
DRAFT STATUTORY INSTRUMENTS

2018 No.

**The Financial Services and Markets Act 2000
(Claims Management Activity) Order 2018**

PART 2

Amendments to secondary legislation made under the 2000 Act

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

3. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁽¹⁾ is amended as follows.

4. In article 4 (specified activities: general), after paragraph (2A)⁽²⁾ insert—

“(2B) The kinds of activity specified in Part 3B are specified for the purposes of section 22(1B) of the Act (and accordingly any activity of one of those kinds, when carried on by way of business in Great Britain, is a regulated activity).”.

5. In article 64 (agreeing to carry on specified kinds of activity) for “or Part 3A” substitute “, Part 3A or Part 3B”.

6. In article 72A (information society services), after paragraph (1) insert—

“(1A) For the purposes of paragraph (1), “activity” includes regulated claims management activities of a kind specified by articles 89G to 89M.”.

7. After Part 3A⁽³⁾ insert—

“PART 3B

CLAIMS MANAGEMENT ACTIVITIES IN GREAT BRITAIN

The activities

89F. Specified kinds of claims management activity

(1) A claims management activity is a specified kind of activity when it is an activity specified in any of articles 89G to 89M.

(2) For the purposes of this Part—

(a) “claimant” includes, in civil proceedings in Scotland, a pursuer;

(b) “defendant” includes, in civil proceedings in Scotland, a defender;

⁽¹⁾ [S.I. 2001/544](#).

⁽²⁾ Article 4(2A) was inserted by [S.I. 2013/1881](#).

⁽³⁾ Part 3A was inserted by [S.I. 2013/1881](#).

- (c) “personal injury claim” means a claim for personal injury within the meaning of the Civil Procedure Rules 1998⁽⁴⁾ in England and Wales and an action for damages for, or arising from, personal injuries within the meaning set out in section 8(7) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018⁽⁵⁾ in Scotland;
- (d) “financial services or financial product claim” includes a claim made under section 75 of the Consumer Credit Act 1974⁽⁶⁾;
- (e) “housing disrepair claim” means a claim under section 11 of the Landlord and Tenant Act 1985⁽⁷⁾ or section 4 of the Defective Premises Act 1972⁽⁸⁾ in England and Wales or an application in respect of the repairing standard under section 22 of the Housing (Scotland) Act 2006⁽⁹⁾, or claims in relation to the disrepair of premises under a term of a tenancy agreement or lease or under the common law relating to nuisance or negligence, but does not include claims for statutory nuisance under section 82 of the Environmental Protection Act 1990⁽¹⁰⁾;
- (f) “a claim for a specified benefit” means a claim for one of the following benefits—
- (i) industrial injuries benefit, within the meaning given by section 94 of the Social Security Contributions and Benefits Act 1992⁽¹¹⁾;
 - (ii) any supplement or additional allowance, or increase of benefit or allowance to which a recipient of an industrial injuries benefit may be entitled under that Act or any other Act;
 - (iii) a benefit under a scheme referred to in paragraph 2 or 4 of Schedule 8 to that Act; or
 - (iv) a benefit under the Pneumoconiosis etc. (Workers’ Compensation) Act 1979⁽¹²⁾.
- (g) “criminal injury claim” means a claim under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995⁽¹³⁾;
- (h) “employment related claim” includes a claim in relation to wages and salaries and other employment related payments and claims in relation to wrongful or unfair dismissal, redundancy, discrimination and harassment;
- (i) “investigating” means carrying out an investigation into, or commissioning the investigation of, the circumstances, merits or foundation of a claim; and
- (j) “representing” means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made.
- (3) A person is to be treated as carrying on a regulated claims management activity in Great Britain when the activity is carried on—
- (a) by a person who is—
 - (i) an individual who is ordinarily resident in Great Britain; or
 - (ii) a person, other than an individual, who is constituted under the law of England and Wales or Scotland; or

(4) S.I. 1998/3132.

(5) 2018 asp 10.

(6) 1974 c. 39. Section 75 was amended by S.I. 1983/1878 and 2010/1010.

(7) 1985 c. 70.

(8) 1972 c. 35.

(9) 2006 asp 1.

(10) 1990 c. 43.

(11) 1992 c. 4.

(12) 1979 c. 41.

(13) 1995 c. 53.

