



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART III

#### AUTHORISATION AND EXEMPTION

##### *Authorisation*

#### **31 Authorised persons.**

- (1) The following persons are authorised for the purposes of this Act—
- (a) a person who has a Part IV permission to carry on one or more regulated activities;
  - (b) an EEA firm qualifying for authorisation under Schedule 3;
  - (c) a Treaty firm qualifying for authorisation under Schedule 4;
  - (d) a person who is otherwise authorised by a provision of, or made under, this Act.
- (2) In this Act “authorised person” means a person who is authorised for the purposes of this Act.

#### **Commencement Information**

- II** S. 31 wholly in force at 1.12.2001; s. 31 not in force at Royal Assent see s. 431(2); s. 31(1)(b) in force for specified purposes at 25.2.2001 by S.I. 2001/516, art. 2(c), **Sch. Pt. 3**; s. 31(1)(b) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 31(1)(c) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 31 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

#### **32 Partnerships and unincorporated associations.**

- (1) If a firm is authorised—

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- (a) it is authorised to carry on the regulated activities concerned in the name of the firm; and
  - (b) its authorisation is not affected by any change in its membership.
- (2) If an authorised firm is dissolved, its authorisation continues to have effect in relation to any [<sup>F1</sup>individual or] firm which succeeds to the business of the dissolved firm.
- [<sup>F2</sup>(3) For the purposes of this section, an individual or firm is to be regarded as succeeding to the business of a dissolved firm only if succession is to the whole or substantially the whole of the business of the former firm.]
- (4) “Firm” means—
- (a) a partnership; or
  - (b) an unincorporated association of persons.
- (5) “Partnership” does not include a partnership which is constituted under the law of any place outside the United Kingdom and is a body corporate.

#### Textual Amendments

- F1** Words in s. 32(2) inserted (12.7.2007) by [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), [art. 3\(a\)](#)
- F2** S. 32(3) substituted (12.7.2007) by [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), [art. 3\(b\)](#)

### *Ending of authorisation*

#### **33 Withdrawal of authorisation by the Authority.**

- (1) This section applies if—
- (a) an authorised person’s Part IV permission is cancelled; and
  - (b) as a result, there is no regulated activity for which he has permission.
- (2) The Authority must give a direction withdrawing that person’s status as an authorised person.

#### **34 EEA firms.**

- (1) An EEA firm ceases to qualify for authorisation under Part II of Schedule 3 if it ceases to be an EEA firm as a result of—
- (a) having its EEA authorisation withdrawn; or
  - (b) ceasing to have an EEA right in circumstances in which EEA authorisation is not required.
- (2) At the request of an EEA firm, the Authority may give a direction cancelling its authorisation under Part II of Schedule 3.
- (3) If an EEA firm has a Part IV permission, it does not cease to be an authorised person merely because it ceases to qualify for authorisation under Part II of Schedule 3.

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

**C1** S. 34(2) modified (1.12.2001) by [S.I. 2001/2511](#), [regs. 1\(1\)](#), 8; [S.I. 2001/3538](#), [art. 2\(1\)](#)

**35 Treaty firms.**

- (1) A Treaty firm ceases to qualify for authorisation under Schedule 4 if its home State authorisation is withdrawn.
- (2) At the request of a Treaty firm, the Authority may give a direction cancelling its Schedule 4 authorisation.
- (3) If a Treaty firm has a Part IV permission, it does not cease to be an authorised person merely because it ceases to qualify for authorisation under Schedule 4.

**36 Persons authorised as a result of paragraph 1(1) of Schedule 5.**

- (1) At the request of a person authorised as a result of paragraph 1(1) of Schedule 5, the Authority may give a direction cancelling his authorisation as such a person.
- (2) If a person authorised as a result of paragraph 1(1) of Schedule 5 has a Part IV permission, he does not cease to be an authorised person merely because he ceases to be a person so authorised.

*Exercise of EEA rights by UK firms*

**37 Exercise of EEA rights by UK firms.**

Part III of Schedule 3 makes provision in relation to the exercise outside the United Kingdom of EEA rights by UK firms.

**Commencement Information**

**I2** [S. 37](#) wholly in force at 1.12.2001; [s. 37](#) not in force at Royal Assent see [s. 431\(2\)](#); [s. 37](#) in force for specified purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(c\)](#), [Sch. Pt. 3](#); [s. 37](#) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); [s. 37](#) in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2](#), [Sch. Pt. 2](#); [s. 37](#) in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

*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 Part IV permission.

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- (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.

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

- C2** S. 38(2) modified (31.10.2001) by [S.I. 2001/3374](#), art. 1, **Sch. para. 3**
- C3** 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**
- C4** 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**
- C5** 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)**
- C6** 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)
- C7** 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}

**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>F3</sup>(1A) But a person is not exempt as a result of subsection (1)—

- (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

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- maintained in that State pursuant to Article 23 of the markets in financial instruments directive;
- (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 Authority 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 Authority by virtue of section 347(1)(ha).]
- (2) A person who is exempt as a result of subsection (1) is referred to in this Act as an appointed representative.
- (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.
- (4) In determining whether an authorised person has complied with a provision contained in or made under this Act, [<sup>F4</sup>or with a provision contained in any directly applicable Community regulation made under the markets in financial instruments directive,] 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>F5</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 banking consolidation directive, or

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- (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—
  - (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

- 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(4) 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\(b\)](#)
- F5** 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\(c\)](#)

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

- C8** S. 39(2) modified (31.10.2001) by [S.I. 2001/3374](#), art. 1, [Sch. para. 7](#)
- C9** 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](#)
- C10** 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](#)
- C11** 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](#)
- C12** 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

- I3** 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>F6</sup>  
F6

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.

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- (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 Authority 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 Authority 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—
- (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

- F6** 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](#)

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