STATUTORY INSTRUMENTS

2007 No. 1821

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Exemption) (Amendment No. 2) Order 2007

Made - - - -	*25th June 2007*
Laid before Parliament	*26th June 2007*
Coming into force	
Articles 1 and 2(1), (2) and (4)	*20th July 2007*
Article 2(3)	*1st November 2007*

The Treasury make the following Order in exercise of the powers conferred on them by sections 38 and 428(3) of the Financial Services and Markets Act 2000(**a**):

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Exemption) (Amendment No. 2) Order 2007.

(2) Articles 1 and 2(1), (2) and (4) come into force on 20th July 2007 and article 2(3) comes into force on 1st November 2007.

Amendment of the Financial Services and Markets Act 2000 (Exemption) Order 2001

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

(2) In Part 3 of the Schedule (persons exempt in respect of any regulated activity mentioned in article 5(1)), after paragraph 33 insert—

"**33A.** Invest Northern Ireland.".

(3) In Part 4 of the Schedule (persons exempt in respect of particular regulated activities), in paragraph 40(3)(b)—

(i) for "this paragraph" substitute "sub-paragraph (1)";

(ii) after "Regulated Activities Order" insert "in breach of the general prohibition".

(4) In Part 4 of the Schedule, after paragraph 49 insert—

(**a**) 2000 c. 8.
(**b**) S.I. 2001/1201, amended by S.I. 2001/3623 and 2007/125. There are other amending instruments but none is relevant to this Order.

"Freight forwarders and storage firms

50.—(1) A freight forwarder or storage firm is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 21, 25, 39A or 53 of the Regulated Activities Order(**a**) (dealing in investments as agent, arranging deals in investments, assisting in the administration and performance of a contract of insurance or advising on investments) in the circumstances referred to in paragraph 2.

(2) The circumstances are—

(a) where a freight forwarder ("F")—

(i) holds a policy of insurance which insures F in respect of loss of or damage to goods which F transports or of which F arranges the transportation, and

(ii) makes available to a customer rights under that policy to enable the customer to claim directly against the insurer in respect of loss or damage to those goods; or

(b) where a storage firm ("S")—

(i) holds a policy of insurance which insures S in respect of loss of or damage to goods which S stores or for which S arranges storage, and

(ii) makes available to a customer rights under that policy to enable the customer to claim directly against the insurer in respect of loss or damage to those goods.

(3) In this paragraph—

(a) "freight forwarder" means a person whose principal business is arranging or carrying out the transportation of goods;

(b) "storage firm" means a person whose principal business is storing goods or arranging storage for goods;

(c) "customer" means a person who is not an individual who uses the service of a freight forwarder or storage firm.

Policyholder Advocates

51.—(1) A person acting as a policyholder advocate is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 25 or 53 of the Regulated Activities Order (arranging deals in investments or advising on investments) in so far as he carries on these activities in connection with, or for the purposes of, his role as policyholder advocate.

(2) In sub-paragraph (1), "policyholder advocate" means a person who is—

(a) appointed by an insurer ("I") to represent the interests of policyholders in negotiations with I about I's proposals to redefine the rights and interests in any surplus assets arising in I's with-profits fund; and

(b) approved or nominated by the Authority to carry out that role.

(3) In sub-paragraph (2), "with-profits fund" means a long-term insurance fund in which policyholders are eligible to participate in surplus assets of the fund.".

Kevin Brennan
Claire Ward

25th June 2007 — Two of the Lords Commissioners of Her Majesty's Treasury

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(**a**) S.I.2001/544, amended by S.I.2003/1476; there are other amending instruments but none is relevant to this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2001 (Exemption) Order 2001 (S.I. 2001/1201) ("the principal order") which provides for certain persons to be exempt from the general prohibition imposed by section 19 of the Financial Services and Markets Act 2000 (c. 8) ("the Act") on carrying on a regulated activity in the United Kingdom unless authorised under the Act. It inserts three new exemptions into the Schedule to the principal order.

New paragraph 33A of the Schedule to the principal order provides that Invest Northern Ireland established by the Industrial Development Act (Northern Ireland) 2002 (c.1 (N.I.)) is exempt in relation to the regulated activities listed in article 5(1) of the principal order (most of which relate to investment services).

New paragraph 50 of the Schedule to the principal order exempts a freight forwarder or storage firm from requiring authorisation in respect of the activities specified in articles 21, 25, 39A and 53 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) in circumstances where the freight forwarder or storage firm makes available to a customer rights under a policy of insurance held by the freight forwarder or storage firm in respect of loss or damage to goods consigned such that the customer has direct rights against the insurer in respect of loss or damage to those goods.

New paragraph 51of the Schedule to the principal order exempts a person who is approved or nominated by the Financial Services Authority ("FSA") to act as a policyholder advocate from requiring authorisation in respect of activities specified by articles 25 and 53 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. A policyholder advocate is appointed where an insurance firm carrying on with-profits business is seeking to make a reattribution of its inherited estate. The policyholder advocate negotiates with the firm on behalf of relevant with-profits policyholders. The FSA rules in relation to policyholder advocates, made under section 138 of the Act, can be found in the part of the FSA handbook entitled "conduct of business".

This Order also makes a minor correction to article 40 of the Schedule to the principal order (exemption for enterprise schemes).

Regulatory impact assessments of the effect of the exemptions inserted as new paragraphs 50 and 51 of the Schedule to the principal order on the costs of business are available from the HM Treasury website or from the Financial Stability and Risk team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. Copies have been placed in the libraries of both Houses of Parliament. A full Regulatory Impact Assessment has not been produced for the exemption inserted as new paragraph 33A of the Schedule to the principal order as no impact on the private or voluntary sectors is foreseen.

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