) in subsection (8) for the definition of "customer" substitute—

""customer"—

(a) in relation to an authorised person, means a person who is using, or who is or may be contemplating using, any of the services provided by the authorised person; and

(b) in relation to an authorised person carrying on a regulated claims management activity, also means (so far as not included in paragraph (a)) a person who has or may have a claim within the meaning of section 419A in respect of which the authorised person is carrying on a regulated claims management activity.".

(5) In section 327 (exemption from the general prohibition) after subsection (8) insert—

"(9) The exemption in this section does not apply to the carrying on of a regulated claims management activity in Great Britain.".

(6) In section 404E (meaning of "consumers")—

(a) in subsection (1)—

(i) in the words before paragraph (a) omit "who";

(ii) in paragraphs (a) and (b), at the beginning insert "who";

(**a**) 1990 c. 41. Section 58AA was inserted by the Coroners and Justice Act 2009 (c. 25), section 154.
(**b**) Section 419A was inserted by the Financial Guidance and Claims Act 2018 (c.10), section 27(11).

(iii) at the end of paragraph (a) omit "or";

(iv) at the end of paragraph (b) insert—

"; or

(c) in respect of whom a person carries on an activity which is specified in article 89G of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (seeking out etc claims) whether that activity, as carried on by that person, is a regulated activity or is, by reason of an exclusion provided for under the 2001 Order or the 2000 Act, not a regulated activity.";

(b) in subsection (2) in paragraph (c) the words from "to engage" to the end become sub-paragraph (i) and at the end of that sub-paragraph insert—

"; or

(ii) to engage in claims management activity;"; and

(c) in subsection (6) after the definition of "credit institution" insert—

""engage in claims management activity" has the meaning given by section 21;".

(7) In section 425A (consumers: regulated activities etc carried on by authorised persons), in subsection (2)—

(a) in the words before paragraph (a) omit "who";

(b) in paragraphs (a) and (b), at the beginning insert "who";

(c) at the end of paragraph (b) omit "or";

(d) at the end of paragraph (c) insert—

"; or

(d) in respect of whom a person carries on an activity which is specified in article 89G of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (seeking out etc claims) whether that activity, as carried on by that person, is a regulated activity or is, by reason of an exclusion provided for under the 2001 Order or the 2000 Act, not a regulated activity.".

Enterprise Act 2002

92. In the Enterprise Act 2002(**a**)—

(a) in Schedule 14, omit "Compensation Act 2006 (c. 29)."(**b**); and

(b) in Schedule 15 omit "Compensation Act 2006 (c. 29).".

Compensation Act 2006

93. Omit Part 2 of the Compensation Act 2006.

Tribunals, Courts and Enforcement Act 2007

94. In Schedule 6 to the Tribunals, Courts and Enforcement Act 2007(**c**), in Part 4 (tribunals for the purposes of section 30 (transfer of functions of certain tribunals)) omit the entry for the Claims Management Services Tribunal.

(**a**) 2002 c. 40.
(**b**) Those words were inserted in Schedule 14 and in Schedule 15 by S.I. 2007/2977.
(**c**) 2007 c. 15.

Legal Services Act 2007

95.—(1) The Legal Services Act 2007(**a**) is amended as follows.

(2) In section 8 (the Consumer Panel), in subsection (5) for paragraph (e) substitute—

"(e) an authorised person (within the meaning given in section 31 of the Financial Services and Markets Act 2000 (authorised persons)) in relation to regulated claims management activity (within the meaning given by section 417(1) of that Act (definitions));".

(3) In section 122 (appointment of the Chief Ombudsman and assistant ombudsmen), for subsection (3) substitute—

"(3) It is a condition of appointment under subsection (1)(b) that the person appointed must not during the appointment carry on for or in expectation of any fee, gain or reward—

(a) any activity which is a reserved legal activity, or

(b) a regulated claims management activity (within the meaning given by section 417(1) of the Financial Services and Markets Act 2000 (definitions))".

