STATUTORY INSTRUMENTS

2001 No. 3649

The Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001

PART 8

MISCELLANEOUS AMENDMENTS TO PRIMARY LEGISLATION

Damages Act 1996 (c. 48)

Enhanced protection for structured settlement annuitants

350. In section 4 of the Damages Act 1996—

(a) in subsection (1) after "insurer)", and in subsections (2) and (3) after "sections", insert "as applied by any transitional provisions made by order under section 426 of the 2000 Act";

(b) after subsection (3), insert—

"(3A) In relation to an annuity—

(a) purchased for a person pursuant to a structured settlement from an authorised insurer;

(b) purchased from such an insurer pursuant to any order of the kind referred to in subsection (2); or

(c) purchased from or otherwise provided by such an insurer pursuant to terms corresponding to those of a structured settlement contained in an agreement of the kind referred to in subsection (3),

any long term insurance provision in the Financial Services Compensation Scheme has effect in accordance with subsection (3B).

(3B) To the extent that any long term insurance provision limits the obligation of the scheme manager to make payments or secure continuity of insurance by reference to any amount less than the full amount of any liability, benefit or value due under a contract of long term insurance, the provision has effect as if the reference to that amount were a reference to the full amount of the liability, benefit or value.

(3C) In this section—

"the 2000 Act" means the Financial Services and Markets Act 2000;

"authorised insurer" means an authorised person within the meaning of the 2000 Act with permission under that Act to effect or carry out contracts of insurance as principal;

"Financial Services Compensation Scheme" means the Financial Services Compensation Scheme referred to in section 213(2) of the Financial Services and Markets Act 2000;

"long term insurance provision" means any provision in the Financial Services Compensation Scheme requiring the scheme manager to—

(a) pay compensation in respect of a liability of an authorised insurer in liquidation under a contract of long term insurance;

(b) secure continuity of insurance for parties to contracts of long term insurance in the event that an authorised insurer goes into liquidation; or

(c) secure that payments are made in respect of benefits falling due under contracts of long term insurance during any period while the scheme manager is seeking to make arrangements to secure continuity of insurance as mentioned in (b) above;

"scheme manager" means a body corporate established in accordance with section 212(1) of the 2000 Act.

(3D) In subsections (3B) and (3C) above—

(a) a reference to a contract of long term insurance must be read with—

(i) section 22 of the 2000 Act;

(ii) any relevant order under that section; and

(iii) Schedule 2 to that Act;

(b) an authorised insurer is in liquidation when—

(i) a resolution has been passed in accordance with the provisions of the Insolvency Act 1986 or (as the case may be) of the Insolvency (Northern Ireland) Order 1989 for the voluntary winding up of the insurer, otherwise than merely for the purpose of reconstruction of the insurer or of amalgamation with another insurer; or

(ii) without any such resolution having been passed beforehand, an order has been made for the winding up of the insurer by the court under that Act or that Order.";

(c) In subsection (5), for "This section applies", substitute "Subsections (1) to (3) of this section apply";

(d) After subsection (5), insert—

"(6) Subsections (3A) to (3D) of this section apply if the liquidation of the authorised insurer begins (within the meaning of subsection (3D)) after the coming into force of section 19 of the 2000 Act, irrespective of when the annuity was purchased or provided.".