
STATUTORY INSTRUMENTS

2009 No. 774

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act
2000 (Controllers) (Exemption) Order 2009

<i>Made</i>	- - - -	<i>24th March 2009</i>
<i>Laid before Parliament</i>		<i>24th March 2009</i>
<i>Coming into force</i>	- -	<i>15th April 2009</i>

The Treasury, in exercise of the powers conferred upon them by sections 192(a) and 428(3) of the Financial Services and Markets Act 2000 ^{M1}, make the following Order:

Marginal Citations

M1 2000 c.8. Section 192(a) was amended by regulation 4(a) of the [Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#).

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 and comes into force on 15th April 2009.

Interpretation

2. In this Order—

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

“authorised building society” means any UK authorised person ^{M2} which is a building society within the meaning of section 119 of the Building Societies Act 1986 (interpretation) ^{M3};

“relevant friendly society” means any UK authorised person which is a friendly society to which neither subsection (2) nor subsection (3) of section 37 of the Friendly Societies Act 1992 (restriction on combinations of business) ^{M4} applies; and

“relevant UK authorised person” means a UK authorised person other than—

(a) a credit institution authorised under the banking consolidation directive ^{M5};

(b) an investment firm authorised under the markets in financial instruments directive ^{M6};

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- (c) a management company as defined in [^{F1}Article 2.1(b)] of the UCITS directive, authorised under that directive ^{M7};
- (d) an undertaking pursuing the activity of direct insurance within the meaning of—
 - (i) Article 2 of the life assurance consolidation directive, authorised under that directive ^{M8}; or
 - (ii) Article 1 of the first non-life insurance directive, authorised under that directive ^{M9}; or
- (e) an undertaking pursuing the activity of reinsurance within the meaning of Article 2.1(a) of the reinsurance directive, authorised under that directive ^{M10}.

Textual Amendments

- F1** Words in art. 2 substituted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), reg. 1, **Sch. para. 8(2)**

Marginal Citations

- M2** “UK authorised person” is defined in section 191G of the Act (as inserted by [S.I. 2009/534](#), see [Regulation 3](#) and Schedule 1).
- M3** [1986 c.53](#). There are amendments to section 119 which are not relevant to this Order.
- M4** [1992 c.40](#). There are amendments to section 37 which are not relevant to this Order.
- M5** “Credit institution” is defined in section 191G of the Act (as inserted by [S.I. 2009/534](#), see [Regulation 3](#) and Schedule 1) and “banking consolidation directive” is defined in section 425(1) of and Schedule 3 to the Act (as amended by [S.I. 2003/2066](#) and [S.I. 2006/3221](#)).
- M6** “Investment firm” is defined in section 424A of the Act (as inserted by [S.I. 2006/2975](#) and amended by [S.I. 2007/126](#)) and “markets in financial instruments directive” is defined in section 425(1) of and Schedule 3 to the Act (as amended by [S.I. 2003/2066](#) and [S.I. 2006/2975](#)).
- M7** “UCITS directive” is defined in section 425(1) of and Schedule 3 to the Act (as amended by [S.I. 2003/2066](#)).
- M8** “Life assurance consolidation directive” is defined in section 425(1) of and Schedule 3 to the Act (as amended by [S.I. 2003/2066](#) and [S.I. 2004/3379](#)).
- M9** “First non-life insurance directive” is defined in section 425(1) of and Schedule 3 to the Act (as amended by [S.I. 2003/2066](#)).
- M10** “Reinsurance directive” is defined in section 425(1) of and Schedule 3 to the Act (as amended by [S.I. 2003/2066](#) and [S.I. 2007/3253](#)).

Matters affecting calculations under this Order

3. For the purposes of calculations under this Order—
- (a) the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert; and
 - (b) the provisions of section 184 of the Act (disregarded holdings) ^{M11} apply.

Marginal Citations

- M11** Section 184 of the Act was substituted [S.I. 2009/534](#) (see [Regulation 3](#) and Schedule 1).

General exemption in respect of certain non-directive firms

4.—(1) This article provides exemptions from the obligations in sections 178 and 191D of the Act [^{F2}(notifying the regulators)]^{M12} in relation to a person (“A”) who decides to acquire, increase, reduce or cease to have control over a relevant UK authorised person (“B”).

(2) This article does not apply where B is an authorised building society or a relevant friendly society.