(4) Omit section 161 (extension of Part 6 to claims management services).

(5) In section 173 (the levy)—

(a) in subsection (5) omit paragraph (b); and

(b) in subsection (6)(b) omit the words from "or by virtue of" to the end.

(6) Omit section 174A (OLC expenditure relating to claims management services)(**b**).

(7) Omit section 187 and Schedule 19 (amendments of Part 2 of the Compensation Act 2006 (claims management services)).

(8) In section 206 (Parliamentary control of orders and regulations), in subsection (4) omit paragraph (oa)(**c**).

(9) In Schedule 1 (the Legal Services Board)—

(a) in paragraph 2—

(i) in sub-paragraph (3) for paragraph (b) substitute—

"(b) carry on a regulated claims management activity (within the meaning given by section 417(1) of the Financial Services and Markets Act 2000 (definitions)), or";

(ii) in sub-paragraph (4) after paragraph (b) insert—

"(ba) an authorised person (within the meaning given in section 31 of the Financial Services and Markets Act 2000 (authorised persons)) in relation to regulated claims management activity (within the meaning given by section 417(1) of that Act (definitions));"; and

(b) in paragraph 3, in sub-paragraph (l) for "Part 2 of the Compensation Act 2006 (c. 29)" substitute "section 419A of the Financial Services and Markets Act 2000 (c. 8)".

(10) In Schedule 15 (the Office for Legal Complaints)—

(a) in paragraph 2, in sub-paragraph (3) after paragraph (a) insert—

"(aa) an authorised person (within the meaning given in section 31 of the Financial Services and Markets Act 2000 (authorised persons)) in relation to regulated claims management activity (within the meaning given by section 417(1) of that Act (definitions)),"; and

(b) in paragraph 4, in sub-paragraph (i) for "Part 2 of the Compensation Act 2006 (c. 29)" substitute "section 419A of the Financial Services and Markets Act 2000 (c. 8)".

(**a**) 2007 c. 29.
(**b**) Section 174A was inserted by the Financial Services (Banking Reform) Act 2013 (c. 33), section 140(4) and (5).
(**c**) Paragraph (oa) of section 206(4) was inserted by the Financial Services (Banking Reform) Act 2013, section 140(4) and (6).

Legal Aid, Sentencing and Punishment of Offenders Act 2012

96. In the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**a**), in section 59 (regulators and regulated persons), in each table omit the entry relating to a person specified in the first column as "the Claims Management Regulator".

Crime and Courts Act 2013

97. In Schedule 9 to the Crime and Courts Act 2013(**b**) (single county court in England and Wales), in the list of provisions in paragraph 52(2) omit the entry "Compensation Act 2006: section 8(2),".

Financial Services (Banking Reform) Act 2013

98.—(1) The Financial Services (Banking Reform) Act 2013(**c**) is amended as follows.

(2) Omit section 139 (power to impose penalties on persons providing claims management services).

(3) Omit section 140 (recovery of expenditure incurred by Office for Legal Complaints).

(4) In section 147(2) (extent) omit paragraphs (b) and (c).

CHAPTER 2

Amendment of secondary legislation

Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

99.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**d**) are amended as follows.

(2) In Schedule 1 (disclosure of confidential information whether or not subject to single market restrictions), in Part 1 at the end insert—

"*Person*	*Functions*
The Information Commissioner	All functions of that person so far as they are exercisable in relation to the provision of claims management services (within the meaning given in regulation 21A of the Privacy and Electronic Communications (EC Directive) Regulations 2003(**e**))
The General Council of the Bar	(a) Its functions under arrangements which it has, or rules which it makes, in compliance with section 30(4) of the Financial Guidance and Claims Act 2018 (as applied by section 32(2) of that Act), for monitoring and enforcing the prohibitions in section 32(1) of that Act (b) Its functions under rules which it makes in compliance with section 33(1) of that Act
The Law Society of England and Wales	(a) Its functions under arrangements which it has, or rules which it makes, in compliance with section 30(4) of the Financial Guidance

