STATUTORY INSTRUMENTS

2006 No. 1969

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006

Approved by both Houses of Parliament

Made - - - -	*28th June 2006*
Laid before Parliament	*29th June 2006*
Coming into force in accordance with article 1(2) and (3)	

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 Financial Services and Markets Act 2000(**a**)) will become a regulated activity;

The Treasury make the following Order in exercise of the powers conferred on them by sections 22(1) and (5), 426, 427 and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006.

(2) Articles 1, 2 and 4 of this Order come in to force—

(a) for the purposes of enabling applications to be made for Part IV permission or for a variation of Part IV permission in relation to the regulated activity specified by article 52(b) of the Principal Order as amended by this Order or in relation to an investment specified by article 82(2) of the Principal Order as amended by this Order on 1st October 2006;

(b) and for all other purposes on 6th April 2007.

(3) All other articles of this Order come into force on 6th April 2007.

(4) In this Order—

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

"the Act" means the Financial Services and Markets Act 2000;

"commencement" means 6th April 2007.

(**a**) 2000 c. 8.
(**b**) S.I. 2001/544.

Amendment of the Principal Order

2.—(1) The Principal Order is amended as follows.

(2) In paragraph (1) of article 3 (interpretation)—

(a) for the definition of "occupational pension scheme", substitute—

""occupational pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993(**a**) but with paragraph (b) of the definition omitted;";

(b) after the definition of "pension fund management contract" insert—

""personal pension scheme" means a scheme or arrangement which is not an occupational pension scheme or a stakeholder pension scheme and which is comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people—

(a) on retirement,

(b) on having reached a particular age, or

(c) on termination of service in an employment;".

(3) In the title of Chapter 11 of Part 2 (stakeholder pension schemes), omit "stakeholder".

(4) For article 52 (establishing etc. a stakeholder pension scheme), substitute—

"Establishing etc. a pension scheme

52. The following are specified kinds of activity—

(a) establishing, operating or winding up a stakeholder pension scheme;

(b) establishing, operating or winding up a personal pension scheme.".

(5) For article 82 (rights under a stakeholder pension scheme), substitute—

"Rights under a pension scheme

82.—(1) Rights under a stakeholder pension scheme.

(2) Rights under a personal pension scheme.".

Transitional provisions

3.—(1) Paragraph (2) applies to a person ("A") who immediately before commencement had Part IV permission to carry on an activity of the kind specified by article 52 of the Principal Order.

(2) On commencement A is to be treated as also having Part IV permission to carry on the activity of establishing, operating or winding up a personal pension scheme.

(3) Paragraph (4) applies to a person ("B") who immediately before commencement had Part IV permission to carry on an activity of the kind specified by article—

(a) 14 (dealing in investments as principal),

(b) 21(**b**) (dealing in investments as agent),

(c) 25 (arranging deals in investments),

(d) 37 (managing investments),

(e) 40 (safeguarding and administering investments),

(f) 45(**c**) (sending dematerialised instructions),

(**a**) The definition of 'occupational pension scheme' was inserted into section 1 of the Pensions Act 1993 (c. 48) by the Pensions Act 2004 (c. 35) section 239(1) and (2).
(**b**) Article 21 was amended by S.I. 2003/1476.
(**c**) Article 45 was amended by S.I. 2001/3544 and 2002/682.

(g) 53(**a**) (advising on investments), or

(h) in so far as relevant to any activity specified in this paragraph or by article 52 of the Principal Order, 64(**b**) (agreeing to carry on specified kinds of activity),

of the Principal Order in relation to rights under a stakeholder pension scheme ("a relevant permission").

(4) On commencement B is to be treated as also having Part IV permission to carry on, in relation to rights under a personal pension scheme, any of the activities of a kind mentioned in paragraph (3) for which he had a relevant permission immediately before commencement.

(5) No person shall be treated as having his Part IV permission extended in accordance with this article if on or before 23rd March 2007 he gave written notice to the Authority that he did not wish to have his permission extended.

