

2022 No. 466

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2022

Made - - - - - *21st April 2022*

Laid before Parliament *22nd April 2022*

Coming into force in accordance with article 1

The Treasury, in exercise of the powers conferred by sections 22(1) and (5), 38(1), (3) and (4), 235(5), 426(2)(a) and 428(3) of, and paragraphs 25(1)(f) and (2) of Schedule 2 to, the Financial Services and Markets Act 2000(a), make the following Order.

PART 1

Introductory provisions

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2022.

(2) This article comes into force on 16th May 2022.

(3) Articles 2 to 8 come into force—

(a) on 16th May 2022 for the purposes of enabling the FCA—

(i) to make rules, and

(ii) to give guidance; and

(b) for all other purposes on 29th July 2022.

(4) In this Order, “the Act” means the Financial Services and Markets Act 2000.

(a) 2000 c. 8. Paragraph 25 of Schedule 2 was amended by section 8 of the Financial Services Act 2012 (c. 21) and section 27 of the Financial Guidance and Claims Act 2018 (c. 10).

PART 2

Amendments to secondary legislation made under the Act

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

2.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a) is amended as follows.

(2) In article 59 (funeral plan contracts), after paragraph (2A)(b), insert—

“(3) Where—

- (a) a person (“A”) has a funeral plan contract (“the contract”) with a customer under which A has given or assumed the undertaking referred to in paragraph (2)(b);
- (b) another person (“B”) intends to give an equivalent or substantially similar undertaking (“the proposed undertaking”) to that customer;
- (c) A and B intend that B’s proposed undertaking will replace A’s undertaking;
- (d) paragraph (4) or (5) applies; and
- (e) A and B have notified the FCA in writing—
 - (i) that they consider the conditions in sub-paragraphs (a) to (d) to be met; and
 - (ii) of a date, on or after 29th July 2022, from which A and B agree to regard B’s undertaking as having replaced A’s undertaking for the purpose of the operation of this article;

for the purposes of paragraph (1A), B is to be treated as if B were carrying out the contract as provider from the date specified in the notification to the FCA under sub-paragraph (e)(ii).

(4) This paragraph applies if—

- (a) A and B intend that, in order for B’s proposed undertaking to replace A’s undertaking under the contract, B should assume A’s undertaking by novation;
- (b) A has taken reasonable steps to secure the customer’s written consent to the proposed novation; and
- (c) the customer has neither provided that consent nor objected, in either case within a reasonable period.

(5) This paragraph applies if it appears to A and B that it would not be reasonably practicable for B to assume A’s undertaking referred to in paragraph (2)(b) by novation, assignment or operation of law, or for the conditions in paragraph (4) to be met, before the first day paragraph (1A) applies in relation to activities carried on by A in accordance with articles 1 and 1A of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021.

(6) If—

- (a) paragraph (3) applies; and
- (b) the proposed undertaking referred to in paragraph (3)(b) is given to the customer;

then that undertaking is to be treated as if it were a “funeral plan contract” for the purposes of paragraph (2).”.

(3) After article 60A (managers of UK UCITs and AIFs)(c), insert—

(a) S.I. 2001/544.

(b) Article 59(2A) was inserted by S.I. 2021/90.

(c) Article 60A was inserted by S.I. 2002/1776.

“Insolvency practitioners

60AA. Article 59(1A) is subject to the exclusion in article 72H (insolvency practitioners).”.

- (4) In article 72H (insolvency practitioners)(a), after paragraph (2)(s), insert—
“(sa) article 59(1A) (carrying out a funeral plan contract as provider);”.

The Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001

3. In the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001(b), for paragraph 18(c) of the Schedule (arrangements not amounting to a collective investment scheme), substitute—

“Funeral plan contracts

18. Arrangements do not amount to a collective investment scheme if they consist of, or are made pursuant to—

- (a) a funeral plan contract; or
- (b) a contract which would be a funeral plan contract but for the proviso to article 59(2) of the Regulated Activities Order.”.

