

B Draft Regulated Activities Order

B.1 The following pages contain:

B.2 the draft statutory instrument to make amendments to the Regulated Activities Order and associated secondary legislation under FSMA; and

B.3 The draft statutory instrument to make an amendment to the By Way of Business Order

[2016] No.

FINANCIAL SERVICES AND MARKETS

**Financial Services and Markets Act 2000 (Regulated Activities)
(Amendment) (No. X) Order [2016]**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Treasury, in exercise of the powers conferred by sections 21(9) and (15), 22(1) and (5), 39(1) and 417(1) of, and paragraph 25(1)(a) of Schedule 2 to, the Financial Services and Markets Act 2000^(a), make the following Order:

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. X) Order [2016] and comes into force on [].

Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

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

(2) In article 3^(c) (interpretation), in the definition of “overseas person”, after “52,” insert “52D, 52E, 52F.”.

(3) After article 12 (breakdown insurance) insert—

12ZA. Regulated annuity buyback agreements

There is excluded from article 10 any activity of a kind specified in article 52E(1) (entering into regulated annuity buyback agreements).

12ZB. Facilitating annuity assignment or buyback agreements

(1) There is excluded from article 10—

- (a) any activity which consists of an annuity provider facilitating a regulated annuity assignment agreement or a regulated annuity buyback agreement; and
- (b) any activity which consists of an annuity provider facilitating an onward assignment arrangement or an onward buyback arrangement.

(2) In this article—

- (a) “annuity provider” has the same meaning as in article 52E(2)(d);
- (b) “onward assignment arrangement” means an arrangement which results in the purchaser under a regulated annuity assignment agreement selling to a third party the right to payments under the contract to pay an annuity on human life to which the regulated annuity assignment agreement relates;
- (c) “onward buyback arrangement” means an arrangement which results in the purchaser under a regulated annuity assignment agreement selling back to the annuity provider the right to payments under the contract to pay an annuity on human life to which the regulated annuity assignment agreement relates;
- (d) “purchaser” has the same meaning as in article 52D(2)(b);
- (e) “regulated annuity assignment agreement” has the same meaning as in article 52D(2)(a);
- (f) “regulated annuity buyback agreement” has the same meaning as in article 52E(2)(a);
- (g) for the purposes of sub-paragraphs (b) and (c), the right to payments under the contract to pay an annuity on human life to which the regulated annuity assignment agreement relates may include any ancillary rights relating to those payments under the contract;
- (h) an annuity provider will be taken to be “facilitating” a regulated annuity assignment agreement, a regulated annuity buyback agreement, an onward assignment arrangement or an onward buyback arrangement where—
 - (i) it is carrying on an activity specified in article 25 (arranging deals in investments) in relation to the contract to pay an annuity on human life to which the agreement or arrangement relates; and
 - (ii) it is the person responsible for making payments under the contract to pay an annuity on human life to which the agreement or arrangement relates.”.

(4) After article 19 (risk management) insert—

i19A. Regulated annuity assignment agreements

There is excluded from article 14 any activity of the kind specified in article 52D(1) (entering into regulated annuity assignment agreements).

19B. Regulated annuity buyback agreements

There is excluded from article 14 any activity of the kind specified in article 52E(1) (entering into regulated annuity buyback agreements).¹

(5) After article 23 (risk management) insert—

i23A. Regulated annuity broking

There is excluded from article 21 any activity of a kind specified in article 52F(1) (regulated annuity broking).¹

(6) After article 35B (providing pensions guidance under Part 20A of the Act) insert—

i35C. Regulated annuity broking

There is excluded from article 25 any activity of a kind specified in article 52F(1) (regulated annuity broking).¹

(7) After Chapter XIA insert—

CHAPTER XIB
ASSIGNMENT OR BUYBACK OF RIGHTS UNDER CONTRACTS TO
PAY ANNUITIES ON HUMAN LIFE

The activities

52D. Entering into regulated annuity assignment agreements

(1) Entering into a regulated annuity assignment agreement as a purchaser is a specified kind of activity.

