

ANNEX D

DRAFT LEGISLATION

DRAFT

Order made by the Treasury, laid before Parliament under paragraph 26 of Schedule 2 to the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament within twenty-eight days beginning with the day on which the Order was made, no account to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

STATUTORY INSTRUMENTS

2003 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. X) (Insurance Intermediaries) Order 2003

<i>Made</i>	<i>2003</i>
<i>Laid before Parliament</i>	<i>2003</i>
<i>Coming into force</i>	<i>October 2004</i>

Whereas, 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, in exercise of the powers conferred upon them by sections 22(1) and (5), 38, 192(a), 397(9), (10) and (14), 426 and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000, hereby make the following Order:

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.X) (Insurance Intermediaries) Order 2003 and comes into force on []October 2004.

(a) 2000 c.8.

(2) In this Order –

“the Act” means the Financial Services and Markets Act 2000;

“the principal Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a).

PART 2

AMENDMENTS TO THE PRINCIPAL ORDER

Amendments to the principal Order

2. This Part of the Order amends the principal Order.

Interpretation and general

3.—(1) In article 3(1) (interpretation) -

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

““manage”, in relation to a contract of insurance, means assisting in the administration and performance of such a contract, in particular in the event of a claim;”;

(b) after the definition of “regulated mortgage contract”, insert –

““relevant investment” means –

(a) any contractually based investment;

(b) rights under a contract of insurance which is not a qualifying contract of insurance; or

(c) any investment of the kind specified by article 89 so far as relevant to an investment falling within (b);”.

(2) In article 4 (specified activities: general) –

(a) after paragraph (4), insert –

“(4A) Where a person, other than a person specified by Article 1.2 of the insurance mediation directive (the text of which is set out in Part I of Schedule 4) –

(a) for remuneration, takes up or pursues insurance mediation or reinsurance mediation in relation to a risk or commitment situated in an EEA State, and

(b) in doing so would be treated as carrying on an activity of a kind specified by a provision of this Part but for an exclusion in any of articles 30, 38, 66, and 67,

that exclusion is to be disregarded (and accordingly that person is to be treated as carrying on an activity of the kind specified by the provision in question).”;

(b) in paragraph (5) –

(i) after the definition of “core investment service”, insert –

““insurance mediation” has the meaning given by Article 2.3 of the insurance mediation directive (the text of which is set out in Part II of Schedule 4);”;

(ii) at the end of that definition, omit the word “and”; and

(iii) at the end of the definition of “investment firm”, insert –

“; and

“reinsurance mediation” has the meaning given by Article 2.4 of the insurance mediation directive (the text of which is set out in Part III of Schedule 4).”.

(a) S.I. 2001/544; amended by S.I. 2001/3544; S.I. 2002/682; S.I. 2002/1310 and S.I. 2002/1776.

Activities – dealing in contracts of insurance as agent

4.—(1) In article 21 (dealing in investments as agent), for “contractually based investment”, substitute “relevant investment”.

(2) In article 22 (dealing as agent with or through authorised persons), for paragraph (2), substitute –

“(2) But the exclusion in paragraph (1) does not apply if –

(a) the transaction relates to a contract of insurance; or

(b) the agent receives from any person other than the client any pecuniary reward or other advantage, for which he does not account to the client, arising out of his entering into the transaction.”.

(3) In article 24 (other exclusions from the activity of dealing as agent), for “and 72A (information society services)”, substitute “, 72A (information society services), 72B (activities carried on by a provider of relevant goods [or services]), 72D (insurance mediation activities carried on by a relevant travel agent) and 72E (large risks contracts where risk situated outside the EEA)”.

Activities – arranging deals in investments

5.—(1) In article 25(1) (arranging deals in investments), for “contractually based investment”, substitute “relevant investment”.

(2) In article 28 (arranging transactions to which the arranger is a party), after paragraph (2), insert –

“(3) But the exclusions in paragraphs (1) and (2) do not apply to arrangements made for or with a view to a transaction which relates to a contract of insurance into which the person making the arrangements enters or is to enter as agent for some other person.”.