The Financial Services and Markets Act 2000 (Exemption) Order 2001

4. In the Financial Services and Markets Act 2000 (Exemption) Order 2001(d), after paragraph 52(1) of the Schedule (official receivers etc)(e), insert—

- “(4) A person who—
- (a) acts as an official receiver within the meaning of section 399 of the Insolvency Act 1986(f) or article 2 of the Insolvency (Northern Ireland) Order 1989(g), and
 - (b) by virtue of that office, becomes the liquidator of a company in accordance with section 136(h) of the Insolvency Act 1986 or article 116 of the Insolvency (Northern Ireland) Order 1989,

is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 59(1A) of the Regulated Activities Order (carrying out a funeral plan contract as provider).”.

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021

5.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021(i) is amended as follows.

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- (a) Article 72H was inserted by S.I. 2014/366. There are amendments to article 72H which are not relevant to this Order.
 - (b) S.I. 2001/1062.
 - (c) Paragraph 18 of the Schedule was substituted by S.I. 2001/3650 and further substituted by S.I. 2021/90. The substitution made by S.I. 2021/90 is omitted by article 5 of this Order.
 - (d) S.I. 2001/1201.
 - (e) Paragraph 52 of the Schedule was inserted by S.I. 2013/1881. Sub-paragraphs (1)(a), (2) and (3) were revoked by S.I. 2014/366.
 - (f) 1986 c. 45. Section 399 was amended by paragraphs 1 and 14 of Schedule 23 to the Enterprise Act 2002 (c. 40), paragraphs 1 and 7 of Schedule 20 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) and paragraph 93 of Schedule 9 to the Crime and Courts Act (c. 22).
 - (g) S.I. 1989/2405 (N.I.19). The definition of “the official receiver” in article 2 was amended by S.I. 2005/1455 and by section 4(1) and (2) of the Debt Relief Act (Northern Ireland) 2010 (c. 16). There are other amendments to article 2 which are not relevant to this Order.
 - (h) Section 136 was amended by paragraphs 1 and 31 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c. 26).
 - (i) S.I. 2021/90.

(2) In article 1(3) (citation, commencement and interpretation), for “This Order” substitute “Subject to article 1A, this Order”.

(3) After article 1, insert—

“Transitional period

1A.—(1) Article 1(3) applies subject to this article.

(2) Where—

- (a) the FCA received a provider’s application before 1st March 2022; and
- (b) one of the following applies—
 - (i) that application has not been determined by the FCA in accordance with section 55V(a) of the Act before 29th July 2022;
 - (ii) that provider withdrew that application before 29th July 2022;
 - (iii) the FCA refused that application before 29th July 2022 by giving the provider a decision notice in accordance with section 55X(4)(f)(b) of the Act;

article 2(4)(a) applies only in relation to activities carried on by that provider on or after 31st October 2022.

(3) In this article—

“application” means an application to the FCA under section 55A(c) of the Act for permission to carry on either of the regulated activities specified in article 59 of the Regulated Activities Order;

“funeral plan contract” has the same meaning as in article 59(2) of the Regulated Activities Order;

“provider” means a person responsible for carrying out a funeral plan contract as provider.”.

(4) Omit article 3 (substituting paragraph 18 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001).

PART 3

Consequential amendments to the Act and supplemental provisions

Amendment of the Act

6.—(1) The Act is amended as follows.

(2) In section 165 (regulators’ power to require information: authorised persons etc.)(d)—

- (a) at the end of subsection (11)(c), omit “or”;
- (b) at the end of subsection (11)(d), insert—
 - “; or
- (e) involved in the administration of any trust arrangement relating to a funeral plan contract entered into or carried out by A.”;

(a) Section 55V was inserted by section 11 of the Financial Services Act 2012 and amended by S.I. 2013/1773, S.I. 2013/1797 and S.I. 2018/546.

(b) Section 55X was inserted by section 11 of the Financial Services Act 2012 and amended by S.I. 2018/135 and S.I. 2018/1149.