(**a**) 2012 c. 10.
(**b**) 2013 c. 22.
(**c**) 2013 c. 33.
(**d**) S.I. 2001/2188, as amended by S.I. 2009/2877 and 2012/916. There are other amendments, but they are not relevant.
(**e**) S.I. 2003/2426. Regulation 21A was inserted by the Financial Guidance and Claims Act 2018, section 35.

	and Claims Act 2018 (as applied by section 32(2) of that Act), for monitoring and enforcing the prohibitions in section 32(1) of that Act (b) Its functions under rules which it makes in compliance with section 33(1) of that Act
The Chartered Institute of Legal Executives	(a) Its functions under arrangements which it has, or rules which it makes, in compliance with section 30(4) of the Financial Guidance and Claims Act 2018 (as applied by section 32(2) of that Act), for monitoring and enforcing the prohibitions in section 32(1) of that Act (b) Its functions under rules which it makes in compliance with section 33(1) of that Act".

(3) In Schedule 2 (disclosure of confidential information not subject to single market restrictions) omit the entry relating to a person specified in the first column as "The Claims Management Regulator".

Legislative and Regulatory Reform (Regulatory Functions) Order 2007

100. In the Legislative and Regulatory Reform (Regulatory Functions) Order 2007(**a**), in Part 2 of the Schedule omit the heading "Claims Management Services" and the entry "Part 2 of the Compensation Act 2006".

Legal Services Act 2007 (Disclosure of Restricted Information) Order 2011

101. In the Legal Services Act 2007 (Disclosure of Restricted Information) Order 2011(**b**), in Schedule 1 (list of persons to whom information may be disclosed) omit "The Claims Management Regulator".

Damages-Based Agreements Regulations 2013

102. In the Damages-Based Agreements Regulations 2013(**c**), in regulation 1(2) (interpretation), in the definition of "client", for "section 4(2)(b) of the Compensation Act 2006" substitute "section 419A of the Financial Services and Markets Act 2000".

Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013

103. In the Schedule to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013(**d**) (meaning of referral fees authorised person), in paragraph 3 insert at the end—

"(h) a regulated claims management activity (within the meaning given by section 417(1) of the 2000 Act (definitions)).".

Economic Growth (Regulatory Functions) Order 2017

104. In the Economic Growth (Regulatory Functions) Order 2017(**e**), in Part 3 of the Schedule, for the entry under the heading "Claims Management Services" substitute "Part 2 of the Financial Guidance and Claims Act 2018(**f**) (Claims Management Services)".

(**a**) S.I. 2007/3544, as amended by S.I. 2014/860.
(**b**) S.I. 2011/122.
(**c**) S.I. 2013/609.
(**d**) S.I. 2013/1635.
(**e**) S.I. 2017/267.
(**f**) 2018 c. 10.

CHAPTER 3

Revocations

Revocations

105. In consequence of the repeal of Part 2 of the Compensation Act 2006 by article 93 the following statutory instruments are revoked—

(a) the Compensation (Regulated Claims Management Services) Order 2006(**a**);

(b) the Compensation (Specification of Benefits) Order 2006(**b**);

(c) the Compensation (Claims Management Services) Regulations 2006(**c**);

(d) the Compensation (Exemptions) Order 2007(**d**);

(e) the Compensation (Exemptions) (Amendment) (No. 1) Order 2007(**e**);

(f) the Compensation (Claims Management Services) (Amendment) Regulations 2008(**f**);

(g) the Compensation (Claims Management Services) (Amendment) Regulations 2014(**g**);

(h) the Legal Services Act 2007 (Claims Management Complaints) (Fees) Regulations 2014(**h**);

(i) the Compensation (Claims Management Services) (Amendment) Regulations 2015(**i**);

(j) the Legal Services Act 2007 (Claims Management Complaints) (Fees) (Amendment) Regulations 2016(**j**);

(k) the Legal Services Act 2007 (Claims Management Complaints) (Fees) (Amendment) Regulations 2017(**k**).