Interim permission

4.—(1) This article applies where—

(a) a person has submitted an application for Part IV permission or a variation of Part IV permission ("the applicant"), to the extent that the application relates to—

(i) a regulated activity specified by article 52(b) of the Principal Order (as amended by this Order),

(ii) an investment specified by article 82(2) of the Principal Order (as amended by this Order);

(b) on or before 1st October 2006, the applicant had been carrying on an activity that following commencement will be—

(i) a regulated activity of establishing, operating or winding up a personal pension scheme; or

(ii) an activity of a kind specified by article—

(aa) 14 (dealing in investments as principal),

(bb) 21 (dealing in investments as agent),

(cc) 25 (arranging deals in investments),

(dd) 37 (managing investments),

(ee) 40 (safeguarding and administering investments),

(ff) 45 (sending dematerialised instructions),

(gg) 53 (advising on investments), or

(hh) in so far as relevant to any activity specified in this sub-paragraph, 64 (agreeing to carry on specified kinds of activity),

of the Principal Order in relation to rights under a personal pension scheme;

(c) the Authority received the application on or before 23rd March 2007; and

(d) the application had not been finally decided before commencement.

(2) The applicant is to be treated as having at commencement the permission to which the application relates.

(3) A permission which an applicant is to be treated as having is referred to in this Order as an "interim permission".

(4) Without prejudice to the exercise by the Authority of its powers under Part 4 of the Act an interim permission lapses when the application has been finally decided.

(**a**) Article 53 was amended by S.I. 2003/1476.
(**b**) Article 64 was amended by S.I. 2001/682.

(5) In this article "finally decided" means—

(a) subject to paragraph (6), when the application is withdrawn;

(b) when the Authority grants permission under section 42 of the Act (giving permission) to carry on the activity in question;

(c) where the Authority has refused an application and the matter is not referred to the Tribunal, when the time for referring the matter to the Tribunal has expired;

(d) where the Authority has refused an application and the matter is referred to the Tribunal when—

(i) if the reference is determined by the Tribunal (including a determination following remission back to the Tribunal for rehearing in accordance with subsection (3)(a) of section 137 of the Act (appeal on a point of law)), the time for bringing an appeal has expired, or

(ii) on an appeal from a determination by the Tribunal on a point of law, the Court itself determines the application in accordance with section 137 of the Act.

(6) An applicant who is treated as having interim permission may not withdraw the application without first obtaining the consent of the Authority.

(7) Where—

(a) the Authority exercises its power under section 45 (variation etc. on the Authority's own initiative) in relation to an authorised person who holds an interim permission; and

(b) as a result of the variation there are no longer any regulated activities for which the authorised person has permission,

the Authority must, once it is satisfied that it is no longer necessary to keep the interim permission in force, cancel it.

Interim approval

5.—(1) This article applies where—

(a) an applicant (within the meaning of article 4(1)) has submitted, before commencement, an application to the Authority under section 60 of the Act (applications for approval); and

(b) the application has not been finally decided.

(2) The person in respect of whom the application is made is to be treated as having at commencement the Authority's approval for the purposes of section 59 of the Act (approval for particular arrangements) in relation to the functions to which the application relates.

(3) An approval which an applicant is to be treated as having is referred to in this Order as an "interim approval".

(4) Without prejudice to the exercise by the Authority of its powers under Part 4 of the Act an interim approval lapses when the application has been finally decided.

(5) In this article, "finally decided" means—

(a) when the application is withdrawn;

(b) when the Authority grants the application for approval under section 62 of the Act (applications for approval: procedure and right to refer to Tribunal);

(c) where the Authority has refused an application and the matter is not referred to the Tribunal, when the time for referring the matter to the Tribunal has expired;

(d) where the Authority has refused an application and the matter is referred to the Tribunal, when—

(i) if the reference is determined by the Tribunal (including a determination following remission back to the Tribunal for rehearing in accordance with subsection (3)(a) of section 137 of the Act), the time for bringing an appeal has expired, or

(ii) on an appeal from a determination by the Tribunal on a point of law, the Court itself determines the application in accordance with section 137 of the Act.