(c) Section 55A was inserted by section 11 of the Financial Services Act 2012 and amended by S.I. 2018/135 and S.I. 2018/1149.

(d) Section 165 was amended by section 41 of, and paragraph 1 of Schedule 12 to, the Financial Services Act 2012. There are other amendments which are not relevant to this Order.

- (c) after subsection (12)(a), insert—
- “(13) In this section, “funeral plan contract” has the same meaning as in article 59(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.”.
- (3) In section 166 (reports by skilled persons)(b)—
- (a) in subsection (10), for “or (12)”, substitute “, (12) or (13)”;
- (b) after subsection (12), insert—
- “(13) This subsection applies to a person who is or has at any relevant time been involved in the administration of any trust arrangement relating to a funeral plan contract entered into or carried out by an authorised person.
- (14) In this section, “funeral plan contract” has the same meaning as in article 59(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.”.
- (4) In section 213 (the compensation scheme)(c), after subsection (13), insert—
- “(14) In this Part, “funeral plan contract” has the same meaning as in article 59(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.”.
- (5) In section 215 (rights of the scheme in insolvency)(d)—
- (a) after subsection (2)(e), insert—
- “(2ZA) The compensation scheme may also make provision in relation to a relevant person, or to a successor of a description falling within section 213(1)(b), who enters into or carries out funeral plan contracts and is unable, or likely to be unable, to satisfy claims made against them—
- (a) about rights or obligations in connection with any trust or contract of insurance relating to the funeral plan contracts entered into or carried out by such a person or successor;
- (b) about the effect of a payment of compensation, or of a payment in connection with securing continuity of funeral plan contracts under the scheme, on rights and obligations arising out of matters in connection with which the payment was made;
- (c) giving the scheme manager a right of recovery in respect of the rights or obligations referred to in paragraphs (a) and (b).
- (2ZB) The amount required to be paid to the scheme manager under such a right of recovery conferred by the scheme may not exceed the amount paid or (in the opinion of the scheme manager) to be paid out by the scheme manager in connection with those funeral plan contracts.
- (2ZC) For the purposes of subsection (2ZA)(a), the provision that may be made includes—
- (a) provision in respect of rights or obligations that came into existence before or after the date on which that subsection comes into force;
- (b) provision to vary existing rights or obligations;
- (c) provision to create new rights in favour of, or obligations to, the scheme manager which override existing rights or obligations.”;
- (b) in subsection (2B)(f), for “subsection (2)” substitute “subsection (2A)”.
- (6) After section 215 (rights of the scheme in insolvency), insert—

(a) Section 165(12) was inserted by paragraph 4(3) of Schedule 9 to the Financial Services Act 2021 (c. 22).

(b) Section 166 was substituted by section 41 of, and paragraph 5 of Schedule 12 to, the Financial Services Act 2012 and amended by section 2 of, and Schedule 2 to, the Financial Services Act 2021.

(c) There are amendments to section 213 which are not relevant to this Order.

(d) The heading to section 215 was substituted by sections 169 and 175(1) and (4) of the Banking Act 2009 (c. 12).

(e) Section 215(2) was amended by sections 169 and 175(1) and (3) of the Banking Act 2009.

(f) Section 215(2B) was inserted by S.I. 2015/486.

“215A Continuity etc. of funeral plan contracts

(1) The compensation scheme may, in particular, include provision requiring or enabling the scheme manager to make arrangements for securing continuity of cover for—

- (a) plan holders;
- (b) plan holders of a specified class;
- (c) plan holders of funeral plan contracts of a specified class.

(2) In this section—

“plan holder” means—

- (a) a person who has a funeral plan contract with a relevant funeral plan provider, or
- (b) a person whose funeral is to be provided or secured under a funeral plan contract with a relevant funeral plan provider;

“relevant funeral plan provider” means a relevant person who—

- (a) has permission to enter into or carry out a funeral plan contract as provider, and
- (b) is unable, or likely to be unable, to satisfy claims made against them.