CHAPTER 4

Saving and supplemental provisions

SECTION 1

General provision

General scope of saving provisions

106.—(1) Paragraphs (3) and (4) apply where, in relation to an enactment which is amended by Chapter 1 or Chapter 2 of this Part or is revoked by Chapter 3 of this Part, it is provided in this Chapter that despite the amendment or the revocation a relevant provision continues to have effect for specified purposes.

(2) "Relevant provision" means, in the case of an amendment, the provision which is amended or a specified provision of the enactment which is amended, and in the case of an enactment which is revoked, a specified provision of that enactment.

(3) The relevant provision continues to have effect—

(a) only for the specified purposes; and

(**a**) S.I. 2006/3319.
(**b**) S.I. 2006/3321.
(**c**) S.I. 2006/3322.
(**d**) S.I. 2007/209.
(**e**) S.I. 2007/1090.
(**f**) S.I. 2008/1441.
(**g**) S.I. 2014/3239.
(**h**) S.I. 2014/3316.
(**i**) S.I. 2015/42.
(**j**) S.I. 2016/92.
(**k**) S.I. 2017/22.

(b) with any modification made for those purposes.

(4) Other provisions of the enactment which contains the relevant provision continue to have effect so far as is necessary to give effect to the saving made for the specified purposes.

SECTION 2

Primary legislation

Courts and Legal Services Act 1990

107. Section 58AA of the Courts and Legal Services Act 1990 has effect in relation to any damages-based agreement made before 1st April 2019 without the amendment made by article 90.

Compensation Act 2006

108.—(1) In this article a reference to a numbered section is a reference to the section so numbered in the Compensation Act 2006.

(2) Despite articles 93 and 95(7)—

(a) sections 7, 10 and 11 (offences) continue to have effect for the purposes of—

(i) article 55 (investigation and prosecution after 1st April 2019 in relation to conduct before that date) and article 57 (offences under the Compensation Act 2006: continuation of investigation commenced by the Regulator and institution of criminal proceedings) in relation to—

(aa) an investigation of a kind specified in article 55(a)(i) or (b) or 57 and the resulting prosecution of any criminal proceedings;

(bb) any conviction and sentencing of the defendant in such a prosecution;

(ii) article 58 (continuation of criminal proceedings instituted by the Regulator) in relation to any criminal proceedings to which that article applies;

(b) section 8(1) and (2) (power to apply for an injunction) continues to have effect for the purposes of article 59 (continuation of injunction applications made by the Regulator) in relation to any application for an injunction to which that article applies;

(c) section 8(5), (6) and (7) (power to issue a search warrant) continues to have effect for the purposes of article 60 (continuation of application made by the Regulator for a search warrant) in relation to any application for the issue of a warrant to which that article applies;

(d) sections 8(8), 9 and 15 and the Schedule to the Compensation Act 2006 (power to make regulations) continue to have effect for the purposes of article 111 (saving and supplemental provision for the Compensation (Claims Management Services) Regulations 2006);

(e) section 13(1), (1A), (3) and (3A) (appeals and references to Tribunal)—

(i) continues to have effect for the purposes of Part 3 of this Order in relation to any appeal to the First-tier Tribunal brought by a person under that section before 1st April 2019;

(ii) is to be read for those purposes as if, in subsection (3)(e), the reference to the Regulator, and in subsection (3A)(d), the first reference to the Regulator, were references to the FCA;

(f) section 13(2) and (3) continues to have effect for the purposes of article 67 (continuation of references made by the Regulator to the First-tier Tribunal) in relation to any reference to which that article applies; and

(g) Part 2 of the Compensation Act 2006 continues to have effect for the purposes of section 161 of the Legal Services Act 2007 (extension of Part 6 to claims management services) and article 111.