- (b) in respect of a claimant or potential claimant who is—
 - (i) an individual who is ordinarily resident in Great Britain; or
 - (ii) a person, other than an individual, who is constituted under the law of England and Wales or Scotland.
- (4) For the purposes of this article—
 - (a) a person is “ordinarily resident” in Great Britain if that person satisfies the requirements of the Statutory Residence Test as set out in Schedule 45 to the Finance Act 2013⁽¹⁴⁾ either—
 - (i) at the time of the facts giving rise to the claim or potential claim; or
 - (ii) at the time when the regulated claims management activity is carried out in respect of that claimant or potential claimant;
 - (b) the references to the “UK” in the Statutory Residence Test in Schedule 45 are to be read as if they were expressed as references to “Great Britain”.

89G. Seeking out, referrals and identification of claims or potential claims

- (1) Each of the following is a specified kind of activity when carried on in relation to a claim of a kind specified in paragraph (2)—
 - (a) seeking out persons who may have a claim, unless that activity constitutes the communication of an invitation or inducement to engagement in claims management activity within the meaning of section 21 (restrictions on financial promotion)⁽¹⁵⁾ of the Act;
 - (b) referring details of—
 - (i) a claim or potential claim; or
 - (ii) a claimant or potential claimantto another person (including to a person having the right to conduct litigation); and
 - (c) identifying—
 - (i) a claim or potential claim; or
 - (ii) a claimant or potential claimant.
- (2) The kinds of claim are—
 - (a) a personal injury claim;
 - (b) a financial services or financial product claim;
 - (c) a housing disrepair claim;
 - (d) a claim for a specified benefit;
 - (e) a criminal injury claim; and
 - (f) an employment related claim.

89H. Advice, investigation or representation in relation to a personal injury claim

- 89H.** Each of the following activities is a specified kind of activity when carried on in relation to a personal injury claim—
 - (a) advising a claimant or potential claimant;

⁽¹⁴⁾ 2013 c. 29.

⁽¹⁵⁾ Section 21 was amended by the 2018 Act, section 27(4). There are other amendments, but none is relevant.

- (b) investigating a claim; and
- (c) representing a claimant.

89I. Advice, investigation or representation in relation to a financial services or financial product claim

89I. Each of the following activities is a specified kind of activity when carried on in relation to a financial services or financial product claim—

- (a) advising a claimant or potential claimant;
- (b) investigating a claim; and
- (c) representing a claimant.

89J. Advice, investigation or representation in relation to a housing disrepair claim

89J. Each of the following activities is a specified kind of activity when carried on in relation to a housing disrepair claim—

- (a) advising a claimant or potential claimant;
- (b) investigating a claim; and
- (c) representing a claimant.

89K. Advice, investigation or representation in relation to a claim for a specified benefit

89K. Each of the following activities is a specified kind of activity when carried on in relation to a claim for a specified benefit—

- (a) advising a claimant or potential claimant;
- (b) investigating a claim; and
- (c) representing a claimant.

89L. Advice, investigation or representation in relation to a criminal injury claim

89L. Each of the following activities is a specified kind of activity when carried on in relation to a criminal injury claim—

- (a) advising a claimant or potential claimant;
- (b) investigating a claim; and
- (c) representing a claimant.

89M. Advice, investigation or representation in relation to an employment related claim

89M. Each of the following activities is a specified kind of activity when carried on in relation to an employment related claim—

- (a) advising a claimant or potential claimant;
- (b) investigating a claim; and
- (c) representing a claimant.

Exclusions

89N. Claims management activity conducted by legal professionals

(1) There is excluded from articles 89G to 89M any activity which is carried on in England and Wales by—

- (a) a legal practitioner;
- (b) a firm, organisation or body corporate that carries on the claims management activity through a legal practitioner; or
- (c) an individual who carries on the claims management activity at the direction of, and under the supervision of, a legal practitioner who is—
 - (i) that individual's employer or fellow employee; or
 - (ii) a director of a company, or a member of a limited liability partnership, that provides the service and is that individual's employer.

(2) For the purposes of paragraph (1) “legal practitioner” means—

- (a) a solicitor or barrister of any part of England and Wales or Northern Ireland;
- (b) a Fellow of the Chartered Institute of Legal Executives;
- (c) a European lawyer, as defined in the European Communities (Services of Lawyers) Order 1978⁽¹⁶⁾ or the European Communities (Lawyer's Practice) Regulations 2000⁽¹⁷⁾;
- (d) a registered foreign lawyer, as defined in section 89(9) of the Courts and Legal Services Act 1990⁽¹⁸⁾;
- (e) any other member of a legal profession, of a jurisdiction other than England and Wales, that is recognised by the Law Society of England and Wales or the General Council of the Bar as a regulated legal profession.