(3) The scheme may provide for the scheme manager to take such measures as appear to it to be appropriate—

- (a) for securing or facilitating the transfer of a relevant funeral plan provider’s business so far as it consists of the carrying out of funeral plan contracts, or of any part of that business, to another authorised person;
- (b) for securing the issue by another authorised person to the plan holders concerned of funeral plan contracts in substitution for their existing contracts.

(4) The scheme may also provide for the scheme manager to make, or secure the making of, payments to a plan holder or to any other person in connection with the provision of a funeral—

- (a) during any period while the scheme manager is seeking to make arrangements mentioned in subsection (1);
- (b) if it appears to the scheme manager that it is not reasonably practicable to make such arrangements.

(5) The scheme may also provide, in relation to the administration or winding up of a relevant funeral plan provider, for the scheme manager to make payments—

- (a) in specified circumstances,
- (b) but only if the scheme manager is satisfied that such payments are made in respect of any reasonable fees, costs, charges or other expenses reasonably and exclusively incurred for the purposes of complying with a request of the scheme manager under section 215B,

to, or on behalf of, the relevant funeral plan provider or to the administrator or liquidator of the funeral plan provider.

(6) A provision of the scheme made by virtue of section 213(3)(b) may include the power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—

- (a) taking measures as a result of any provision of the scheme made by virtue of subsection (3);
- (b) making, or securing the making of, payments as a result of any provision of the scheme made by virtue of subsection (4) or (5).

215B Scheme manager’s power to require assistance from liquidator etc. in relation to funeral plan contracts

(1) This section applies in relation to the administration or winding up of a relevant funeral plan provider.

(2) The administrator or liquidator of the relevant funeral plan provider must, at the request of the scheme manager, provide any assistance identified by the scheme manager as being necessary—

- (a) to enable the scheme manager to administer the compensation scheme in relation to funeral plan contracts, and
- (b) to enable the scheme manager to secure continuity of cover in relation to funeral plan contracts.

(3) “Relevant funeral plan provider” has the meaning given in section 215A.”.

(7) In section 219 (scheme manager’s power to require information)—

- (a) at the end of subsection (1A)(c)(a), omit “or”;
- (b) at the end of subsection (1A)(d), insert—
 - “, or
 - (e) on a person (“the Third Party”) whom the scheme manager thinks is or was at any relevant time involved in any contract of insurance or in the administration of any trust arrangement relating to a funeral plan contract entered into or carried out by a person (P)—
 - (i) against whom a claim has been made under the scheme, or
 - (ii) who is unable or likely to be unable to satisfy claims under the scheme against P.”;
- (c) in subsection (1B)(b), in the words before paragraph (a), for “and (d)” substitute “, (d) and (e)(ii).”.

(8) In section 223(3)(b) (management expenses)(c), after “section”, insert “215A(3) or (4),”.

PART 4

Rules and guidance

Funeral plans related rules and guidance made by the FCA

7. The requirements of section 138I (consultation by the FCA)(d) of the Act, in so far as they apply to a proposal by the FCA to make rules and guidance in relation to the amendments made by this Order, may be satisfied by things done (wholly or in part) before the date on which this Order comes into force for the purpose of enabling the FCA to make rules and give guidance.

PART 5

Review

Review

- 8.—(1) The Treasury must from time to time—
- (a) carry out a review of this Order, and
 - (b) publish a report setting out the conclusions of the review.

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- (a) Section 219(1A) was inserted by section 176(4) of the Banking Act 2009. There are other amendments to section 219 which are not relevant to this Order.
 - (b) Section 219(1B) was inserted by section 176(4) of the Banking Act 2009.
 - (c) Section 223(3) was amended by section 171(2) of the Banking Act 2009 and section 24 of, and paragraph 24 of Schedule 2 to, the Financial Services Act 2010 (c. 28).
 - (d) Section 138I was inserted by section 24(1) of the Financial Services Act 2012. There are amendments to section 138I which are not relevant to this Order.

(2) The first report must be published before the end of the period of five years beginning on 16th May 2022.

(3) Subsequent reports must be published at intervals not exceeding five years.

