



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART III

#### AUTHORISATION AND EXEMPTION

##### *Exemption*

#### **38 Exemption orders.**

- (1) The Treasury may by order (“an exemption order”) provide for—
  - (a) specified persons, or
  - (b) persons falling within a specified class,to be exempt from the general prohibition.
- (2) But a person cannot be an exempt person as a result of an exemption order if he has a <sup>[F1]</sup>Part 4A permission].
- (3) An exemption order may provide for an exemption to have effect—
  - (a) in respect of all regulated activities;
  - (b) in respect of one or more specified regulated activities;
  - (c) only in specified circumstances;
  - (d) only in relation to specified functions;
  - (e) subject to conditions.
- (4) “Specified” means specified by the exemption order.

#### **Textual Amendments**

- F1** Words in s. 38(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 4](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### **Modifications etc. (not altering text)**

- C1** S. 38(2) modified (31.10.2001) by [S.I. 2001/3374, art. 1, Sch. para. 3](#)

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- C2** S. 38(2) modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 3**
- C3** S. 38(2) modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 3**
- C4** S. 38(2) modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), 7, **Sch. para. 3(a)**
- C5** S. 38(2) modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **7(1)(3)**
- C6** S. 38(2) modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2), 34**, {Sch. paras. 1, 3}
- C7** S. 38(2) modified (2.4.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (S.I. 2013/655), arts. 1, **10(5)(a)**
- C8** S. 38(2) modified (26.7.2013 for specified purposes, 2.9.2013 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(5), **59(2)(a)**
- C9** S. 38(2) modified (1.4.2015) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2015 (S.I. 2015/369), arts. 1, **7(6)(a)**

### **39 Exemption of appointed representatives.**

(1) If a person (other than an authorised person)—

- (a) is a party to a contract with an authorised person (“his principal”) which—
  - (i) permits or requires him to carry on business of a prescribed description, and
  - (ii) complies with such requirements as may be prescribed, and
- (b) is someone for whose activities in carrying on the whole or part of that business his principal has accepted responsibility in writing,

he is exempt from the general prohibition in relation to any regulated activity comprised in the carrying on of that business for which his principal has accepted responsibility.

[<sup>F2</sup>(1ZA) But a person is not exempt as a result of subsection (1) if subsection (1A) or (1BA) applies to the person.]

[<sup>F3</sup>(1A) [<sup>F4</sup>This subsection applies to a person] —

- (a) if his principal is an investment firm or a credit institution, and
- (b) so far as the business for which his principal has accepted responsibility is investment services business,

unless he is entered on the applicable register.

(1B) The “applicable register” is—

- (a) in the case of a person established in an EEA State (other than the United Kingdom) which permits investment firms authorised by the competent authority of that State to appoint tied agents, the register of tied agents maintained in that State pursuant to Article 23 of the markets in financial instruments directive;

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- (b) in the case of a person established in an EEA State which does not permit investment firms authorised as mentioned in paragraph (a) to appoint tied agents—
  - (i) if his principal has his relevant office in the United Kingdom, the record maintained by the [F5FCA] by virtue of section 347(1)(ha), and
  - (ii) if his principal is established in an EEA State (other than the United Kingdom) which permits investment firms authorised by the competent authority of the State to appoint tied agents, the register of tied agents maintained by that State pursuant to Article 23 of the markets in financial instruments directive; and
- (c) in any other case, the record maintained by the [F5FCA] by virtue of section 347(1)(ha).]

[F6(1BA) This subsection applies to a person (“A”)—

- (a) if A’s principal is a mortgage intermediary, and
- (b) so far as the business for which A’s principal has accepted responsibility is of a kind—
  - (i) specified in article 25A (arranging regulated mortgage contracts), article 36A (credit broking), article 53A (advising on regulated mortgage contracts) or article 53DA (advising on regulated credit agreements the purpose of which is to acquire land) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and
  - (ii) to which the mortgages directive applies,

unless A meets the requirements of subsection (1BB).