(3) There is excluded from articles 89G to 89M any activity which is carried on in Scotland by—

- (a) a legal practitioner;
- (b) a firm, organisation or body corporate that carries on the claims management activity through or under the supervision of a legal practitioner where that firm, organisation or body corporate is—
 - (i) a firm of solicitors;
 - (ii) an incorporated practice; or
 - (iii) a licensed legal services provider and the activity is a legal service as defined within section 3 of the Legal Services (Scotland) Act 2010⁽¹⁹⁾.

(4) For the purposes of paragraph (3) “legal practitioner” means—

- (a) a person who is qualified to practise as a solicitor under section 4 of the Solicitors (Scotland) Act 1980⁽²⁰⁾;
- (b) an advocate who is a member of the Faculty of Advocates;
- (c) a European lawyer as defined in the European Communities (Services of Lawyers) Order 1978 or the European Communities (Lawyer's Practice) (Scotland) Regulations 2000⁽²¹⁾; or

⁽¹⁶⁾ S.I. 1978/1910.

⁽¹⁷⁾ S.I. 2000/1119.

⁽¹⁸⁾ 1990 c. 41.

⁽¹⁹⁾ 2010 asp 16.

⁽²⁰⁾ 1980 c. 46.

⁽²¹⁾ S.S.I. 2000/121.

(d) a registered foreign lawyer within the meaning of section 65 of the Solicitors (Scotland) Act 1980.

(5) But an activity mentioned in paragraph (1) or (3) is only excluded from articles 89G to 89M if the legal practitioner concerned carries on the claims management activity in the ordinary course of legal practice pursuant to the professional rules to which that legal practitioner is subject.

(6) The exclusions in this article are to be read as if they were expressed as exemptions for the purposes of the following provisions of the Financial Guidance and Claims Act 2018—

- (a) section 32(5)(b) (PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to the FCA); and
- (b) section 33(11) (legal services regulators' rules: charges for claims management services).

89O. Claims management activity conducted by a charity or not-for-profit agency

(1) There is excluded from articles 89G to 89M any activity carried on by a charity or a not-for-profit agency.

(2) In this article “charity” means—

- (a) a charity as defined by section 1(1) of the Charities Act 2011⁽²²⁾ or the Charities and Trustee Investment (Scotland) Act 2005⁽²³⁾; or
- (b) a body registered in the Scottish Charity Register.

(3) In this article “not-for-profit agency” means a body that by or under its constitution—

- (a) is required to apply the whole of its net income, and any expendable capital, after payment of outgoings for charitable or public purposes; and
- (b) is prohibited from distributing, directly or indirectly, any part of its net income by way of profits or its assets among any of its members.

(4) But a body is not prevented from being a not-for-profit agency for the purposes of paragraph (3) if its constitution permits—

- (a) the payment, out of the body's funds, of reasonable and proper remuneration for goods or services supplied to the body by a member; or
- (b) in the case of a not-for-profit body that is a charity, the payment to a member to which the member is eligible because that member is a beneficiary of the charity; or
- (c) the purchase, out of the body's funds, of indemnity insurance for trustees of the body.

89P. Claims management activity conducted by a person appointed by a statutory or other public body

89P. There is excluded from articles 89G to 89M any activity carried on by—

- (a) any person established or appointed by virtue of an enactment;
- (b) an Independent Complaints Reviewer; or
- (c) an Independent Case Examiner

in the course of carrying out that individual's duties.

⁽²²⁾ 2011 c. 25.

⁽²³⁾ 2005 asp 10.

89Q. Claims management activity conducted by the Motor Insurers' Bureau

89Q. There is excluded from articles 89G to 89M any activity carried on by the Motor Insurers' Bureau in the course of carrying on its functions (being the company limited by guarantee mentioned in section 95(2) (notification of refusal of insurance on grounds of health) of the Road Traffic Act 1988⁽²⁴⁾).

89R. Claims management activity conducted by a medical defence union

89R. There is excluded from articles 89G to 89M any activity carried on by—

- (a) the Medical Protection Society Limited for its members;
- (b) the Medical Defence Union Limited for its members; or
- (c) the Medical and Dental Defence Union of Scotland Limited for its members.

89S. Claims management activity conducted an independent trade union

(1) There is excluded from articles 89G to 89M any activity carried on by an independent trade union for –

- (a) a member (including a retired member or a student member) of an independent trade union;
- (b) a member of the family of a member referred to in sub-paragraph (a); or
- (c) a former member of the trade union to whom the trade union may, under its rules, provide claims management services, or a member of the family of such a former member.

