
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

200[3] No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 200[3]

Made - - - - - *200[3]*

Coming into force in accordance with article 1(2)

Whereas this Order adds activities to those that are controlled activities for the purposes of section 21 of the Financial Services and Markets Act 2000(a) and is therefore an Order to which section 429(4) of that Act applies;

Whereas a draft of this Order has been approved by resolution of both Houses of Parliament;

The Treasury in exercise of the powers conferred on them by section 21(5), (9) and (10) and section 428(3) of the Financial Services and Markets Act 2000 hereby make the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 200[3], and comes into force on such a day as the Treasury may specify.

(2) Any day specified under paragraph (2) must be caused to be notified in the London, Edinburgh and Belfast Gazettes published not later than one week before that day.

Interpretation

2. In this Order, “the Financial Promotion Order” means the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001(b).

Exempt communications: real time communications effecting an introduction

3. After article 28A(c) of the Financial Promotion Order insert –

“**Real time communications: introductions in connection with qualifying credit**

28B – (1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to any real time communication which –

(a) 2000 c.8.

(b) S.I. 2001/1335, amended by S.I. 2001/2633, S.I. 2001/3650, and S.I. 2001/3800 [*Insert reference to any further amending instruments.*]

(c) Article 28A was inserted by S.I. 2001/2633, article 2(a).

- (a) relates to a controlled activity falling within paragraph 10, 10A or 10B of Schedule 1, and
- (b) is made for the purpose of, or with a view to, introducing the recipient to a person ('N') who is –
 - (i) an authorised person who carries on the controlled activity to which the communication relates,
 - (ii) an appointed representative, where the controlled activity to which the communication relates is also a regulated activity in respect of which he is exempt from the general prohibition, or
 - (iii) an overseas person who carries on the controlled activity to which the communication relates.
- (2) The requirements of this paragraph are that the maker of the communication ('M') –
 - (a) does not receive any money, other than money payable to M on his own account, paid by the recipient for or in connection with any transaction which the recipient enters into with or through N as a result of the introduction; and
 - (b) before making the introduction, gives to the recipient such of the information mentioned in paragraph (3) as applies to M.
- (3) That information is –
 - (a) that M is a member of the same group as N;
 - (b) details of any payment which M will receive from N, by way of fee or commission, for introducing the recipient to N;
 - (c) an indication of any other reward or advantage received or to be received by M that arises out of his making introductions to N.
- (4) In this article, "overseas person" means a person who carries on controlled activities which fall within paragraph 10, 10A or 10B of Schedule 1, but who does not carry on any such activity, or offer to do so, from a permanent place of business maintained by him in the United Kingdom."

Exempt communications: miscellaneous amendments

- 4.—(1) Part VI of the Financial Promotion Order (exempt communications: certain controlled activities) is amended as follows.
- (2) In paragraph (2) of article 29 (communications required or authorised by enactments), for "paragraph 10" substitute "paragraph 10, 10A or 10B".
- (3) In paragraph (2) of article 30 (overseas communicators: solicited real time communications), in the definition of "relevant investment activities", after "paragraphs 3 to 7" insert "or 10 to 10B".
- (4) In article 46 (qualifying credit to bodies corporate), for "paragraph 10" substitute "paragraph 10, 10A or 10B".

Controlled activities: arranging and advising on qualifying credit

- 5.—(1) In Part I of Schedule 1 to the Financial Promotion Order (controlled activities), after paragraph 10 (providing qualifying credit) insert –
 - "Arranging qualifying credit etc.**
 - 10A Making arrangements –**
 - (a) for another person to enter as borrower into an agreement for the provision of qualifying credit; or
 - (b) for a borrower under a regulated mortgage contract, within the meaning of article 61(3) of the Regulated Activities Order, entered into after the coming into force of

that article, to vary the terms of that contract in such a way as to vary his obligations under that contract,
is a controlled activity.

Advising on qualifying credit etc.

10B - (1) Advising a person is a controlled activity if the advice is –

(a) given to the person in his capacity as a borrower or potential borrower; and

(b) advice on the merits of his doing any of the following -

(i) entering into an agreement for the provision of qualifying credit, or

(ii) varying the terms of a regulated mortgage contract entered into by him after the coming into force of article 61 of the Regulated Activities Order in such a way as to vary his obligations under that contract.

(2) In this paragraph “borrower” and “regulated mortgage contract” have the meaning given by article 61(3) of the Regulated Activities Order.”.

(2) In paragraph 11 (agreeing to carry on specified kinds of activity), for “paragraphs 3 to 10” substitute “paragraphs 3 to 10B”.

Date

Two of the Lords Commissioners of
Her Majesty’s Treasury

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (“the Financial Promotion Order”), by specifying two new controlled activities for the purposes of section 21 of the Financial Services and Markets Act 2000 (“the Act”), and by providing a further exemption from the financial promotion restriction in that section. These amendments are made in parallel with amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 by S.I. ****/**** which specify arranging regulated mortgage contracts and advising on regulated mortgage contracts as regulated activities under the Act.

Article 1 provides that the Order will come into force on a day specified by the Treasury, and that day must be notified at least one week in advance in the London, Edinburgh and Belfast Gazettes.

Article 3 adds a new exemption to the Financial Promotion Order in respect of real time communications which relate to the provision of qualifying credit, arranging qualifying credit, or advising or qualifying credit, and are made for the purpose of introducing the recipient to an authorised person, an appointed representative, or an overseas person who carries on the controlled activity to which the communication relates. The exemption will only apply if the person making the communication complies with specified conditions. The first condition is that the maker of the communication does not handle client money, and the second is that he discloses specified information to the recipient.

Article 4 expands the existing exemptions in the Financial Promotion Order relating to communications required or authorised by enactments, solicited real time communications made by overseas communicators, and communications on qualifying credit directed at bodies corporate, so that they cover communications relating to the new controlled activities of arranging qualifying credit and advising on qualifying credit.

Article 5 inserts new paragraphs into Schedule 1 to the Financial Promotion Order, so as to specify arranging qualifying credit and advising on qualifying credit as controlled activities. Arranging qualifying credit consists of arranging for a borrower to enter into an agreement for the provision of qualifying credit or arranging for a borrower to vary the terms of a regulated mortgage contract. Advising on qualifying credit consists of giving advice to a borrower or potential borrower on the merits of that person entering into an agreement for the provision of qualifying credit or varying the terms of a regulated mortgage contract.