Application of the Authority's rules etc. to persons with interim permission or interim approval

6.—(1) The Authority may direct in writing that any relevant provision which would otherwise apply to a person by virtue of his interim permission or interim approval is not to apply, or is to apply to him as modified in the way specified in the direction.

(2) Where the Authority makes a rule, gives guidance or issues a statement or code which applies only to persons with an interim permission or an interim approval (or only to a class of such persons), sections 65 (statements and codes: procedure) and 155 (consultation) and subsection (3) of section 157 (guidance) of the Act do not apply to that rule, guidance, statement or code.

(3) For the purposes of paragraph (1), a "relevant provision" is any provision made as a result of the exercise by the Authority of any of its legislative functions mentioned in paragraph 1(2) of Schedule 1 to the Act (the Financial Services Authority).

Application of the Act etc.

7. The Schedule modifies the application of the Act and the Principal Order in relation to persons with an interim permission or an interim approval.

Amendments to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001

8.—(1) Article 2 of the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001(**a**) is amended as follows.

(2) Omit the definitions of "occupational pension scheme" and "personal pension scheme".

(3) In the appropriate places insert—

> ""occupational pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993 but with paragraph (b) of the definition omitted;
>
> "personal pension scheme" means a scheme or arrangement which is not an occupational pension scheme and which is comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people—
>
> (a) on retirement,
>
> (b) on having reached a particular age, or
>
> (c) on termination of service in an employment;".

Amendments to the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001

9.—(1) The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001(**b**) is amended as follows.

(2) In article 3(2)(h), omit "stakeholder".

(3) In article 4(3), for the definition of "occupational pension scheme", substitute—

> ""occupational pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993 but with paragraph (b) of the definition omitted;".

(**a**) S.I. 2001/1062, to which there are amendments not relevant to this instrument.
(**b**) S.I. 2001/1177; article 4(3) was amended by S.I. 2005/922.

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

10. In article 5(1)(h) of the Financial Services and Markets Act 2000 (Exemption) Order 2001(**a**), omit "stakeholder".

Amendment to the Financial Services and Markets Act 2000 (Professions)(Non-Exempt Activities) Order 2001

11. In article 4(e) of the Financial Services and Markets Act 2000 (Professions)(Non-Exempt Activities) Order 2001(**b**), omit "stakeholder".

Amendments to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

12.—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(**c**) is amended as follows.

(2) In article 72(4) for the definition of "personal pension scheme" substitute—

> ""personal pension scheme" means a scheme or arrangement which is not an occupational pension scheme or a stakeholder pension scheme and which is comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people—
>
> (a) on retirement,
>
> (b) on having reached a particular age, or
>
> (c) on termination of service in an employment.".

(3) For paragraph 20 (rights under a stakeholder pension scheme) of Part 2 of Schedule 1, substitute—

> **"Rights under a pension scheme**
>
> **20.—**(1) Rights under a stakeholder pension scheme.
>
> (2) Rights under a personal pension scheme.
>
> (3) "Stakeholder pension scheme" and "personal pension scheme" have the meanings given by article 72(4).".

(4) In paragraph 28 (interpretation) of Part 2 of Schedule 1, for the definition of "occupational pension scheme", substitute—

> ""occupational pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993 but with paragraph (b) of the definition omitted;".

Frank Roy
Alan Campbell
28th June 2006 — Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Article 7

APPLICATION OF THE ACT AND THE PRINCIPAL ORDER TO PERSONS WITH AN INTERIM PERMISSION OR AN INTERIM APPROVAL

1. Paragraphs 2 and 3 apply to every person with interim permission.

(**a**) S.I. 2001/1201, to which there are amendments not relevant to this instrument.
(**b**) S.I. 2001/1227, to which there are amendments not relevant to this instrument.
(**c**) S.I. 2005/1529, to which there are amendments not relevant to this instrument.

2. For the purposes of section 20 (authorised persons acting without permission), a person's interim permission is treated as having been given to him under Part 4 of the Act.