(3) Where A decides to acquire or increase control over B, A is exempt from the obligation imposed by section 178 unless giving effect to the decision would result in A beginning to be in the position of holding—

- (a) 20% or more of the shares in B or in a parent undertaking of B (“P”);
- (b) 20% or more of the voting power in B or P; or
- (c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

(4) Where A decides to reduce or cease to have control over B, A is exempt from the obligation imposed by section 191D unless giving effect to the decision would result in A ceasing to be in the position of holding—

- (a) 20% or more of the shares in B or in a parent undertaking of B (“P”);
- (b) 20% or more of the voting power in B or P; or
- (c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

Textual Amendments

F2 Words in art. 4(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 166**

Marginal Citations

M12 Sections 178 was substituted and 191D inserted by [S.I. 2009/534](#) (see [Regulation 3](#) and Schedule 1).

Specific exemptions in respect of authorised building societies

5.—(1) This article provides exemptions from the obligations in sections 178 and 191D of the Act in relation to a person (“A”) who decides to acquire, increase, reduce or cease to have control over an authorised building society (“B”).

(2) Where A decides to acquire or increase control over B, A is exempt from the obligation imposed by section 178 unless giving effect to the decision would result in A beginning to be in the position of holding 20% or more of the capital of B.

(3) Where A decides to reduce or cease to have control over B, A is exempt from the obligation imposed by section 191D unless giving effect to the decision would result in A ceasing to be in the position of holding 20% or more of the capital of B.

(4) For the purposes of this article “capital”, in relation to an authorised building society, consists of the following—

- (a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 ^{M13} which have been issued by that society; and
- (b) the general reserves of that society.

Marginal Citations

M13 See the Building Societies (Deferred Shares) Order 1991([S.I. 1991/701](#)).

Specific exemptions in respect of friendly societies

6.—(1) This article provides exemptions from the obligations in sections 178 and 191D of the Act in relation to a person (“A”) who decides to acquire, increase, reduce or cease to have control over a relevant friendly society (“B”).

(2) Where A decides to acquire or increase control over B, A is exempt from the obligation imposed by section 178.

(3) Where A decides to reduce or cease to have control over B, A is exempt from the obligation imposed by section 191D.

[^{F3}Specific exemptions in respect of consumer credit

6A.—(1) This article provides exemptions from the obligations in sections 178 and 191D of the Act in relation to a person (“A”) who decides to acquire, increase, reduce or cease to have control over a UK authorised person (“B”) who—

- (a) carries on regulated activities which are relevant credit activities, and
- (b) does not carry on any other regulated activities.

(2) Where A decides to acquire or increase control over B, A is exempt from the obligation imposed by section 178 unless giving effect to the decision would result in A beginning to be in the position of holding—

- (a) 33% or more of the shares in B or in a parent undertaking of B (“P”),
- (b) 33% or more of the voting power in B or P, or
- (c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

(3) Where A decides to reduce or cease to have control over B, A is exempt from the obligation imposed by section 191D unless giving effect to the decision would result in A ceasing to be in the position of holding—

- (a) 33% or more of the shares in B or in a parent undertaking of B (“P”),
- (b) 33% or more of the voting power in B or P, or
- (c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

(4) For the purposes of this article, each of the following is a “relevant credit activity”—

- (a) an activity of the kind specified by article 36A of the Regulated Activities Order (credit broking) when carried on in the case specified in paragraph (6), (7) or (8),
- (b) an activity of the kind specified by article 39D of that Order (debt adjusting) when carried on—
 - (i) in the case specified in paragraph (6), by a person who also carries on an activity of the kind specified by sub-paragraph (a),
 - (ii) by a person who also carries on an activity of the kind specified by sub-paragraph (d) or (e), or
 - (iii) by a not-for-profit body,