(2) In paragraph (1), “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992⁽²⁵⁾.

(3) For the purposes of paragraph (1) –

- (a) subject to sub-paragraph (b), whether a person is or has been a member (including a retired member or a student member) of a trade union is to be decided in accordance with the rules of that trade union;
- (b) “member” of a trade union does not include a person who, under those rules, is a member only for the purpose of pursuing a claim or claims; and
- (c) whether a person is a member of the family of a member of a trade union is to be decided in accordance with the rules of that trade union.

(4) An exemption of a trade union under this article is subject to compliance by the trade union with the condition that the trade union, in carrying on a regulated claims management activity, must act in accordance with the code of practice for the provision of regulated claims management activities by trade unions issued by the Treasury.

89T. Claims management activity conducted by a students' union

(1) There is excluded from articles 89G to 89M any activity carried on by a students' union for a member of that students' union or a member of a constituent or affiliated association or body.

(2) In this article “students' union” has the meaning given by section 20 (meaning of “students' union”) of the Education Act 1994⁽²⁶⁾.

⁽²⁴⁾ 1988 c. 52.

⁽²⁵⁾ 1992 c. 52.

⁽²⁶⁾ 1994 c. 30.

89U. Claims management activity conducted by an insurance intermediary

89U. There is excluded from articles 89G to 89M any regulated activity of the kind specified in article 21, 25, 39A, 53 or 64 carried on by a person who has permission to carry on that activity in relation to a contract of insurance.

89V. Certain providers of referrals

(1) There is excluded from article 89G the activity of referring details of a potential claim or potential claimant to another person if—

- (a) the person who refers those details (“the introducer”) carries on no other regulated claims management activity;
- (b) the activity is incidental to the introducer’s main business;
- (c) the details are only referred to authorised persons, legal practitioners, or a firm, organisation or body corporate that provides the service through legal practitioners;
- (d) of the claims that the introducer refers to such persons, that introducer is paid, in money or money’s worth, for no more than 25 claims per calendar quarter; and
- (e) the introducer, in obtaining and referring those details, has complied with the provisions of the Data Protection Act 2018⁽²⁷⁾, the Privacy and Electronic Communications (EC Directive) Regulations 2003⁽²⁸⁾, the General Data Protection Regulation (EU) of the European Parliament and of the Council 2016/679⁽²⁹⁾ and the Consumer Protection from Unfair Trading Regulations 2008⁽³⁰⁾.

(2) Paragraph (1)(e) does not apply in the case of a referral to a legal practitioner or firm, organisation or body corporate that carries on the activity through legal practitioners.

(3) In this article “legal practitioner” has the meaning given by article 89N(2) or (4).

89W. Services in connection with counterclaims and claims against third parties

89W. There is excluded from articles 89G to 89M any activity carried on in circumstances where—

- (a) a claim has been made by a person (“the claimant”) against another person (“the defendant”); and
- (b) the activity being carried on consists of the provision of a service to the defendant in connection with—
 - (i) the making of a counterclaim against the claimant arising out of the same set of facts as the claim referred to in sub-paragraph (a); or
 - (ii) the making of a claim against a third party (whether for contribution, as a subrogated claim, or otherwise) which is incidental to, or consequent on, the claim referred to in sub-paragraph (a).”.

⁽²⁷⁾ 2018 c. 12.

⁽²⁸⁾ S.I. 2003/2426.

⁽²⁹⁾ Regulation (EU) 2016/679.

⁽³⁰⁾ S.I. 2008/1277.

The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

8. The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005⁽³¹⁾ is amended as follows.

9. In article 2 (interpretation: general), in the appropriate place, insert—

““controlled claims management activity” has the meaning given in article 4(3);”.

10. In article 4—

(a) in the heading of the article, after “controlled activities” insert “, controlled claims management activities”;

(b) after paragraph (2) insert—

“(3) For the purposes of section 21(10B)⁽³²⁾ of the Act, a controlled claims management activity is an activity carried on in Great Britain of a kind specified in paragraph 11A of Schedule 1.”.

11. In article 8 (interpretation: solicited and unsolicited real time communications)—

(a) in paragraph (3), in sub-paragraph (b) after “controlled activities or investments” insert “or controlled claims management activities”; and

(b) in paragraph (4), in sub-paragraph (b) after “any investment activity” insert “or any claims management activity”.