3. A person's interim permission is to be disregarded for the purposes of—

(a) subsection (2) of section 38 (exemption orders),

(b) subsection (2) of section 40 (application for permission),

(c) subject to paragraph 7, section 42 (giving permission),

(d) section 43 (imposition of requirements), and

(e) subsections (1), (4) and (5) of section 44 (variation etc. at request of authorised person).

4. Paragraphs 5(1), 6 to 9, 11, 12 and 13 apply to a person who falls within subsection (1) of section 31 (authorised persons) only by virtue of having an interim permission.

5.—(1) A person with interim permission is to be treated after commencement as an authorised person for the purposes of the Act (and any provision made under the Act), unless otherwise expressly provided for by this Schedule.

(2) A person with an interim approval is to be treated after commencement as an approved person for the purposes of the Act (and any provision made under the Act), unless otherwise expressly provided for by this Schedule.

6. For the purposes of subsection (1) of section 21 (restrictions on financial promotion) a person with an interim permission is not to be treated as an authorised person for the purposes of communicating or approving the content of a communication except where the communication invites or induces a person to enter into (or offer to enter into) an agreement the making or the performance of which constitutes a controlled activity which corresponds to a regulated activity which is covered by his interim permission.

7. A person with an interim permission may still be an appointed representative within the meaning of subsection (2) of section 39 (exemption of appointed representatives) (and hence may be treated as exempt from the general prohibition as a result of section 39(1) for the purposes of subsection (3)(a) of section 42 (giving permission)).

8. Subsection (3)(a) of section 213 (the compensation scheme) does not apply to a person who is a relevant person (within the meaning of that section) only by virtue of his having interim permission.

9. Subsection (1)(a) of section 347 (the record of authorised persons etc.) is disapplied in relation to persons with interim permission.

10. Section 347(1)(h) is disapplied in relation to persons with interim approval.

11. In article 22 of the Principal Order (deals with or through authorised persons), with the exception of the first reference, the references to an "authorised person" do not include a person with interim permission.

12. In article 29 of the Principal Order (arranging deals with or through authorised persons), with the exception of the first reference, the references to an "authorised person" do not include a person with interim permission.

13. For the purposes of paragraphs (1)(a), (2)(a), (3) and (4)(a) of article 72 of the Principal Order (overseas persons), a person with an interim permission is not to be treated as an authorised person.

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) ("the Principal Order") by substituting new articles for article 52 (establishing etc. a stakeholder pension scheme) and article 82 (rights under a stakeholder pension scheme). Under article 52 as substituted, establishing, operating or winding up a personal pension scheme (as well as establishing etc. a stakeholder pension scheme) is a regulated activity for the purposes of the Financial Services and Markets Act 2000 (c. 8) ("the Act"). Under article 82 as substituted, rights under a personal pension scheme become investments falling within the scope of regulation under the Act.

Article 3 contains transitional arrangements for authorised persons with existing permissions under Part 4 of the Act. Where an existing permission allows the authorised person to establish etc. a stakeholder pension scheme, the authorised person is treated as having permission also for the activity of establishing etc. a personal pension scheme from the date this Order comes into force (6th April 2007). Where the authorised person has permission to carry on activities listed in article 3(3) in relation to the specified investment of rights under a stakeholder pension scheme, he is to be treated as having permission to carry on those activities in relation to the new specified investment of rights under a personal pension scheme from the date this Order comes into force.

Article 4 confers an interim permission on certain applicants who have applied to the Financial Services Authority ("the Authority") for permission under Part 4 of the Act which relate to the activity of establishing, operating or winding up a personal pension scheme or which relate to the specified investment of rights under a personal pension scheme and whose application is pending on the date (6th April 2007) when those activities become regulated within the meaning of section 22 of the Act.

Article 5 confers interim approval in similar terms to those in article 4 on people working for a person who benefits from an interim permission and who would need approval under Part 5 of the Act.

Article 6 allows the Authority to modify, amongst other things, its rules in their application to persons with an interim permission or an interim approval.

Article 7 and the Schedule provide for the application of provisions in, or made under, the Act to persons with an interim permission or an interim approval, indicating where such provisions are to be treated as including or not including such persons.

Articles 8 – 12 make consequential amendments to secondary legislation made under the Act.

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