(2) In this article—

- (a) “regulated annuity assignment agreement” means an annuity assignment agreement that is not an exempt assignment agreement;
- (b) “annuity assignment agreement” means an arrangement which results in an annuity holder selling to a person (the “purchaser”) the right to payments under a contract to pay an annuity on human life;
- (c) “annuity holder” means the person who for the time being is the legal holder of a policy which is a contract to pay an annuity on human life, and includes any person to whom, under the policy, a sum is due, a periodic payment is payable or any other benefit is to be provided, but does not include a person to whom such sums, payments or benefits are provided or are due as a result of a regulated annuity assignment agreement entered into by a previous annuity holder;
- (d) “exempt assignment agreement” means an annuity assignment agreement of the type specified in paragraph (3);
- (e) for the purposes of sub-paragraph (b), the right to payments under a contract to pay an annuity on human life may include any ancillary rights relating to those payments under the annuity.

(3) The annuities specified in this paragraph are: [Insert the annuities that are out of scope, as per DWP secondary legislation].

52E. Entering into regulated annuity buyback agreements

(1) Entering into a regulated annuity buyback agreement as an annuity provider is a specified kind of activity.

(2) In this article—

- (a) “regulated annuity buyback agreement” means an annuity buyback agreement that is not an exempt annuity buyback agreement;
- (b) “annuity buyback agreement” means an arrangement in which the annuity holder sells back to the annuity provider the right to payments under a contract to pay an annuity on human life;
- (c) “annuity holder” has the same meaning as in article 52D(2)(c);
- (d) “annuity provider” means the person who is obliged to make payments to an annuity holder under a contract to pay an annuity on human life;
- (e) “exempt annuity buyback agreement” means an annuity buyback agreement of the type specified in article 52D(3);
- (f) for the purposes of sub-paragraph (b), the right to payments under a contract to pay an annuity on human life may include any ancillary rights relating to those payments under the contract.

52F. Regulated annuity broking

(1) Regulated annuity broking is a specified kind of activity.

(2) In this article—

- (a) “regulated annuity broking” means any of—

- (i) entering into a regulated annuity assignment agreement or a regulated annuity buyback agreement as agent;
- (ii) making arrangements for another person (whether as principal or agent) to enter into a regulated annuity assignment agreement or a regulated annuity buyback agreement; or
- (iii) making arrangements with a view to another person who participates in the arrangements entering into a regulated annuity assignment agreement or a regulated annuity buyback agreement;

but does not include any activity of the kind specified in Article 39A (assisting in the administration and performance of a contract of insurance);

- (b) “regulated annuity assignment agreement” has the same meaning as in article 52D(2)(a);
- (c) “regulated annuity buyback agreement” has the same meaning as in article 52E(2)(a).

Exclusions

52G. Enabling parties to communicate

A person does not carry on an activity of the kind specified in article 52F(1) (regulated annuity broking) merely by providing means by which one party to a transaction (or potential transaction) is able to communicate with other such parties.

52H. Facilitating an assignment or buyback agreement

(1) An annuity provider does not carry on an activity of the kind specified in article 52F(1) (regulated annuity broking) by facilitating a regulated annuity assignment agreement or a regulated annuity buyback agreement.

(2) For the purposes of paragraph (1) an annuity provider will be “facilitating” a regulated annuity assignment agreement or a regulated annuity buyback agreement where—

- (a) it is carrying on an activity specified in article 25 (arranging deals in investments) in relation to the contract to pay an annuity on human life to which the agreement relates; and
- (b) it is the person responsible for making payments under the contract to pay an annuity on human life to which the agreement relates.

(3) In this article—

“annuity provider” has the same meaning as in article 52E(2)(d);

“regulated annuity assignment agreement” has the same meaning as in article 52D(2)(a);

“regulated annuity buyback agreement” has the same meaning as in article 52E(2)(a).

52I. Other exclusions

Article 52F is subject to the exclusions in articles 66 (trustees, nominees and personal representatives), 72A (information society services), 72C (provision of information on an incidental basis) and 72H (insolvency practitioners).¹

(8) In article 72^(a) (overseas persons), after paragraph (6) insert—

i(6A) An overseas person does not carry on an activity of the kind specified in article 52D (entering into regulated annuity assignment agreements) where either—

- (a) the annuity provider has a Part 4A permission to carry on an activity of the kind specified in article 10 (effecting and carrying out contracts of insurance); or

- (b) the agreement is entered into with or through a person who has a Part 4A permission to carry on an activity of the kind specified in article 52F (regulated annuity broking).