12. In paragraph (1) of article 11 (combination of different exemptions) in sub-paragraph (b) for “11” substitute “11A”.

13. In article 12 (communications to overseas recipients)—

(a) in paragraph (1) for “paragraphs (2) and (7)” substitute “paragraphs (2), (7) and (8)”; and

(b) after paragraph (7) insert—

“(8) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.”.

14. In paragraph (1) of article 13 (communications from customers and potential customers)—

(a) in sub-paragraph (a)—

(i) after “controlled investment” insert “or controlled claims management activity”;

(ii) omit “or”;

(b) at the end of sub-paragraph (b) insert “; or”; and

(c) after sub-paragraph (b) insert—

“(c) in order that the customer can be supplied with services in respect of a controlled claims management activity by that supplier.”.

15. In paragraph (2) of article 14 (follow up non-real time communications and solicited real time communications) in sub-paragraph (d) after “and the same controlled investment” insert “or relates to the same controlled claims management activity”.

16. In paragraph (1A) of article 15 (introductions) after sub-paragraph (c) insert—

“(d) paragraph 11A of that Schedule.”.

17. In article 16 (exempt persons) in paragraph (1) sub-paragraph (c) after “controlled activity” insert “or controlled claims management activity”.

⁽³¹⁾ S.I. 2005/1529.

⁽³²⁾ Section 21(10B) was inserted by Financial Guidance and Claims Act 2018 (c. 10) section 27(3)(b).

- 18.** In article 17 (generic promotions)—
- (a) at the end of sub-paragraph (a) omit “and”;
 - (b) at the end of sub-paragraph (b) insert “; and”;
 - (c) after sub-paragraph (b) insert—
 - “(c) does not identify (directly or indirectly) any person as a person who carries on a controlled claims management activity.”.
- 19.** In article 19 (investment professionals) after paragraph (6) insert —
- “(7) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.”.
- 20.** In article 20 (communications by journalists) in paragraph (3)—
- (a) in sub-paragraph (b) after “paragraph (4)” insert “or to a controlled claims management activity”;
 - (b) in sub-paragraph (c) after “controlled investment” insert “or who carries on or engages in the controlled claims management activity”.
- 21.** In article 27 (application of exemptions in Part 6) after sub-paragraph (b) insert—
- “(c) a controlled claims management activity.”.
- 22.** In article 28 (one off non-real time communications and solicited real time communications) in paragraph (3) sub-paragraph (a) after “investment activity” insert “or controlled claims management activity”.
- 23.** In article 28A (one off unsolicited real time communications) after paragraph (3) insert—
- “(4) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.”.
- 24.** In article 30 (overseas communicators: solicited real time communications) after paragraph (2) insert—
- “(3) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.”.
- 25.** In article 31 (overseas communicators: non-real time communications to previously overseas customers) after paragraph (3) insert—
- “(4) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.”.
- 26.** In article 32 (overseas communicators: unsolicited real time communications to previously overseas customers) after paragraph (3) insert—
- “(4) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.”.
- 27.** In article 33 (overseas communicators: unsolicited real time communications to knowledgeable customers) after paragraph (4) insert—
- “(5) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.”.
- 28.** Article 36 (nationals of EEA States other than United Kingdom) is renumbered as paragraph (1) of that article and after the renumbered paragraph (1) insert—
- “(2) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.”.

29. In article 39 (joint enterprises) in paragraph (2) after “controlled activity” insert “or controlled claims management activity”.

30. In article 47 (persons in the business of disseminating information) in paragraph (2)(a) after “controlled activities” insert “or controlled claims management activities”.

31. In article 49 (high net worth companies, unincorporated associations etc) after paragraph (7) insert—

“(8) Paragraph (1) does not apply to any communication in respect of a controlled claims management activity.”.

32. In article 55A (non-real time communication by members of professions)—

(a) in paragraph (2) after “investment and consumer credit-related” insert “and claims management-related”;

(b) in paragraph (3) after “investment and consumer credit-related” insert “and claims management-related”.

33. In article 59 (annual accounts and directors’ report) in paragraph (3) in sub-paragraph (a) for “11” substitute “11A”.

34. In article 61 (sale of goods and supply of services) in paragraph (1) in the definition of “supplier”—

(a) after “controlled activities” insert “or controlled claims management activities”;

(b) for “and 10BB” substitute “, 10BB and 11A”.

35. In article 73 (advice centres) in paragraph (2)—

(a) at the end of sub-paragraph (e) omit “or”;

(b) at the end of sub-paragraph (f) insert—

“; or

(g) a controlled claims management activity.”.

