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STATUTORY INSTRUMENTS

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**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<sup>(1)</sup>, 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.

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(1) [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(2) is amended as follows.

(2) In article 59 (funeral plan contracts), after paragraph (2A)(3), 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)(4), insert—

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(2) [S.I. 2001/544](#).

(3) Article 59(2A) was inserted by [S.I. 2021/90](#).

(4) 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)(5), 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(6), for paragraph 18(7) 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(8), after paragraph 52(1) of the Schedule (official receivers etc)(9), insert—

“(4) A person who—

- (a) acts as an official receiver within the meaning of section 399 of the Insolvency Act 1986(10) or article 2 of the Insolvency (Northern Ireland) Order 1989(11), and
- (b) by virtue of that office, becomes the liquidator of a company in accordance with section 136(12) 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).”.

(5) Article 72H was inserted by [S.I. 2014/366](#). There are amendments to article 72H which are not relevant to this Order.

(6) [S.I. 2001/1062](#).

(7) 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.

(8) [S.I. 2001/1201](#).

(9) 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](#).

(10) [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](#)).

(11) [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.

(12) Section 136 was amended by paragraphs 1 and 31 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 ([c. 26](#)).

## **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<sup>(13)</sup> is amended as follows.

(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<sup>(14)</sup> 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)<sup>(15)</sup> 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<sup>(16)</sup> 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.)<sup>(17)</sup>—

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<sup>(13)</sup> [S.I. 2021/90](#).

<sup>(14)</sup> 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](#).

<sup>(15)</sup> 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](#).

<sup>(16)</sup> 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](#).

<sup>(17)</sup> 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.

- (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.”;
- (c) after subsection (12)(18), 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)(19)—
  - (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)(20), 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)(21)—
  - (a) after subsection (2)(22), 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—

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

(19) 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.

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

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

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