Legal Services Act 2007

109.—(1) In this article a reference to a numbered section is a reference to the section so numbered in the Legal Services Act 2007.

(2) Despite article 95(4) section 161 continues to have effect—

(a) for the purposes of an application to the court made under section 141(2) or (3) in relation to a direction under section 137(2) contained in the determination of any complaint to which article 69 applies (complaints made before 1st April 2019); and

(b) in relation to the application, for those purposes, of sections 141 and 142(1) and (2).

(3) For the purposes of paragraph (2) section 142(2) is to be read as if the reference to "each relevant authorising body" were a reference to the FCA and the scheme operator (as defined in article 68).

(4) Despite article 95(4) section 161 continues to have effect—

(a) for the purposes of article 79(2) (information and reports) in relation to any enquiry by the court of a kind referred to in article 79(2)(b); and

(b) in relation to the application, for those purposes, of section 149(3), (4) and (7).

(5) Despite article 95(4) section 161 continues to have effect—

(a) for the purposes of a decision by the ombudsman under article 74(2) (funding and charges); and

(b) in relation to the application, for those purposes, of rules made under section 136(1).

Legal Aid, Sentencing and Punishment of Offenders Act 2012

110.—(1) This article applies for the purposes of article 55 (investigation and prosecution after 1st April 2019 in relation to conduct before that date) in relation to the continuation, taking or commencement by the FCA of any action for monitoring and enforcing the restrictions in section 56(1) and (2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act").

(2) Section 57 of the 2012 Act (effect of rules against referral fees) is to be read as if subsection (4) were omitted.

(3) Section 59 of the 2012 Act (Regulators and regulated persons)—

(a) continues to have effect without the amendment made by article 96; and

(b) is to be read as if the reference to the Claims Management Regulator in the first column of each of the tables in subsections (1) and (2) were a reference to the FCA.

SECTION 3

Secondary legislation

Compensation (Claims Management Services) Regulations 2006

111.—(1) In this article a reference to a numbered regulation is a reference to the regulation so numbered in the Compensation (Claims Management Services) Regulations 2006.

(2) Despite article 105(c) regulation 48 continues to have effect for the purposes of consideration by the FCA of whether a person is liable for a relevant default (within the meaning given in article 51(1) (penalties for conduct for which the Regulator has not given notice of proposed penalty)).

(3) Despite article 105(c) regulation 35 continues to have effect for the purposes of the conduct by the FCA of—

(a) an investigation by the FCA of a kind referred to in article 55(1)(a)(ii) or (iii) (investigation and prosecution after 1st April 2019 in relation to conduct before that date);

(b) an investigation on the FCA's behalf of a kind referred to in article 56(2) (unprofessional conduct: continuation of investigation commenced by the Regulator).

(4) Despite article 105(c) regulations 34 and 37 to 45 (search warrants) continue to have effect for the purposes of article 60 (continuation of application made by the Regulator for a search warrant), and for those purposes—

(a) regulations 40 to 44A are to be read as if regulation 38(2) (definitions) defined a reference to an officer of the Regulator by reference to an officer authorised by the FCA for the purposes of section 165(3) of the 2000 Act;

(b) regulations 34(2) and (5)(c), 37(1), (2) and (5), 39 and 40(1) and (4) are to be read as if a reference to the Regulator, apart from in a reference to an officer of the Regulator, were a reference to the FCA; and

(c) regulation 34(2) and (5)(c) is to be read as if a reference to regulation 33 were a reference to section 165 of the 2000 Act (Regulators' power to require information: authorised persons etc).

Damages-Based Agreements Regulations 2013

112. The Damages-Based Agreements Regulations 2013 continue to have effect in relation to any damages-based agreement made before 1st April 2019 without the amendment made by article 102.