36. After article 73 (advice centres) insert—

“PART 6A

EXEMPT COMMUNICATIONS: CONTROLLED CLAIMS MANAGEMENT ACTIVITIES

73A. Application of exemptions in this Part

The exemptions in this Part apply to any communication which relates to a controlled claims management activity of a kind specified in paragraph 11A of Schedule 1.

73B. Communications made by legal professionals

(1) The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made in England and Wales by—

(a) a legal practitioner;

(b) a firm, organisation or body corporate that carries on the controlled claims management activity through a legal practitioner; or

- (c) an individual who carries on the controlled claims management activity at the direction of, and under the supervision of, a legal practitioner who is—
 - (i) that individual's employer or fellow employee; or
 - (ii) a director of a company, or a member of a limited liability partnership, that provides the service and is that individual's employer.
- (2) In paragraph (1) "legal practitioner" means—
 - (a) a solicitor or barrister of any part of England and Wales or Northern Ireland;
 - (b) a Fellow of the Chartered Institute of Legal Executives;
 - (c) a European lawyer, as defined in the European Communities (Services of Lawyers) Order 1978⁽³³⁾ or the European Communities (Lawyer's Practice) Regulations 2000⁽³⁴⁾;
 - (d) a registered foreign lawyer, as defined in section 89(9) of the Courts and Legal Services Act 1990⁽³⁵⁾;
 - (e) any other member of a legal profession, of a jurisdiction other than England and Wales, that is recognised by the Law Society of England and Wales or the General Council of the Bar as a regulated legal profession.
- (3) The financial promotion restriction does not apply to a communication which relates to a controlled claims management activity when that communication is made in Scotland by—
 - (a) a legal practitioner;
 - (b) a firm, organisation or body corporate that carries on the controlled claims management activity through or under the supervision of a legal practitioner where that firm, organisation or body corporate is—
 - (i) a firm of solicitors;
 - (ii) an incorporated practice; or
 - (iii) a licensed legal services provider and the activity is a legal service as defined within section 3 of the Legal Services (Scotland) Act 2010⁽³⁶⁾.
- (4) In paragraph (3) "legal practitioner" means—
 - (a) a person who is qualified to practise as a solicitor under section 4 of the Solicitors (Scotland) Act 1980⁽³⁷⁾;
 - (b) an advocate who is a member of the Faculty of Advocates;
 - (c) a European lawyer as defined in the European Communities (Services of Lawyers) Order 1978 or the European Communities (Lawyer's Practice) (Scotland) Regulations 2000⁽³⁸⁾; or
 - (d) a registered foreign lawyer within the meaning of section 65 of the Solicitors (Scotland) Act 1980.
- (5) A communication mentioned in paragraph (1) or (3) is only excluded from the financial promotion restriction if the legal practitioner concerned carries on the controlled claims management activity in the ordinary course of legal practice pursuant to the professional rules to which that legal practitioner is subject.

⁽³³⁾ S.I. 1978/1910.

⁽³⁴⁾ S.I. 2000/1119.

⁽³⁵⁾ 1990 c. 41.

⁽³⁶⁾ 2010 asp 16.

⁽³⁷⁾ 1980 c. 46.

⁽³⁸⁾ S.S.I. 2000/121.

73C. Communications made by a charity or not-for-profit agency

(1) The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made by a charity or not-for-profit agency.

(2) In this article “charity” means—

- (a) a charity as defined by section 1(1) of the Charities Act 2011⁽³⁹⁾ or the Charities and Trustee Investment (Scotland) Act 2005⁽⁴⁰⁾; or
- (b) a body registered in the Scottish Charity Register.

(3) In this article “not-for-profit agency” means a body that by or under its constitution—

- (a) is required to apply the whole of its net income, and any expendable capital, after payment of outgoings for charitable or public purposes; and
- (b) is prohibited from distributing, directly or indirectly, any part of its net income by way of profits or its assets among any of its members.

(4) But a body is not prevented from being a not-for-profit agency for the purposes of paragraph (3) if its constitution permits—

- (a) the payment, out of the body’s funds, of reasonable and proper remuneration for goods or services supplied to the body by a member; or
- (b) in the case of a not-for-profit body that is a charity, the payment to a member to which the member is eligible because that member is a beneficiary of the charity; or
- (c) the purchase, out of the body’s funds, of indemnity insurance for trustees of the body.

73D. Communications made by a person appointed by a statutory or other public body

73D. The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made by—

- (a) any person established or appointed by virtue of an enactment;
- (b) an Independent Complaints Reviewer; or
- (c) an Independent Case Examiner

when the communication is made in the course of carrying out that individual’s duties.

