
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ([S.I. 2001/544](#)) (“the RAO”) to transpose parts of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast) (OJ L173, 12/6/2014, p.349) (“MiFID 2”).

The RAO specifies kinds of activities and investments for the purposes of the Financial Services and Markets Act 2000 (“the Act”) (c.8). When an activity of a specified kind is carried on by way of business in relation to an investment of a specified kind, it is a “regulated activity” for the purposes of the Act. Section 19 of the Act prohibits persons from carrying on any regulated activity in the United Kingdom unless they are authorised or exempt.

Article 3 provides that the operation of an organised trading facility is a specified activity. A definition of “organised trading facility” is inserted by article 2.

Article 4 extends the specified activities of dealing in investments as agent (article 21 of the RAO), arranging deals in investments (article 25 of the RAO), managing investments (article 37 of the RAO) and advising on investments (article 53 of the RAO) in relation to structured deposits. A definition of “structured deposit” is inserted by article 2.

Article 5 amends article 72 of the RAO (overseas persons’ exclusion), which excludes certain activities from being categorised as regulated activities under RAO provisions including articles 14, 21, 25, 25D and 53, if they are carried out by overseas persons in specific circumstances. The amendments suspend the exclusion under article 72 where Title VIII of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (OJ L173 12/6/2014, p.84) gives overseas persons the right to carry out the same activities in order to make United Kingdom law compatible with that Regulation.

Article 6 provides that emission allowances are a specified investment. Article 2 amends the definition of “securities” in the RAO to include emission allowances, and the effect of this change is that specified activities such as dealing in investments as a principal (article 14 of the RAO) and dealing in investments as agent (article 21 of the RAO), which apply in relation to “securities”, will extend to emission allowances.

Articles 7 to 9 amend articles 83 (options), 84 (futures) and 85 (contracts for differences) of the RAO. Certain derivatives relating to currencies and binary contracts are added as new specified investments. Amendments also transpose in part Article 6 of [Directive 2011/61/EU](#) of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (OJ L174, 1/7/2011, p.1).

Article 10 amends Schedule 2 to the RAO to set out the investment services and activities and financial instruments in Annex I to MiFID 2 and related provision in the Commission Delegated Regulation of 25 April 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (“the Commission Regulation”). Article 11 replaces Schedule 3 to the RAO with a new Schedule 3 containing the text of Article 2 of MiFID 2 (exemptions) and related provision in the Commission Regulation.

Article 13 applies the Financial Conduct Authority’s integrity objective to the purposes for which the Authority may make product intervention rules under section 137D of the Act.

Article 15 makes transitional provision in respect of applications for a permission or an approval (or variations of a permission or an approval) under the Act in relation to a specified activity or a specified investment amended or inserted by this Order. If the application is made before 3rd July 2017, the regulator need not determine such application within the statutory period (normally 3 or 6 months) but must keep the applicant informed of progress and must determine the application before 3rd January 2018.

Article 16 is a transitional provision for persons already holding permissions to undertake the specified activities of dealing in investments as agent (article 21 of the RAO), arranging deals in investments (article 25 of the RAO), managing investments (article 37 of the RAO) or advising on investments (article 53 of the RAO). Article 15 enables such persons to have their existing permission varied to permit them to undertake those activities in relation to structured deposits provided they notify the appropriate regulator of their wish to do so.

Article 17 requires the Treasury to review this Order every five years.

The Schedule makes consequential amendments to other legislation. In particular it makes amendments to the controlled activities and controlled investments in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 ([S.I. 2005/1529](#)) similar to the amendments to the corresponding specified activities and specified investments in the RAO.

A transposition note setting out how MiFID 2 is transposed into UK law is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.gov.uk and is published alongside the Order on www.legislation.gov.uk.