*Alan Mak
Rebecca Harris*

21st April 2022

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

The Order makes amendments to the regulatory framework for funeral plan contracts in consequence of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021 (S.I. 2021/90) (“the Regulated Activities Amendment Order 2021”) which has made it a regulated activity for funeral plan providers to enter into or carry out insurance or trust backed funeral plan contracts.

The Order makes certain amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the Regulated Activities Order”), the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (S.I. 2001/1062) (“the Collective Investment Schemes Order”), the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201) (“the Exemption Order”), the Regulated Activities Amendment Order 2021 and the Financial Services and Markets Act 2000 (“the Act”) (c. 8).

Part 2 makes amendments to certain secondary legislation made under the Act.

Article 2 makes amendments to the Regulated Activities Order. It amends article 59 to provide that, if certain conditions are met, a funeral plan provider who has agreed to give an undertaking to a customer, which would replace another provider's undertaking to that same customer under an existing funeral plan contract, is to be treated for the purposes of the regulated activity specified in article 59(1A) as if they were carrying out that existing contract as provider. It also amends article 72H to exclude the specified activity of carrying out of a funeral plan contract under article 59(1A) from the prohibition on carrying out a regulated activity under section 19 of the Act, when carried on by a person acting as an insolvency practitioner, and inserts a new article 60AA as a consequence of the amendment to article 72H.

Article 3 makes a minor amendment to paragraph 18 of Schedule 1 to the Collective Investment Schemes Order, which prescribes arrangements that do not amount to collective investment schemes for the purposes of section 235(5) of the Act.

Article 4 amends paragraph 52 of the Schedule to the Exemption Order to exclude the specified activity of carrying out of a funeral plan contract under article 59(1A) of the Regulated Activities Order from the prohibition on carrying out a regulated activity under section 19 of the Act, when carried on by a person acting as official receiver and liquidator.

Article 5 inserts a new article 1A in the Regulated Activities Amendment Order 2021 to provide that article 2(4)(a) of that Order, which inserts a new article 59(1A) in the Regulated Activities Order, does not apply until 31 October 2022 in relation to firms that meet certain conditions relating to the status of their application for authorisation to the Financial Conduct Authority (“the FCA”) as at the date on which article 2(4)(a) otherwise comes into force under article 1(3). Article 5 also makes minor consequential amendments to the Regulated Activities Amendment Order 2021.

Part 3 of the Order makes consequential amendments to Part 11 of the Act concerning regulators' powers to require information; and to Part 15 of the Act, which establishes the Financial Services Compensation Scheme (“the FSCS”), to provide the FCA with certain rule-making powers in relation to the FSCS.

Article 6 provides the FCA with the power to make rules allowing the FSCS to secure continuity of cover for holders of funeral plan contracts where a funeral plan provider fails, as an alternative to paying compensation, and to seek recoveries from a person other than the funeral plan provider in circumstances where the funeral plan provider is unable, or likely to be unable, to satisfy claims against it. Article 6 also makes provision requiring certain insolvency practitioners to provide any assistance identified by the FSCS as being necessary to enable to FSCS to administer the compensation scheme or to secure continuity of cover of funeral plan contracts and gives the FCA the power to make rules allowing the FSCS to meet reasonable expenses incurred by insolvency practitioners in connection with that requirement. Article 6 also makes certain other consequential amendments to the Act to ensure that the FCA's information-gathering powers extend to persons involved in the provision of funeral plan contracts other than the authorised funeral plan provider.

Part 4 of the Order relates to rules and guidance made by the FCA, to allow the FCA to take steps to prepare rules and guidance before the date given in article 1(3)(a).

Part 5 of the Order requires the Treasury to carry out a review of this Order at least every five years.

A de minimis impact assessment of the effect this Order will have on business and the voluntary sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.gov.uk and is published alongside the Order on www.legislation.gov.uk.

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£6.90

<http://www.legislation.gov.uk/id/uksi/2022/466>

ISBN 978-0-34-823455-8



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