73E. Communications made by the Motor Insurers’ Bureau

73E. The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made by the Motor Insurers’ Bureau in the course of carrying its functions (being the company limited by guarantee mentioned in section 95(2) (notification of refusal of insurance on grounds of health) of the Road Traffic Act 1988⁽⁴¹⁾).

73F. Communications made by a medical defence union

73F. The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made by—

⁽³⁹⁾ 2011 c. 25.

⁽⁴⁰⁾ 2005 asp 10.

⁽⁴¹⁾ 1988 c. 52.

- (a) the Medical Protection Society Limited for its members;
- (b) the Medical Defence Union Limited for its members; or
- (c) the Medical and Dental Defence Union of Scotland Limited for its members.

73G. Communications made by an independent trade union

(1) The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made by an independent trade union for —

- (a) a member (including a retired member or a student member) of an independent trade union;
- (b) a member of the family of a member referred to in sub-paragraph (a); or
- (c) a former member of the trade union to whom the trade union may, under its rules, provide claims management services, or a member of the family of such a former member.

(2) In paragraph (1) “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992⁽⁴²⁾.

(3) For the purposes of paragraph (1)—

- (a) subject to sub-paragraph (b), whether a person is or has been a member (including a retired member or a student member) of a trade union is to be decided in accordance with the rules of that trade union;
- (b) “member” of a trade union does not include a person who, under those rules, is a member only for the purpose of pursuing a claim or claims; and
- (c) whether a person is a member of the family of a member of a trade union is to be decided in accordance with the rules of that trade union.

(4) An exemption of a trade union under this article is subject to compliance by the trade union with the condition that the trade union, in making a communication which relates to a controlled claims management activity, must act in accordance with the code of practice for the provision of regulated claims management activities by trade unions issued by the Treasury.

73H. Communications made by a students’ union

(1) The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made by a students’ union for a member of that students’ union or a member of a constituent or affiliated association or body.

(2) In this article “students’ union” has the meaning given by section 20 (meaning of “students’ union”) of the Education Act 1994⁽⁴³⁾.

73I. Communications made by an insurance intermediary

73I. The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity when that communication is made by a person who has permission to carry out a regulated activity of the kind specified in article 21, 25, 39A, 53 or 64 of the Regulated Activities Order in relation to a contract of insurance.

⁽⁴²⁾ 1992 c. 52.

⁽⁴³⁾ 1994 c. 30.

73J. Communications made by certain providers of referrals

(1) The financial promotion restriction does not apply to any communication which relates to the controlled claims management activity falling within paragraph 11A(2) of Schedule 1 of referring the details of a potential claim or potential claimant to another person if –

- (a) the person who refers those details (“the introducer”) carries on no other regulated claims management service;
- (b) the activity is incidental to the introducer’s main business;
- (c) the details are only referred to authorised persons, legal practitioners, or a firm, organisation or body corporate that provides the service through legal practitioners;
- (d) of the claims that the introducer refers to such persons, that introducer is paid, in money or money’s worth, for no more than 25 claims per calendar quarter; and
- (e) the introducer, in obtaining and referring those details has complied with the provisions of the Data Protection Act 2018⁽⁴⁴⁾, the Privacy and Electronic Communications (EC Directive) Regulations 2003⁽⁴⁵⁾, the General Data Protection Regulation (EU) of the European Parliament and of the Council 2016/679⁽⁴⁶⁾ and the Consumer Protection from Unfair Trading Regulations 2008⁽⁴⁷⁾.

(2) Paragraph 1(e) does not apply in the case of a referral to a legal practitioner or firm, organisation or body corporate that carries on the activity through legal practitioners.

(3) In this article “legal practitioner” has the meaning given by article 73B(2) or (4).”.

37. After article 73J (inserted by article 36) insert—
“PART 7

REVOCATIONS”

38. After paragraph 11 of Schedule 1 (controlled activities) insert—

“PART 1A

CONTROLLED CLAIMS MANAGEMENT ACTIVITY

11A.—(1) A claims management activity carried out in Great Britain is a controlled claims management activity.

(2) For the purposes of this paragraph, a claims management activity is one of the following activities:

- (a) seeking out persons who may have a claim, referring details of a claim or potential claim or a claimant or potential claimant to another person (including a person having the right to conduct litigation), or identifying a claim or potential claim or a claimant or potential claimant in respect of—
 - (i) a personal injury claim;
 - (ii) a financial services or financial product claim;

⁽⁴⁴⁾ 2018 c. 12.