(3) In article 29 (arranging deals with or through authorised persons), for paragraph (2), substitute –

“(2) But the exclusion in paragraph (1) does not apply if –

(a) the transaction relates, or would relate, to a contract of insurance; or

(b) A receives from any person other than the client any pecuniary reward or other advantage, for which he does not account to the client, arising out of his making the arrangements.”.

(4) In article 30 (arranging transactions in connection with lending on the security of insurance policies), in paragraph (2) –

(a) in the definition of “relevant authorised person”, for “qualifying contracts of insurance”, substitute “contracts of insurance”; and

(b) in the definition of “relevant transaction”, for “qualifying contract of insurance”, substitute “contract of insurance”.

(5) In article 33 (introducing) –

(a) at the end of paragraph (b)(iii), omit “and”; and

(b) at the end of paragraph (c), insert –

“; and

(d) the arrangements are made with a view to a person entering into a transaction which does not relate to a contract of insurance.”.

(6) In article 35 (international securities self-regulating organisations), in paragraph (4)(a), for “contractually based investments”, substitute “relevant investments”.

(7) In article 36 (other exclusions from the activity of arranging deals), for “and 72A (information society services)”, substitute “, 72A (information society services), 72B (activities carried on by a provider of relevant goods [or services]), 72C (provision of information about

contracts of insurance on an incidental basis), 72D (insurance mediation activities carried on by a relevant travel agent) and 72E (large risks contracts where risk situated outside the EEA)”.

Activities – managing investments

6.—(1) In article 37 (managing investments), in paragraph (a), for “contractually based investment”, substitute “relevant investment”.

(2) After article 38 (attorneys), insert –

“Claims management on behalf of an insurer etc.

38A. A person does not carry on an activity of the kind specified by article 37 if –

(a) the assets in question consist of rights under contracts of insurance; and

(b) he acts in the course of carrying on the activity of –

(i) loss adjusting,

(ii) expert appraisal, or

(iii) managing claims on behalf of –

(aa) a person who has Part IV permission to carry on an activity of the kind specified by article 10, or

(bb) an EEA firm falling within paragraph 5(d) of Schedule 3 to the Act (insurance undertaking),

and that activity is carried on in the course of carrying on any profession or business.”.

(3) In article 39 (other exclusions from the activity of managing investments), for “and 72A (information society services)”, substitute “, 72A (information society services), 72B (activities carried on by a provider of relevant goods [or services]), 72C (provision of information about contracts of insurance on an incidental basis), 72D (insurance mediation activities carried on by a relevant travel agent) and 72E (large risks contracts where risk situated outside the EEA)”.

Activities – safeguarding and administering

7. In article 44 (other exclusions from the activity of safeguarding and administering), for “and 72A (information society services)”, substitute “, 72A (information society services) and 72C (provision of information about contracts of insurance on an incidental basis)”.

Activities - advising on investments

8.—(1) In article 53 (advising on investments), in paragraph (b)(i), for “contractually based investment”, substitute “relevant investment”.

(2) In article 54 (advice given in newspapers), in paragraph (1)(b), for “contractually based investments”, substitute “relevant investments”.

(3) In article 55 (other exclusions from the activity of advising on investments), for “and 72A (information society services)”, insert “, or 72A (information society services), 72B (activities carried on by a provider of relevant goods [or services]), 72D (insurance mediation activities carried on by a relevant travel agent) and 72E (large risks contracts where risk situated outside the EEA)”.

Exclusions applying to several activities

9.—(1) In article 66 (trustees, nominees and personal representatives), in paragraph (1)(b), for “contractually based investment”, substitute “relevant investment”.

(2) In article 68 (activities carried on in connection with the sale of goods or supply of services)

–

- (a) in paragraph (9), for “qualifying contract of insurance”, substitute “contract of insurance”;
 - (b) in paragraph (10), for “qualifying contracts of insurance”, substitute “contracts of insurance”; and
 - (c) in paragraph (11), for “qualifying contract of insurance”, substitute “contract of insurance”.
- (3) In article 69 (groups and joint enterprises), after paragraph (9), insert –
- “(10) Paragraphs (2) and (4) do not apply in the case of a transaction for the sale or purchase of a contract of insurance.
- (11) Paragraph (5) does not apply to the extent that the assets managed consist of rights under contracts of insurance.
- (12) Paragraph (9) does not apply where the advice relates to a transaction for the sale or purchase of a contract of insurance.”.
- (4) In article 70 (activities carried on in connection with the sale of a body corporate), after paragraph (6), insert –
- “(7) Paragraphs (4), (5) and (6) do not apply in the case of a transaction for the sale or purchase of a contract of insurance.”.

