
STATUTORY INSTRUMENTS

2018 No. 1253

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 (Financial Promotion) Order 2005

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⁽¹⁾ or the European Communities (Lawyer’s Practice) Regulations 2000⁽²⁾;
 - (d) a registered foreign lawyer, as defined in section 89(9) of the Courts and Legal Services Act 1990⁽³⁾;
 - (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⁽⁴⁾.
- (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⁽⁵⁾;
 - (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⁽⁶⁾; 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.

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⁽⁷⁾ or the Charities and Trustee Investment (Scotland) Act 2005⁽⁸⁾; or

(1) S.I. 1978/1910.
 (2) S.I. 2000/1119.
 (3) 1990 c. 41.
 (4) 2010 asp 16.
 (5) 1980 c. 46.
 (6) S.S.I. 2000/121.
 (7) 2011 c. 25.

- (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(9)).

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—

- (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.

(8) 2005 asp 10.
(9) 1988 c. 52.

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⁽¹⁰⁾.

(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⁽¹¹⁾.

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.

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

⁽¹⁰⁾ 1992 c. 52.

⁽¹¹⁾ 1994 c. 30.

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⁽¹²⁾, the Privacy and Electronic Communications (EC Directive) Regulations 2003⁽¹³⁾, the General Data Protection Regulation (EU) of the European Parliament and of the Council 2016/679⁽¹⁴⁾ and the Consumer Protection from Unfair Trading Regulations 2008⁽¹⁵⁾.
- (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).”.

⁽¹²⁾ 2018 c. 12.

⁽¹³⁾ S.I. 2003/2426.

⁽¹⁴⁾ Regulation (EU) 2016/679.

⁽¹⁵⁾ S.I. 2008/1277.