(1BB) The requirements of this subsection are—

- (a) that A is entered on the record maintained by the FCA by virtue of section 347(1)(hb);
- (b) that A’s principal is a person who has a Part 4A permission to carry on one or more of the regulated activities mentioned in subsection (1BA)(b)(i); and
- (c) that A’s principal is not a tied mortgage intermediary.]

[F7(1C) Subsection (1D) applies where an authorised person (“A”)—

- (a) has permission under Part 4A, or permission resulting from any other provision of this Act, only in relation to one or more qualifying activities,
- (b) is a party to a contract with another authorised person (A’s “principal”) which—
  - (i) permits or requires A to carry on business of a prescribed description (“the relevant business”), and
  - (ii) complies with such requirements as may be prescribed, and
- (c) is someone for whose activities in carrying on the whole or part of the relevant business A’s principal has accepted responsibility in writing.

(1D) Sections 20(1) and (1A) and 23(1A) do not apply in relation to the carrying on by A of a relevant additional activity.

(1E) In subsections (1C) and (1D)—

- (a) “qualifying activity” means a regulated activity which is of a prescribed kind and relates—

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- (i) to rights under a contract of the kind mentioned in paragraph 23 of Schedule 2, other than one under which the obligation of the borrower to repay is secured on land, or
  - (ii) to rights under a contract of the kind mentioned in paragraph 23B of that Schedule;
  - (b) “relevant additional activity” means a regulated activity which—
    - (i) is not one to which A's permission relates, and
    - (ii) is comprised in the carrying on of the business for which A's principal has accepted responsibility.]
- [<sup>F8</sup>(2) In this Act “appointed representative” means—
- (a) a person who is exempt as a result of subsection (1), or
  - (b) a person carrying on a regulated activity in circumstances where, as a result of subsection (1D), sections 20(1) and (1A) and 23(1A) do not apply.]
- (3) The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility.
- [<sup>F9</sup>(4) In determining whether an authorised person has complied with—
- (a) a provision contained in or made under this Act, or
  - (b) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order,
- anything which a relevant person has done or omitted as respects business for which the authorised person has accepted responsibility is to be treated as having been done or omitted by the authorised person.]
- (5) “Relevant person” means a person who at the material time is or was an appointed representative by virtue of being a party to a contract with the authorised person.
- (6) Nothing in subsection (4) is to cause the knowledge or intentions of an appointed representative to be attributed to his principal for the purpose of determining whether the principal has committed an offence, unless in all the circumstances it is reasonable for them to be attributed to him.
- [<sup>F10</sup>(7) A person carries on “investment services business” if—
- (a) the business includes providing services or carrying on activities of the kind mentioned in Article 4.1.25 of the markets in financial instruments directive, and
  - (b) as a result of providing such services or carrying on such activities he is a tied agent or would be if he were established in an EEA State.
- (8) In this section—
- “competent authority” has the meaning given in Article 4.1.22 of the markets in financial instruments directive;
  - “credit institution” means—
    - (a) a credit institution authorised under the [<sup>F11</sup>capital requirements directive], or
    - (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its relevant office in an EEA State;
  - “relevant office” means—

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- (a) in relation to a body corporate, its registered office or, if it has no registered office, its head office, and
- (b) in relation to a person other than a body corporate, the person's head office.]

#### Textual Amendments

- F2** S. 39(1ZA) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), [Sch. 1 para. 1\(2\)\(a\)](#) (with Pt. 4)
- F3** S. 39(1A)(1B) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), [Sch. 5 para. 2\(a\)](#)
- F4** Words in s. 39(1A) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), [Sch. 1 para. 1\(2\)\(b\)](#) (with Pt. 4)
- F5** Word in s. 39(1B) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 5\(2\)](#) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F6** S. 39(1BA)(1BB) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), [Sch. 1 para. 1\(2\)\(c\)](#) (with Pt. 4)
- F7** S. 39(1C)-(1E) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 10\(2\)](#), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F8** S. 39(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 10\(3\)](#), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F9** S. 39(4) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 5\(3\)](#) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- F10** S. 39(7)(8) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), [Sch. 5 para. 2\(c\)](#)
- F11** Words in s. 39(8) substituted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), [Sch. 2 para. 4](#)

