

**DRAFT**

*Draft Order laid before Parliament under section 429(1) and (6) of 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

---

**2003 No.**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000 (Insurance  
Mediation) (Miscellaneous Amendments) Order 2003**

*Made*

*2003*

*Coming into force*

*October 2004*

Whereas a draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 429(1) and (6) of the Financial Services and Markets Act 2000(a);

The Treasury, in exercise of the powers conferred upon them by sections 192(b), 327(6), 419 and 428(3) of that Act, hereby make the following Order:

**Citation and commencement**

1. This Order may be cited as the Financial Services and Markets Act 2000 (Insurance Mediation) (Miscellaneous Amendments) Order 2003 and comes into force on [October 2004].

**Amendment to the By Way of Business Order**

2.—(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 1(2) (interpretation), at the beginning of sub-paragraph (b), insert ““contract of insurance,””.

(3) In article 3 (investment business) –

(a) at the beginning of paragraph (1), insert “Subject to paragraph (4),”;

(b) after paragraph (3), insert –

“(4) Paragraph (1) does not apply to an insurance mediation activity.

(5) A person is not to be regarded as carrying on by way of business any insurance mediation activity unless he carries on that activity for remuneration.

(6) In this article, “insurance mediation activity” means any activity of the kind specified by article 21, 25, 37 or 53 of the Regulated Activities Order, or article 64 of that Order so far as relevant to any of those articles, so far as it relates to a contract of insurance.”.

---

(a) 2000 c. 8.

(b) S.I. 2001/1177.

### **Amendment to the Non-Exempt Activities Order**

**3.**—(1) The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001(a) is amended as follows.

(2) In article 2(1) (interpretation) –

(a) after the definition of “the Act”, insert –

““contract of insurance” has the meaning given by article 3(1) of the Regulated Activities Order;”;

(b) after the definition of “occupational pension scheme”, insert –

““record of insurance intermediaries” means the record maintained by the Authority under section 347 of the Act (the public record) by virtue of article [93] of the Regulated Activities Order (recorded insurance intermediaries);”;

(c) for the definition of “relevant investment”, substitute –

““relevant investment” has the meaning given by article 3(1) of the Regulated Activities Order;”.

(3) After article 4, insert –

**“4A.** An activity of the kind specified by article 21 or 25 of the Regulated Activities Order (dealing in investments as agent or arranging deals in investments) in so far as it –

(a) relates to a transaction for the sale or purchase of a contract of insurance; and

(b) is carried on by a person who is not included in the record of insurance intermediaries.”.

(4) In article 5 –

(a) for paragraph (1), substitute –

“(1) An activity of the kind specified by article 37 of the Regulated Activities Order (managing investments) in so far as it falls within paragraph (1A) or (1B).

(1A) An activity falls within this paragraph if it consists of buying or subscribing for a security or relevant investment.

(1B) An activity falls within this paragraph if –

(a) the assets being managed consist of contracts of insurance; and

(b) it is carried on by a person who is not included in the record of insurance intermediaries.”; and

(b) in paragraph (2) –

(i) for “Paragraph (1) does not apply”, substitute “An activity does not fall within paragraph (1A)”; and

(ii) in sub-paragraph (b), for “to an activity undertaken”, substitute “if it is undertaken”.

(5) In article 6 –

(a) in paragraph (1), for “either paragraph (2) or (3)”, substitute “paragraph (2), (3) or (5)”; and

(b) in paragraph (2), in sub-paragraph (b), for “relevant investment” substitute “security or contractually based investment”;

(c) after paragraph (4), insert –

“(5) Advice falls within this paragraph in so far as –

(a) it relates to a transaction for the sale or purchase of a contract of insurance; and

(b) is given by a person who is not included in the record of insurance intermediaries.”.

---

(a) S.I. 2001/1227; amended by S.I. 2001/3650 and S.I. 2002/682.

Date

Two of the Lords Commissioners of  
Her Majesty's Treasury

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes amendments in relation to insurance mediation activities. Article 2 amends the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (S.I. 2001/1177). That Order makes provision as to the circumstances in which persons are, or are not, to be regarded as carrying on regulated activities “by way of business” for the purposes of the Financial Services and Markets Act 2000 (“the Act”). This Order amends article 3 of that Order so as to specify that a person who carries on certain regulated activities (within the meaning of the Act) which relate to the sale or purchase of a contract of insurance is not to be regarded as carrying on those activities “by way of business” unless he is remunerated for that activity.

Article 3 of this Order amends the Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (S.I. 2001/1227). That Order specifies the regulated activities which do not fall within the exemption under Part XX of Act (provision of financial services by members of the professions) from the general prohibition under section 19 of the Act. The effect of the amendments is that a member of a professions may not carry on certain regulated activities which relate to the sale or purchase of a contract of insurance in reliance on the provisions of Part XX unless he is included in the register of insurance intermediaries maintained by the Financial Services Authority by virtue of article 93 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544). The amendments also provide that the limitations on the ability of a member of the professions to provide advice to an individual do not apply where the advice relates to certain contracts of insurance, including contracts of general insurance (within the meaning of S.I. 2001/544).

This Order implements in part the European Parliament and Council Directive 2002/[ ]/EC on insurance mediation.