Further exclusions in connection with activities carried on in relation to contracts of insurance

10. After article 72A (information society services), insert –

“Activities carried on by a provider of relevant goods [or services]

(Provisions in italics indicate what the drafting for the “no-FSMA regulation” option for travel insurance sold as part of a package would look like)

72B. – (1) In this article –

“connected contract of insurance” means a contract of insurance which –

- (a) is not a contract of long-term insurance;
- (b) has a total duration (or would have a total duration were any right to renew conferred by the contract exercised) of five years or less;
- (c) has an annual premium (or, where the premium is paid otherwise than by way of annual premium, the equivalent of an annual premium) of 500 euro or less, or the equivalent amount in sterling or other currency;
- (d) covers the risk of –
 - (i) breakdown, loss of, or damage to, non-motor goods supplied by the provider; or
 - (ii) *[damage to, or loss of, baggage and other risks linked to the travel booked with the provider (“travel risks”)]*;
- (e) does not cover any liability risks *[(except, in the case of a contract which covers travel risks, where that cover is ancillary to the main cover provided by the contract)]*;
- (f) is complementary to the non-motor goods being supplied *[or service being provided]* by the provider; and
- (g) is of such a nature that the only information that a person requires in order to carry on an activity of the kind specified by article 21, 25, 37 or 53 in relation to it is the cover provided by the contract;

“linked investment” means an investment of the kind specified by article 89, so far as relevant to a connected contract of insurance;

“non-motor goods” means goods which are not mechanically propelled road vehicles;

“provider” means a person who supplies non-motor goods [*or provides services related to travel*] and who carries on a profession or business which does not otherwise consist of carrying on regulated activities.

(2) There is excluded from article 21 any transaction for the sale or purchase of a connected contract of insurance or a linked investment which a provider enters into as agent.

(3) There are excluded from article 25(1) and (2) any arrangements made by a provider for, or with a view to, a transaction for the sale or purchase of a connected contract of insurance or a linked investment.

(4) There is excluded from article 37 any activity carried on by a provider where the assets in question consist of connected contracts of insurance or linked investments.

(5) There is excluded from article 53 the giving of advice by a provider in relation to a transaction for the sale or purchase of a connected contract of insurance or a linked investment.

(6) *For the purposes of this article, a contract of insurance which covers travel risks is not to be treated as a contract of long-term insurance, notwithstanding the fact that it contains related and subsidiary provisions such that it might be regarded as a contract of long-term insurance, if the cover to which those provisions relate is ancillary to the main cover provided by the contract.”.*

Provision of information on an incidental basis

72C. There is excluded from articles 25(1) and (2), 37 and 40 any activity which -

- (a) relates to a transaction for the sale or purchase of a contract of insurance or an investment of the kind specified by article 89, so far as relevant to such a contract;
- (b) consists of the provision of information to the policyholder or potential policyholder;
- (c) is carried on by a person in the course of carrying on any profession or business which does not otherwise consist of regulated activities; and
- (d) which may reasonably be regarded as being incidental to that profession or business.

Insurance mediation activities carried on by a relevant travel agent

(drafting for the industry specific regulation option for travel insurance sold as part of a package)

72D. – (1) In this article –

“contract of travel insurance” means a contract of insurance which –

- (a) covers the risk of damage to, or loss of, baggage and other risks linked to travel booked with the relevant travel agent;
- (b) has a total duration (or would have a total duration were any right to renew conferred by the contract exercised) of five years or less;
- (c) has an annual premium (or, where the premium is paid otherwise than by way of annual premium, the equivalent of an annual premium) of 500 euro or less, or the equivalent amount in sterling or other currency;
- (d) is not a contract of long-term insurance;
- (e) does not cover any liability risks (except where that cover is ancillary to the main cover provided by the contract);
- (f) is complementary to the service being provided by the relevant travel agent; and
- (g) is of such a nature that the only information that a person requires in order to carry on an activity of the kind specified by article 21, 25, 37 or 53 in relation to it is the cover provided by the contract;

“related rights” means rights of the kind specified by article 89, so far as relevant to a contract of travel insurance;

“relevant travel agent” means a person who –

(a) carries on a profession or business which does not otherwise consist of regulated activities; and

(b) is subject to, or has subscribed to, a code or statement of practice certified for the time being under paragraph (7).