⁽⁴⁵⁾ S.I. 2003/2426.

⁽⁴⁶⁾ Regulation (EU) 2016/679.

⁽⁴⁷⁾ S.I. 2008/1277.

- (iii) a housing disrepair claim;
 - (iv) a claim for a specified benefit;
 - (v) a criminal injury claim; or
 - (vi) an employment related claim.
- (b) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a personal injury claim;
 - (c) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a financial services or financial product claim;
 - (d) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a housing disrepair claim;
 - (e) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a claim for a specified benefit;
 - (f) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a criminal injury claim; or
 - (g) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of an employment related claim.
- (3) In this paragraph—
- (a) “claimant” includes, in civil proceedings in Scotland, a pursuer;
 - (b) “defendant” includes, in civil proceedings in Scotland, a defender;
 - (c) “personal injury claim” means a claim for personal injury within the meaning of the Civil Procedure Rules 1998⁽⁴⁸⁾ in England and Wales and an action for damages for, or arising from, personal injuries within the meaning set out in section 8(7) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018⁽⁴⁹⁾ in Scotland;
 - (d) “financial services or financial product claim” includes a claim made under section 75 of the Consumer Credit Act 1974⁽⁵⁰⁾;
 - (e) “housing disrepair claim” means a claim under section 11 of the Landlord and Tenant Act 1985⁽⁵¹⁾ or section 4 of the Defective Premises Act 1972⁽⁵²⁾ in England and Wales or an application in respect of the repairing standard under section 22 of the Housing (Scotland) Act 2006⁽⁵³⁾, or claims in relation to the disrepair of premises under a term of a tenancy agreement or lease or under the common law relating to nuisance or negligence but does not include claims for statutory nuisance under section 82 of the Environmental Protection Act 1990⁽⁵⁴⁾;
 - (f) “a claim for a specified benefit” means a claim for one of the following benefits—
 - (i) industrial injuries benefit, within the meaning given by section 94 of the Social Security Contributions and Benefits Act 1992⁽⁵⁵⁾;

⁽⁴⁸⁾ S.I. 1998/3132.

⁽⁴⁹⁾ 2018 asp 10.

⁽⁵⁰⁾ 1974 c. 39. Section 75 was amended by S.I. 1983/1878 and 2010/1010.

⁽⁵¹⁾ 1985 c. 70.

⁽⁵²⁾ 1972 c. 35.

⁽⁵³⁾ 2006 asp 1.

⁽⁵⁴⁾ 1990 c. 43.

⁽⁵⁵⁾ 1992 c. 4.

- (ii) any supplement or additional allowance, or increase of benefit or allowance to which a recipient of an industrial injuries benefit may be entitled under that Act or any other Act;
 - (iii) a benefit under a scheme referred to in paragraph 2 or 4 of Schedule 8 to that Act; or
 - (iv) a benefit under the Pneumoconiosis etc. (Workers' Compensation) Act 1979⁽⁵⁶⁾.
- (g) "criminal injury claim" means a claim under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995⁽⁵⁷⁾;
 - (h) "employment related claim" includes a claim in relation to wages and salaries and other employment related payments and claims in relation to wrongful or unfair dismissal, redundancy, discrimination and harassment;
 - (i) "investigating" means carrying out an investigation into, or commissioning the investigation of, the circumstances, merits or foundation of a claim; and
 - (j) "representing" means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made.
- (4) In this paragraph, a person is to be treated as carrying on a controlled claims management activity in Great Britain when the activity is carried on—
- (a) by a person who is—
 - (i) an individual who is ordinarily resident in Great Britain; or
 - (ii) a person, other than an individual, who is constituted under the law of England and Wales or Scotland; or
 - (b) in respect of a claimant or potential claimant who is—
 - (i) an individual who is ordinarily resident in Great Britain; or
 - (ii) a person, other than an individual, who is constituted under the law of England and Wales or Scotland.
- (5) For the purposes of sub-paragraph (4) a person is "ordinarily resident" in Great Britain if that person satisfies the requirements of the Statutory Residence Test as set out in Schedule 45 to the Finance Act 2013⁽⁵⁸⁾ either—
- (a) at the time of the facts giving rise to the claim or potential claim; or
 - (b) at the time when the controlled claims management activity is carried out in respect of that claimant or potential claimant."

⁽⁵⁶⁾ 1979 c. 41.

⁽⁵⁷⁾ 1995 c. 53.

⁽⁵⁸⁾ 2013 c. 29.