PART 7

Review

Review

113.—(1) The Treasury must from time to time—

(a) carry out a review of the regulatory provision contained in this Order; and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before the end of the period of five years beginning with the date on which this Order comes into force for any purpose.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(**a**) ("the 2015 Act") requires that a report setting out the conclusions of a review carried out under this Order must in particular—

(a) set out the objectives intended to be achieved by the regulatory provision in this Order;

(b) assess the extent to which those objectives are achieved;

(c) assess whether those objectives remain appropriate; and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this article, "regulatory provision" has the same meaning as in sections 28 to 32 of the 2015 Act (see section 32 of that Act).

Name
Name
Date — Two of the Lords Commissioners of Her Majesty's Treasury

(**a**) 2015 c. 26.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements the transfer of regulation of claims management activity in Great Britain from the Claims Management Regulation Unit (the "CMRU"), a part of the Ministry of Justice, to the Financial Conduct Authority (the "FCA").

The Financial Guidance and Claims Act 2018 (c. 10) ("the 2018 Act") amends the Financial Services and Markets Act 2000 (c. 8) ("the 2000 Act") to make claims management activity a regulated activity under the 2000 Act. Claims management services include services in relation to claims for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage, or in respect of an obligation.

Under powers inserted into the 2000 Act by section 27 of the 2018 Act, the Treasury may by order prescribe when a person is or is not to be treated as carrying on a claims management activity in Great Britain, and the types of claim in respect of which claims management activity is to be regulated.

This Order sets out those claims management activities which are subject to regulation and the classes of persons who are exempt from authorisation by the FCA. The amendments made by the 2018 Act to the 2000 Act make provision for regulation of claims management activity in Scotland for the first time.

Part 1 of the Order sets out preliminary matters. It makes provision for the Order to come into force ahead of the transfer date of 1st April 2019 to enable the FCA and Financial Ombudsman Service to make rules. Additionally, it sets out when a person is to be treated as carrying on a regulated claims management activity in Great Britain.

Part 2 of the Order carries out key elements of the transfer of the existing claims management regulatory regime from the CMRU to the FCA. It amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I 2001/544) ("the Regulated Activities Order") to specify the claims management activities which are to be treated as "regulated activities" which require authorisation by the FCA.

Those activities include advertising for claimants or potential claimants, advice and representation in respect of claims, and the investigation of claims. The types of claim include: personal injury claims and criminal injury compensation claims, claims relating to financial services or financial products (which include claims made pursuant to section 75 of the Consumer Credit Act 1974 (c. 39)), claims for housing disrepair, employment-related claims and claims for industrial injury disability benefits.

Members of certain professions (notably solicitors, barristers, advocates and legal executives) and certain other classes of person are exempted from regulation under the Regulated Activities Order by the FCA when undertaking claims management activity in the ordinary course of legal practice pursuant to the professional rules to which they are subject as legal practitioners. Certain persons or bodies providing regulated claims management services on a not-for-profit basis will also be exempted.

Part 2 of the Order also amends the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005 (S.I 2005/1529) by specifying claims management activities which are controlled activities for the purposes of section 21 of the 2000 Act. Section 21(1) of that Act prohibits a person from communicating an invitation or inducement to engage in claims management activity unless the content of the communication is approved by an authorised person or unless an exemption applies.

Part 3 of the Order contains transitional provisions.

Part 4 of the Order contains provisions relating to rules and guidance made by the FCA.

Part 5 of the Order contains miscellaneous provisions.

Part 6 of the Order makes consequential amendments to primary and secondary legislation. It provides for the repeal of Part 2 of the Compensation Act 2006 which contains provisions relating to the regulation of claims management services under that Act. It also revokes a number of statutory instruments in consequence of the repeal of that Act and contains a number of saving provisions which are necessary to give effect to certain transitional provisions contained in Part 3 of the Order.

Part 7 of the Order requires the Treasury to review the regulatory provision contained in the Order within 5 years of the Order coming into force.

A de minimis assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW10 2HQ on www.hm-treasury.gov.uk and is published alongside the Order on www.legislation.gov.uk.

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