(2) There is excluded from article 21 any transaction for the sale or purchase of a contract of travel insurance or related rights into which a relevant travel agent enters as agent.

(3) There are excluded from article 25(1) and (2) any arrangements made by a relevant travel agent for, or with a view to, a transaction for the sale or purchase of a contract of travel insurance or related rights.

(4) There is excluded from article 37 any activity carried on by a relevant travel agent where the assets in question consist of rights under contracts of travel insurance or related rights.

(5) There is excluded from article 53 the giving of advice by a relevant travel agent which relates to a contract of travel insurance or related rights.

(6) For the purposes of this article, a contract of travel insurance is not to be treated as a contract of long-term insurance, notwithstanding the fact that it contains related and subsidiary provisions such that it might be regarded as a contract of long-term insurance, if the cover to which those provisions relate is ancillary to the main cover provided by the contract.

(7) The Authority may certify a code or statement of practice for the purposes of this article where the conditions specified in paragraph (8) are satisfied.

(8) The conditions specified in this paragraph are that—

(a) the code or statement of practice contains provisions applicable to the carrying on of activities of the kind specified by any of articles 21, 25(1) and (2), 37 and 53, so far as they relate to contracts of travel insurance or related rights (“insurance mediation activities”), and those provisions include requirements which relate to –

(i) the training or competence which a person must have before carrying on insurance mediation activities;

(ii) the information which must be given to customers before a transaction relating to a contract of travel insurance or related rights is entered into;

(iii) the insurance (including professional indemnity insurance) which a person must have before carrying on insurance mediation activities; and

(iv) the way in which the person promotes the provision by him of insurance mediation activities;

(b) the person who issues the code or statement of practice has arrangements for dealing with complaints against any person who is subject to, or has subscribed to, the code or statement of practice in relation to the carrying on of insurance mediation activities; and

(c) the provisions of the code or statement of practice and the steps taken to enforce the code or statement, are, in the Authority’s opinion, sufficient to protect customers or potential customers.

(9) The Authority may withdraw any certification given under paragraph (7) if it considers that the conditions specified in paragraph (8) are no longer met.

(10) When the Authority certifies a code or statement of practice under paragraph (7) or withdraws certification under paragraph (9), it must give notice in writing to the person who issues the code or statement of practice and to the Treasury.

(11) The Authority must publish any certification or withdrawal of certification under this article in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

Large risks contracts where risk situated outside the EEA

72E. – (1) There is excluded from articles 21, 25(1) and (2), 37 and 53 any activity which is carried on in relation to a large risks contract of insurance or an investment of the kind specified

by article 89, so far as relevant to such a contract, to the extent that the risk or commitment covered by the contract is not situated in an EEA State.

- (2) In this article, a “large risks contract” is a contract the principal object of which is to cover –
- (a) risks falling within paragraph 4 (railway rolling stock), 5 (aircraft), 6 (ships), 7 (goods in transit), 11 (aircraft liability) or 12 (liability of ships) of Part I of Schedule 1;
 - (b) risks falling within paragraph 14 (credit) or 15 (suretyship) of that Part provided that the risks relate to a business carried on by the policyholder;
 - (c) risks falling within paragraph 3 (land vehicles), 8 (fire and natural forces), 9 (damage to property), 10 (motor vehicle liability), 13 (general liability) or 16 (miscellaneous financial loss) of that Part provided that the risks relate to a business carried on by the policyholder and that the condition specified in paragraph (3) is met in relation to that business.
- (3) The condition specified in this paragraph is that at least two of the three following criteria were met in the most recent financial year for which information is available—
- (a) the balance sheet total of the business (with the meaning of section 247(5) of the Companies Act 1985^(a) or article 255(5) of the Companies (Northern Ireland) Order 1986^(b)) exceeded 6.2 million euro,
 - (b) the net turnover (within the meaning given to “turnover” by section 262(1) of that Act or article 270(1) of that Order) exceeded 12.8 million euro,
 - (c) the number of employees (within the meaning given by section 247(6) of that Act or article 255(6) of that Order) exceeded 250,

and for a financial year which is a company’s financial year but not in fact a year, the net turnover of the policyholder shall be proportionately adjusted.