#### Modifications etc. (not altering text)

- C10** S. 39 modified (26.7.2013 for specified purposes, 2.9.2013 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(5), [59\(4\)](#)
- C11** S. 39 applied (with modifications) (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), arts. 1(5), [17](#) (with Pt. 4)
- C12** S. 39(2) modified (31.10.2001) by S.I. 2001/3374, art. 1, [Sch. para. 7](#)
- C13** S. 39(2) modified (31.10.2004) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Mortgages\) Order 2004 \(S.I. 2004/2615\)](#), arts. 1(2)(b), 5, [Sch. para. 7](#)
- C14** S. 39(2) modified (14.1.2005) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(General Insurance Intermediaries\) Order 2004 \(S.I. 2004/3351\)](#), arts. 1(2)(b), 5, [Sch. para. 7](#)
- C15** S. 39(2) modified (6.4.2007) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2006 \(S.I. 2006/1969\)](#), arts. 1(3), 7, [Sch. para. 7](#)

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**C16** S. 39(2) modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2007 \(S.I. 2007/3510\)](#), arts. 1(2), **8(1)(4)**

#### Commencement Information

**II** S. 39 wholly in force at 1.12.2001; s. 39 not in force at Royal Assent see s. 431(2); s. 39(1) in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), art. 2(b), **Sch. Pt. 2**; s. 39 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), art. 2(1)

### [<sup>F12</sup>39A Certain tied agents operating outside United Kingdom

- (1) This section applies to an authorised person whose relevant office is in the United Kingdom if—
  - (a) he is a party to a contract with a person (other than an authorised person) who is established—
    - (i) in the United Kingdom, or
    - (ii) in an EEA State which does not permit investment firms authorised by the competent authority of the State to appoint tied agents; and
  - (b) the contract is a relevant contract.
- (2) A contract is a “relevant contract” if it satisfies conditions A to C.
- (3) Condition A is that the contract permits or requires the person mentioned in subsection (1)(a) (the “agent”) to carry on investment services business.
- (4) Condition B is that either—
  - (a) it is a condition of the contract that such business may only be carried on by the agent in an EEA State other than the United Kingdom; or
  - (b) in a case not falling within paragraph (a), the [<sup>F13</sup>FCA] is satisfied that no such business is, or is likely to be, carried on by the agent in the United Kingdom.
- (5) Condition C is that the business is of a description that, if carried on in the United Kingdom, would be prescribed for the purposes of section 39(1)(a)(i).
- (6) An authorised person to whom this section applies who—
  - (a) enters into or continues to perform a relevant contract with an agent which does not comply with the applicable requirements,
  - (b) enters into or continues to perform a relevant contract without accepting or having accepted responsibility in writing for the agent's activities in carrying on investment services business,
  - (c) enters into a relevant contract with an agent who is not entered on the record maintained by the [<sup>F13</sup>FCA] by virtue of section 347(1)(ha), or
  - (d) continues to perform a relevant contract with an agent when he knows or ought to know that the agent is not entered on that record,

is to be taken for the purposes of this Act to have contravened a requirement imposed on him by or under this Act.
- (7) The “applicable requirements” are the requirements prescribed for the purposes of subsection (1)(a)(ii) of section 39 which have effect in the case of a person to whom subsection (1A) of that section applies.
- (8) A person carries on “investment services business” if—

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- (a) his business includes providing services or carrying on activities of the kind mentioned in Article 4.1.25 of the markets in financial instruments directive, and
  - (b) as a result of providing such services or carrying on such activities he is a tied agent.
- (9) In this section—
- “competent authority” has the meaning given in Article 4.1.22 of the markets in financial instruments directive;
  - “relevant office” means—
    - (a) in relation to a body corporate, its registered office or, if it has no registered office, its head office, and
    - (b) in relation to a person other than a body corporate, the person's head office.]

#### **Textual Amendments**

**F12** S. 39A inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), [Sch. 5 para. 3](#)

**F13** Word in s. 39A substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 6](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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