(6B) An overseas person does not carry on an activity of the kind specified in article 52F (regulated annuity broking) where either—

- (a) the annuity provider has a Part 4A permission to carry on an activity of the kind specified in article 10 (effecting and carrying out contracts of insurance); or
- (b) in relation to a regulated annuity assignment agreement, the purchaser has a Part 4A permission to carry on an activity of the kind specified in article 52D (entering into regulated annuity assignment agreements).

(6C) In paragraphs (6A) and (6B), “annuity provider” has the same meaning as in article 52E(2)(d).¹

Amendments to the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001

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

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

- i(bb) an activity of the kind specified by article 52E of that Order (entering into regulated annuity buyback agreements);
- (bc) an activity of the kind specified by article 52F of that Order (regulated annuity broking);¹

Amendments to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

4.—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005^(c) is amended as follows.

(2) In Part 1 of Schedule 1, after paragraph 10K (advising on a regulated sale and rent back agreement) insert—

i10L. Entering into a regulated annuity assignment agreement

Entering into a regulated annuity assignment agreement as a purchaser is a controlled activity.

10M. Regulated annuity broking

Regulated annuity broking is a controlled activity.

10N. Entering into a regulated annuity buyback agreement

Entering into a regulated annuity buyback agreement as an annuity provider is a controlled activity.”.

(3) In paragraph 28^(a) of Part II of Schedule 1, insert the following definitions in the appropriate places—

“annuity provider” has the same meaning as in article 52E(2)(d) of the Regulated Activities Order;

“purchaser” has the same meaning as in article 52D(2)(b) of the Regulated Activities Order;

“regulated annuity broking”, has the same meaning as in article 52F(2) of the Regulated Activities Order;

“regulated annuity buyback agreement” has the same meaning as in article 52E(2)(a) of the Regulated Activities Order;

“regulated annuity assignment agreement” has the same meaning as in article 52D(2)(a) of the Regulated Activities Order.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This instrument makes amendments to secondary legislation under the Financial Services and Markets Act 2000 (“FSMA”) (c.8) to facilitate the effective regulation of a secondary market in annuities.

Regulation 2 amends the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (S.I. 2001/516) (“RAO”) to create three new specified activities for the purposes of section 22 of FSMA. The type of conduct covered by the new specified activities was previously captured by existing specified activities in the RAO, so regulation 2(3) also creates exclusions from the existing specified activities to make clear that the relevant conduct falls solely under the new activities created for the secondary market in annuities. Regulation 2(2) amends the definition of “overseas person” so that it covers those who carry on the new activities but do not do so from a permanent place of business in the United Kingdom.

Regulation 3 amends the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (S.I. 2001/1217) to specify that appointed representatives are exempt from the new specified activities in articles 52E and 52F of the RAO (regulated annuity broking).

Regulation 4 amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) to specify that the new specified activities are controlled activities for the purposes of the financial promotions regime.

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.

DRAFT STATUTORY INSTRUMENTS

2016 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order [2016]

Made - - - - *****

Coming into force in accordance with article 1

A draft of this instrument was laid before and approved by a resolution of each House of Parliament in accordance with section 429(1) of the Financial Services and Markets Act 2000^(e).

The Treasury, in exercise of the powers conferred by section 419 of that Act, make the following Order:

Citation and commencement

5. This Order may be cited as the Financial Services and Markets Act (Carrying on Regulated Activities by Way of Business) (Amendment) Order [2016] and comes into force on the day after the day on which it is made.

Amendments to the Financial Services and Markets Act 2000 (Carrying on Regulated Activities By Way of Business) Order 2001

6.—(1) The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001^(b) is amended as follows.

(2) After article 3E (debt adjusting, debt counselling etc. by not-for-profit bodies) insert—

3F. Assigning rights under a contract for an annuity on human life

(1) A person who carries on an activity of the kind specified by article 52D of the Regulated Activities Order (entering into regulated annuity assignment agreements) is to be regarded as carrying on that activity by way of business if the activities being carried on consist of, or relate to, that activity.¹

Name
Name

Date

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This instrument makes amendments to secondary legislation under the Financial Services and Markets Act 2000 (c.8), to facilitate the effective regulation of a secondary market in annuities.

Regulation 2 amends the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (S.I. 2001/1177). It provides that a legal or natural person who carries on the activities specified in article 52D of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (S.I. 2001/516) (entering into regulated annuity assignment agreements) will be taken to be doing so by way of business.

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.