(4) For the purposes of paragraph (3), where the recipient is a member of a group for which consolidated accounts (within the meaning of the Seventh Company Law Directive) are drawn up, the question whether the condition met in that paragraph is met is to be determined by reference to those accounts.”.

Relevant text of the insurance mediation directive

11. After Schedule 3, insert –

“SCHEDULE 4

Article 4

RELEVANT TEXT OF THE INSURANCE MEDIATION DIRECTIVE

Part 1

Article 1.2

“This Directive shall not apply to persons providing mediation services for insurance contracts if all the following conditions are met:

- (a) the insurance contract only requires knowledge of the insurance cover that is provided;
- (b) the insurance contract is not a life assurance contract;
- (c) the insurance contract does not cover any liability risks;
- (d) the principal professional activity of the person is other than insurance mediation;
- (e) the insurance is complementary to the product or service supplied by any provider, where such insurance covers:
 - (i) the risk of breakdown, loss of or damage to goods supplied by that provider; or

^(a) 1985 c.6.

^(b) S.I. 1986/1032 (N.I. 6).

(ii) damage to or loss of baggage and other risks linked to the travel booked with that provider, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel;

(f) the amount of the annual premium does not exceed EUR 500 and the total duration of the insurance contract, including any renewals, does not exceed five years.”

Part II

Article 2.3

““Insurance mediation” means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation.”

Part III

Article 2.4

““Reinsurance mediation” means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by a reinsurance undertaking or an employee of a reinsurance undertaking who is acting under the responsibility of the reinsurance undertaking are not considered as reinsurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract, the management of claims of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as reinsurance mediation.””.

PART 3

MEMBERS OF THE PROFESSIONS AND APPOINTED REPRESENTATIVES

Register of unauthorised persons carrying on insurance mediation activities

12. After article 91 of the principal Order, insert –

“PART V

UNAUTHORISED PERSONS CARRYING ON INSURANCE MEDIATION ACTIVITIES

Interpretation

92. In this Part –

“designated professional body” means a body designated by the Treasury under section 326 of the Act^(a);

“insurance mediation activity” means any activity of the kind specified by article 21, 25, 37 or 53, or, so far as relevant to any of those articles, article 64, which is carried on in relation to a contract of insurance;

“the record” means the record maintained by the Authority under section 347 of the Act (public record of authorised persons etc.);

“recorded insurance intermediary” has the meaning given by article 93(4);

“a relevant member”, in relation to a profession, means a member (within the meaning of section 325 of the Act) of a profession or a person who is controlled or managed by one or more such members.

Duty to maintain a record of unauthorised persons carrying on insurance mediation activities

93. – (1) Subject to articles 95 and 96, the Authority must include in the record every person who –

(a) as a result of information obtained by virtue of its rules, appears to the Authority to fall within paragraph (2); or

(b) as a result of information obtained by virtue of article 94, appears to the Authority to fall within paragraph (3).

(2) A person falls within this paragraph if he –

(a) is an appointed representative who carries on insurance mediation activities; or

(b) has entered into a contract with an authorised person by virtue of which he will be a person of the kind specified in sub-paragraph (a).

(3) A person falls within this paragraph if he is a relevant member of a profession who is carrying on, or is proposing to carry on, insurance mediation activities and the general prohibition does not (or will not) apply to the carrying on of those activities by virtue of section 327 of the Act.

(4) In this Part, “recorded insurance intermediary” means a person who is included in the record by virtue of paragraph (1).

(5) The record must include –

(a) in the case of a recorded insurance intermediary, its address; and

(b) in the case of a recorded insurance intermediary which is not an individual, the name of the individuals within the management who are responsible for the business, so far as it relates to insurance mediation activities.

(6) When the Authority, by virtue of paragraph (1), includes a person in, or removes a person from, the record, it must give that person written notice that it has done so.

Members of designated professional bodies

94. – (1) A designated professional body must, by notice in writing, inform the Authority of –

(a) the name,

^(a) See S.I. 2001/1226 made under s.326 of the Act.