- (c) an activity of the kind specified by article 39E of that Order (debt-counselling) when carried on—
 - (i) in the case specified in paragraph (6), by a person who also carries on an activity of the kind specified by sub-paragraph (a),
 - (ii) by a person who also carries on an activity of the kind specified by sub-paragraph (d) or (e), or
 - (iii) by a not-for-profit body,
 - (d) an activity of the kind specified by article 60B of that Order (regulated credit agreements) if—
 - (i) it is carried on by a supplier,
 - (ii) no charge (by way of interest or otherwise) is payable by the borrower in connection with the provision of credit under the regulated credit agreement, and
 - (iii) the regulated credit agreement is not a hire-purchase agreement or a conditional sale agreement,
 - (e) an activity of the kind specified by article 60N of that Order (regulated consumer hire agreements),
 - (f) an activity of the kind specified by article 89A of that Order (providing credit information services) where carried on by a person who also carries on an activity of the kind specified by any of sub-paragraphs (a) to (e), or
 - (g) an activity of the kind specified by article 64 of that Order (agreeing to carry on specified activities) so far as relevant to any activity of the kind specified by sub-paragraphs (a) to (f).
- (5) But an activity is not a relevant credit activity for the purposes of—
- (a) sub-paragraphs (a) to (e) of paragraph (4), and
 - (b) sub-paragraph (g) of that paragraph so far as it relates to activities of the kind specified by any of those sub-paragraphs,
- if it relates to an agreement under which the obligation of the borrower to repay is secured, or is to be secured, by a legal mortgage on land.
- (6) The case specified in this paragraph is where a supplier (other than a domestic premises supplier) carries on the activity for the purposes of, or in connection with, the sale of goods or supply of services by the supplier to a customer (who need not be the borrower under the credit agreement or the hirer under the consumer hire agreement).
- (7) The case specified in this paragraph is where the activity relates to a green deal plan.
- (8) The case specified in this paragraph is where activity relates to a consumer hire agreement where the good being hired is a vehicle.
- (9) For the purposes of this regulation—
- “borrower” includes—
- (a) any person providing a guarantee or indemnity under an agreement, and
 - (b) a person to whom the rights and duties of the borrower under an agreement or a person falling within sub-paragraph (a) have passed by assignment or operation of law;
- “conditional sale agreement” has the meaning given by article 60L of the Regulated Activities Order;
- “customer” means a person to whom a supplier sells goods or supplies services or agrees to do so;

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“domestic premises supplier” means a supplier who sells goods or supplies services to customers who are individuals while physically present in the dwelling of the customer or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer (though a supplier who does so on an occasional basis is not to be treated as a “domestic premises supplier”);

“green deal plan” has the meaning given by section 1 of the Energy Act 2011;

“hire-purchase agreement” has the meaning given by the Regulated Activities Order;

“not-for-profit body” means a body which, by virtue of its constitution or any enactment—

- (a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and
- (b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes);

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

“regulated credit agreement” has the meaning given by the Regulated Activities Order;

“supplier” means a person whose main business is to sell goods or supply services and not to carry on a regulated activity, other than an activity of the kind specified by article 60N of the Regulated Activities Order (regulated consumer hire agreements).]

Textual Amendments

- F3** [Art. 6A](#) inserted (26.7.2013 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **19**

Revocations

7. The following are revoked—
- (a) the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2001 ^{M14};
 - (b) the Financial Services and Markets Act 2000 (Controllers) (Exemption) (No. 2) Order 2001 ^{M15}; and
 - (c) regulation 21 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 ^{M16}.

Marginal Citations

- M14** [S.I. 2001/2638](#).
M15 [S.I. 2001/3338](#).
M16 [S.I. 2003/1476](#).

Dave Watts
Frank Roy
 Two of the Lords Commissioners of Her
 Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under sections 192(a) and 428(3) of the Financial Services and Markets Act 2000 to create exemptions from the obligations to notify the Financial Services Authority when acquiring, increasing, reducing or ceasing to have control over certain UK authorised persons (financial services firms).

Article 4 applies general exemptions in relation to UK authorised persons which are not subject to supervision under the relevant EC directives on financial services. It provides that the obligations to notify apply at the threshold of a 20% holding of shares or voting power (rather than at thresholds of 10%, 20%, 30% and 50%).

Article 5 applies specific exemptions in relation to building societies. This also provides that the obligations to notify apply at the threshold of a 20% holding. In the case of building societies, the relevant holding relates to 20% of the capital of the society.

Article 6 applies specific exemptions in relation to friendly societies.

Article 7 revokes provisions superseded by this Order.

An impact assessment of the effect of the changes made by this Order and the Financial Services and Markets Act 2000 (Controllers) Regulations 2009 (S.I. 2009/534) has been made. This may be obtained from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on the Treasury's website (www.hm-treasury.gov.uk) and is published along the Explanatory Memorandum for this instrument on the OPSI website (www.opsi.gov.uk).

Status:

Point in time view as at 26/07/2013.

Changes to legislation:

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