

2004 No. 2737

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2004

Made - - - - - 16th November 2004

Laid before Parliament 16th November 2004

Coming into force - - 6th April 2005

Approved by Parliament

In the opinion of the Treasury, one of the effects of the following Order is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000(a)) will become a regulated activity;

The Treasury, in exercise of the powers conferred upon them by sections 22(1) and (5) and 428(3) of, and paragraph 25 of Schedule 2, to that Act hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities)(Amendment)(No.2) Order 2004, and comes into force on 6th April 2005.

(2) In this Order—

“the Act” means the Financial Services and Markets Act 2000;

“the principal Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b).

Amendment of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

2. The principal Order is amended as follows.

Providing basic advice on stakeholder products

3. After article 52A of the principal Order, insert—

(a) 2000 c. 8.

(b) S.I. 2001/544, as amended by S.I. 2001/3544, S.I. 2002/682, S.I. 2002/1310, S.I. 2002/1776, S.I. 2002/1777, S.I. 2003/1475, S.I.1476, S.I. 2003/2822 and S.I. 2004/1610.

“CHAPTER XIA

PROVIDING BASIC ADVICE ON STAKEHOLDER PRODUCTS

The activity

Providing basic advice on stakeholder products

52B.—(1) Providing basic advice to a retail consumer on a stakeholder product is a specified kind of activity.

- (2) For the purposes of paragraph (1), a person (“P”) provides basic advice when—
- (a) he asks a retail consumer questions to enable him to assess whether a stakeholder product is appropriate for that consumer; and
 - (b) relying on the information provided by the retail consumer P assesses that a stakeholder product is appropriate for the retail consumer and—
 - (i) describes that product to that consumer;
 - (ii) gives a recommendation of that product to that consumer; and
 - (c) the retail consumer has indicated to P that he has understood the description and the recommendation in sub-paragraph (b).

(3) In this article—

“retail consumer” means any person who is advised by P on the merits of opening or buying a stakeholder product in the course of a business carried on by P and who does not receive the advice in the course of a business carried on by him;

“stakeholder product” means—

- (a) an account which qualifies as a stakeholder child trust fund within the meaning given by the Child Trust Funds Regulations 2004(a);
- (b) rights under a relevant stakeholder pension scheme, and for these purposes—
 - “relevant stakeholder pension scheme” means a stakeholder pension scheme within the meaning given by section 1 of the Welfare Reform and Pensions Act 1999(b) and which is subject to lifestyling, and
 - “lifestyling” means the process, applied from a date at least five years before the member’s retirement date, or, in the case of a member who joins the scheme less than five years before his retirement date, immediately after he becomes a member, and continuing until the member’s retirement date, by which an investment strategy is adopted by the trustees or manager which aims progressively to minimise the variation or potential variation in the value of the member’s rights caused by market conditions from time to time, and the words “member” and “scheme” have the same meaning as they have in the Welfare Reform and Pensions Act 1999;
- (c) an investment of a kind specified in regulations made by the Treasury.”.

Transitional provisions

4.—(1) Part 4 of the Act shall apply in the case of persons who have permission at the date this Order comes into force to carry out the activity specified in article 53 of the principal Order and who wish to carry out the activity specified in article 52B of that Order as follows.

- (2) Where P is a person to whom paragraph (1) applies—
- (a) the procedures established under sections 44 and 45 in respect of application for permission shall not apply in respect of permission to carry out the article 52B activity,
 - (b) P shall be deemed to have such a permission if he has notified the Authority in writing of his wish to undertake the activity and the Authority has acknowledged receipt of P’s notification in writing from the date of the acknowledgement.

(a) S.I 2004/1450 as amended by S.I. 2004/2676
(b) 1999 c.30

Supplemental amendments of secondary legislation

5.—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(a) are amended as follows.

(2) In regulation 2(1) (descriptions of business for which appointed representatives are exempt) after sub-paragraph (b) insert—

“(ba) an activity of the kind specified by article 52B of that Order (providing basic advice on stakeholder products);”.

(3) The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001(b) is amended as follows.

(4) In article 4 after paragraph (e) insert—

“(ea) article 52B (providing basic advice on stakeholder products);”.

16th November 2004

Two of the Lords Commissioners of Her Majesty's Treasury

Jim Murphy
John Heppell

(a) S.I. 2001/1217 as amended by S.I. 2001/2508 and S.I. 2004/453.

(b) S.I. 2001/1227, S.I. 2001/3650, S.I. 2002/682, S.I. 2002/1777, S.I. 2003/1475 and S.I. 2003/1476.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) by inserting a new article 52B into the Order.

This provides that providing basic advice to a retail consumer on a stakeholder product is a regulated activity where the consumer is asked questions to assess the suitability of a stakeholder product for him and, if a stakeholder product is assessed to be appropriate for him, a description of that product is discussed with him, a recommendation is given to him and he certifies that he has understood the description and recommendation.

Transitional provision is made for existing Part 4 permissions in respect of the article 53 activity to have effect as from the date the order comes into force as permission also for the article 52B activity.

Supplemental provision is made to include the Article 52B activity in the list of activities for which appointed representatives do not need Part 4 permission and in the list of activities for which certain professions are not exempt from requiring permission.

Regulations will be made defining other stakeholder products in addition to the stakeholder child trust fund account and rights in a stakeholder pension scheme which are defined in the Child Trust Fund Act 2004 (c.6) and the Welfare Reform and Pensions Act 1999 (c.90) respectively.

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