(b) the address, and

(c) in the case of a member which is not an individual, the name of the individuals within the management who are responsible for the business, so far as it relates to insurance mediation activities,

of any relevant member of the profession in relation to which it is established who, in accordance with its rules, carries on, or proposes to carry on insurance mediation activities but who does not have, and does not propose to apply for, Part IV permission on the basis that the general prohibition does not (or will not) apply to the carrying on of those activities by virtue of section 327 of the Act.

(2) A designated professional body must also, by notice in writing, inform the Authority of any change in relation to the matters specified in sub-paragraphs (a) to (c) of paragraph (1).

(3) A designated professional body must inform the Authority when a relevant member of the profession in relation to which it is established ceases, for whatever reason, to carry on insurance mediation activities.

(4) The Authority may give directions to a designated professional body as to the manner in which the information referred to in paragraphs (1) to (3) must be provided.

Exclusion from record where not fit and proper to carry on insurance mediation activities

95. – (1) If it appears to the Authority that a person who falls within article 93(2) (appointed representatives) (“AR”) is not a fit and proper person to carry on insurance mediation activities, it may decide not to include him in the record or, if that person is already included in the record, to remove him from the record.

(2) Where the Authority proposes to make a determination under paragraph (1), it must give AR a warning notice.

(3) If the Authority makes a determination under paragraph (1), it must give AR a decision notice.

(4) If the Authority gives AR a decision notice under paragraph (3), AR may refer the matter to the Tribunal.

(5) The Authority may, on the application of AR, revoke a determination under paragraph (1).

(6) If the Authority decides to grant the application, it must give AR written notice of its decision.

(7) If the Authority proposes to refuse the application, it must give AR a warning notice.

(8) If the Authority decides to refuse the application, it must give AR a decision notice.

(9) If the Authority gives AR a decision notice under paragraph (8), AR may refer the matter to the Tribunal.

(10) Sections 393 and 394 of the Act (third party rights and access to Authority material) apply to a warning notice given under paragraph (2) or (7) and to a decision notice given under paragraph (3) or (8).

Exclusion from the record where Authority has exercised its power under Part XX of the Act

96. – (1) If a person who appears to the Authority to fall within article 93(3) (member of a profession) falls within paragraph (2) or (3), the Authority must not include him in the record or, if that person is already included in the record, must remove him from the record.

(2) A person falls within this paragraph if, by virtue of a direction given by the Authority under section 328(1) of the Act, section 327(1) of the Act does not apply in relation to the carrying on by him of insurance mediation activities.

(3) A person falls within this paragraph if the Authority has made an order under section 329(2) of the Act dis-applying section 327(1) of the Act in relation to the carrying on by him of insurance mediation activities.”.

PART 4

MISCELLANEOUS

Misleading statements and practices

13. – (1) The Financial Services and Markets Act 2000 (Misleading Statements and Practices) Order 2001(a) is amended as follows.

(2) In article 2 (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;”;
and

(b) after the definition of “the Financial Promotion Order”, insert –
““Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b);”.

(3) In article 3 –

(a) in paragraph (d), for “the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001”, substitute “Regulated Activities Order”; and

(b) after paragraph (d), insert –

“;

(e) (so far as not already specified by paragraph (a)), an activity of the kind specified by article 14 (dealing in investments as principal), 21 (dealing in investments as agent), 25 (arranging deals in investments), 37 (managing investments), 53 (advising on investments), or, so far as relevant to any of those articles, 64 (agreeing) of the Regulated Activities Order, so far as it relates to a contract of insurance.”.

Amendment of the threshold conditions

14. In paragraph 2 of Schedule 6 to the Act (threshold conditions: location of offices)(c) –

(a) at the beginning of sub-paragraph (1), insert “Subject to sub-paragraph (3),”; and

(b) after sub-paragraph (2), insert –

“(3) If the regulated activity concerned is an insurance mediation activity –

(a) sub-paragraph (1) does not apply;

(b) if the person concerned is a body corporate constituted under the law of any part of the United Kingdom, its registered office, or if it has no registered office, its head office, must be in the United Kingdom; and

(c) for the purposes of sub-paragraph (2), a natural person is to be treated as having his head office in the United Kingdom if his residence is situated there.

(4) An insurance mediation activity means any of the following activities–

(a) dealing in rights under a contract of insurance as agent;

(b) arranging deals in rights under a contract of insurance;

(a) S.I. 2001/3645; amended by S.I. 2002/1777.

(b) S.I. 2001/544; amended by S.I. 2001/3544; S.I. 2002/682; S.I. 2002/1310 and S.I. 2002/1776.

(c) Amended by S.I. 2001/2507 and S.I. 2002/682.

- (c) managing rights under a contract of insurance;
- (d) advising on buying or selling rights under a contract of insurance;
- (e) agreeing to do any of the activities specified in sub-paragraph (a) to (d).”.

Amendment of the Exemption Order

15. – (1) The Financial Services and Markets Act 2000 (Exemption) Order 2001^(a) is amended as follows.

(2) In article 2 (interpretation), after the definition of “charity”, insert –

““contract of insurance” has the meaning given by the Regulated Activities Order;”.

(3) In the Schedule to the Order –

(a) for paragraph 47 (local authorities), substitute –

“**47.** A local authority is exempt from the general prohibition in respect of any regulated activity of the kind specified by –

(a) article 21, 25(1) or (2), 37 or 53 of the Regulated Activities Order (dealing in investments as agent, arranging deals in investments, managing investments or advising on investments), so far as it relates to a contract of insurance; or

(b) article 61 of that Order (regulated mortgage contracts).”; and

(b) for paragraph 48 (social housing), substitute –

“**48.** (1) A relevant housing body is exempt from the general prohibition in respect of any regulated activity of the kind specified by –

(a) article 21, 25(1) or (2), 37 or 53 of the Regulated Activities Order (dealing in investments as agent, arranging deals in investments, managing investments or advising on investments), so far as it relates to a contract of insurance; or

(b) article 61 of that Order (regulated mortgage contracts).

(2) In this paragraph, “relevant housing body” means any of the following –

(a) a registered social landlord within the meaning of Part I of the Housing Act 1996^(b);

(b) a housing association registered in the register maintained by Scottish Homes under section 3 of the Housing Associations Act 1985^(c);

(c) the Housing Corporation;

(d) Scottish Homes;

(e) the body established under article 9 of the Housing (Northern Ireland) Order 1981^(d) known as the Northern Ireland Housing Executive.”.

Amendment of section 49 of the Act

16. – (1) Section 49 of the Act (persons connected with an applicant for Part IV permission) is amended as follows.

(2) In subsection (2)(a), after “EEA firm”, insert “(other than an EEA firm falling within paragraph 5(e) of Schedule 3 – insurance and reinsurance intermediaries)”.

(3) After subsection (3), insert –

“(4) But subsection (2) does not apply to the extent that the permission in question relates to an insurance mediation activity.

(5) An insurance mediation activity means any of the following activities–

^(a) S.I. 2001/1201; amended by S.I. 2001/3623.

^(b) 1996 c.52.

^(c) 1985 c. 69. Amended by the Housing Act 1988 (c.50) Schedule 6, paragraph 3 and by S.I. 1996/2325. Repealed in relation to England and Wales by the Housing Act 1996 (c.52) Schedule 19.

^(d) S.I. 1981/156 (N.I.3); substituted by the Housing (Northern Ireland) Order 1983 (S.I. 1983/1118) (N.I. 15), article 85.

- (a) dealing in rights under a contract of insurance as agent;
- (b) arranging deals in rights under a contract of insurance;
- (c) managing rights under a contract of insurance;
- (d) advising on buying or selling rights under a contract of insurance;
- (e) agreeing to do any of the activities specified in sub-paragraph (a) to (d).”.

Controllers of insurance intermediaries

17. – (1) In any case where a person (“the acquirer”) –

- (a) proposes to take, in relation to a UK insurance intermediary (“A”), such a step as is mentioned in section 178(1) of the Act, or
- (b) acquires control, an additional kind of control or an increase in a relevant kind of control over a UK insurance intermediary without himself taking any such step,

the acquirer is exempt from any obligation imposed by section 178 of the Act to notify the Authority of his proposal or acquisition unless paragraph (2) applies.

(2) This paragraph applies if the acquirer, for the first time, falls within any of the cases in paragraph (3).

(3) The cases are where the acquirer –

- (a) holds 20% or more of the shares in A;
- (b) is able to exercise significant influence over the management of A by virtue of his shareholding in A;
- (c) holds 20% or more of the shares in a parent undertaking (“P”) of A;
- (d) is able to exercise significant influence over the management of P by virtue of his shareholding in P;
- (e) is entitled to exercise, or control the exercise of, 20% or more of the voting power in A;
- (f) is able to exercise significant influence over the management of A by virtue of his voting power in A;
- (g) is entitled to exercise, or control the exercise of, 20% or more of the voting power in P; or
- (h) is able to exercise a significant influence over the management of P by virtue of his voting power in P.

(4) In paragraph (3), “the acquirer” means –

- (a) the acquirer;
- (b) any of the acquirer’s associates; or
- (c) the acquirer and any of his associates.

(5) In any case where a controller of a UK insurance intermediary (“A”)–

- (a) proposes to take, in relation to A, such a step as is mentioned in section 190(1) of the Act, or
- (b) ceases to have, or reduces a relevant kind of, control over A without himself taking any such step,

the controller is exempt from any obligation imposed by section 190 of the Act to notify the Authority unless paragraph (6) applies.

(6) This paragraph applies if–

- (a) the percentage of shares held by the controller of A decreases from 20% or more to less than 20%;
- (b) the percentage of shares held by the controller in a parent undertaking (“P”) of A decreases from 20% or more to less than 20%;

- (c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in A decreases from 20% or more to less than 20%; or
- (d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in P decreases from 20% or more to less than 20%.

(7) In paragraph (6), “the controller” means –

- (a) the controller;
- (b) any of the controller’s associates; or
- (c) the controller and any of his associates.

(8) References in this article to acquiring control, or an additional kind of control, increasing control and reducing control are to be read with Part XII of the Act.

(9) In this article –

“associate”, “shares” and “voting power” have the same meaning as in section 422 of the Act;

“UK insurance intermediary” means any UK authorised person (within the meaning of Part XII of the Act) who has Part IV permission to carry on any activity of the kind specified by article 21, 25, 37 or 53 of the principal Order, or, so far as relevant to any of those articles, article 64 of that Order, in relation to a contract of insurance, but who does not have Part IV permission to carry on any other regulated activity.

Name

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

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

Part 2 of the Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the Regulated Activities Order”). It provides for insurance mediation activities (dealing as agent in contracts of insurance, arranging deals in contracts of insurance, managing rights under a contract of insurance and advising on the merits of buying or selling a contract of insurance) to be regulated activities, to the extent that such activities are not already regulated activities. Part 2 also amends the exclusions in the Regulated Activities Order from specified kinds of activities. In particular, this Order inserts a number of new exclusions in relation to activities in relation to contracts of insurance sold as part of a package (including travel insurance and extended warranties) and in relation to the provision of information on an incidental basis in the context of another professional activity.

Part 3 of the Order amends the Regulated Activities Order so as to make provision for appointed representatives (within the meaning of section 39 of the Financial Services and Markets Act 2000 – “the Act”) and members of a designated professional body (within the meaning of Part XX of the Act) who carry on insurance mediation activities without being authorised persons (within the meaning of the Act). In accordance with the provisions of the Directive, the amendments require the Financial Services Authority to maintain a record of such persons.

Part 4 of the Order makes a number of miscellaneous provisions. Article 13 amends the Financial Services and Markets Act 2000 (Misleading Statements and Practices) Order 2001 (S.I. 2001/3645) so as to make section 397 of the Act (misleading statements and practices) apply to all

insurance mediation activities. Article 14 makes a number of amendments to Schedule 6 to the Act (threshold conditions). These amendments reflect the provisions of the Directive which relate to the location of offices of an insurance intermediary. Article 15 amends the provisions of the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201) which relate to local authorities and social landlords. Article 16 amends section 49 of the Act (consultation of relevant home state regulators when considering application for, or variation or cancellation of, Part IV permission) in so far as it relates to those who carry on insurance mediation activities. Article 17 confers a partial exemption from the obligations imposed by Part XII of the Act on controllers of insurance intermediaries to notify the Financial Services Authority of any change of control.