
DRAFT STATUTORY INSTRUMENTS

2018 No.

FINANCIAL SERVICES AND MARKETS

Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018

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

The Treasury make the following Order in exercise of the powers conferred by sections 21(5), (10B)(a) and (15), 22(1B)(b) and (5), 419B(c), 426 and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(d).

In the opinion of the Treasury, one of the effects of the following Order is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000) will become a regulated activity.

In accordance with section 429(1), (3) and (4) of, and paragraph 26(2) of Schedule 2 to, the Financial Services and Markets Act 2000, a draft of this Order has been laid and approved by a resolution of each House of Parliament.

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 2018.

(2) This Order comes into force the day after the day on which it is made to enable the FCA—

- (a) to make rules;
- (b) to give guidance; and

(a) Inserted by section XX of the Financial Guidance and Claims Act 2018 c.X.
(b) Inserted by section XX of the Financial Guidance and Claims Act 2018 c.X
(c) Inserted by section XX of the Financial Guidance and Claims Act 2018 c.X.
(d) 2000 c.8.

- (c) to impose requirements or give directions; and
- (d) to approve rules.

(3) This Order comes into force the day after the day on which it was made to enable the Financial Ombudsman Service to—

- (a) make rules; and
- (b) standard terms.

(4) This Order comes into force on **[DATE]** for all other purposes.

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

Carrying on a regulated claims management activity in Great Britain

2.—(1) A person is to be treated as carrying on a regulated claims management when the activity is carried on—

- (a) by a person who is—
 - (i) an individual ordinarily resident in Great Britain; or
 - (ii) a person, other than an individual, which is established under the law of England and Wales or Scotland; or
- (b) in respect of a claimant or potential claimant who is—
 - (i) an individual who is ordinarily resident in Great Britain; or
 - (ii) a person, other than an individual, which is established under the law of a part of Great Britain.

(2) For the purposes of this article “ordinarily resident” means those persons resident in Great Britain who satisfy the requirements of the Statutory Residence Test as set out in Schedule 45 to the Finance Act 2013(a) either—

- (a) at the time of the facts giving rise to the claim or potential claim; or
- (b) at the time when the claims management activity is carried out in respect of that claimant or potential claimant.

PART 2

Amendments to secondary legislation made under the Act

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

3. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b) is amended as follows.

4. After article 4(2A)(c) insert—

“(2B) The kinds of activity specified in Part 3B are specified for the purposes of section 22(1B)(d) of the Act (and accordingly any activity of one of those kinds, when carried out by way of business in Great Britain, is a regulated activity).”.

5. After Part 3A(e) insert—

(a) 2013 c.29.
(b) S.I. 2001/544.
(c) Article 4(2A) was inserted by S.I. 2013/1881.
(d) Section 22(1B) was inserted by the Financial Guidance and Claims Bill which is expected to receive Royal Assent in March 2018 c.X.
(e) Part 3A was inserted by S.I. 2013/1881.

“PART 3B

CLAIMS MANAGEMENT ACTIVITIES IN GREAT BRITAIN

The activities

89F. Specified kinds of claims management activity

(1) A claims management activity is a specified kind of activity when it is carried out in relation to the following activities specified in articles 89G to 89M in Great Britain.

(2) For the purposes of this Part—

- (a) “claimant” includes, in civil proceedings in Scotland, a pursuer;
- (b) “defendant” includes, in civil proceedings in Scotland, a defender;
- (c) “personal injury claim” means a claim within the meaning of the Civil Procedure Rules 1998^(a) in England and Wales and an action of damages for, or arising from, personal injuries within the meaning set out in section 8(7) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill^(b) in Scotland;
- (d) “housing disrepair claim” means a claim under section 11 of the Landlord and Tenant Act 1985^(c) or section 4 of the Defective Premises Act 1972^(d) in England and Wales or an application in respect of the repairing standard under section 22 of the Housing (Scotland) Act 2006^(e), or claims in relation to the disrepair of premises under a term of a tenancy agreement or lease or under the common law relating to nuisance, but does not include claims for statutory nuisance under section 82 of the Environmental Protection Act 1990^(f);
- (e) a claim for a “specified benefit” means a claim for one of the following benefits—
 - (i) industrial injuries benefit, within the meaning given by section 94 of the Social Security Contributions and Benefits Act 1992^(g);
 - (ii) any supplement or additional allowance, or increase or benefit or allowance to which a recipient of an industrial injuries benefit may be entitled under the Social Security Contributions and Benefits Act 1992 or any other Act;
 - (iii) a benefit under a scheme referred to in paragraph 2 or 4 of Schedule 8 to the Social Security Contribution and Benefits Act 1992; or
 - (iv) a benefit under the Pneumoconiosis etc. (Workers’ Compensation) Act 1979^(h).
- (f) “criminal injury claim” means a claim under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995⁽ⁱ⁾;
- (g) “employment related claim” includes a claim in relation to wages and salaries and other employment related payments and claims in relation to wrongful or unfair dismissal, redundancy, discrimination and harassment;
- (h) “investigating” means carrying out an investigation or commissioning the investigation of, the circumstances, merits or foundation of a claim with a view to the use of the results in pursuing the claim; and
- (i) “representing” means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made.

(a) S.I. 1998/3132.

(b) Bill introduced by the Scottish Government in 2017 which is expected to receive Royal Assent in 2018.

(c) 1985 c.70.

(d) 1972 c. 35.

(e) 2006 asp 1.

(f) 1990 c.43.

(g) 1992 c.4.

(h) 1979 c.41.

(i) 1995 c. 53.

89G. Seeking out, referrals and identification of claims or potential claims

(1) Each of the following is a specified kind of activity when carried on in relation to a claim of a kind specified in paragraph (2)—

- (a) seeking out persons who may have a claim (unless that activity is a controlled claims management activity as defined by section 21(10B)(a) (restrictions on financial promotion) of the Act; or
- (b) referring details of—
 - (i) a claim or potential claim; or
 - (ii) potential claimant to another person (including to a person having the right to conduct litigation); and
- (c) identifying—
 - (i) a potential claim; or
 - (ii) or potential claimant.

(2) The kinds of claim are—

- (a) a personal injury claim;
- (b) a financial services or product claim;
- (c) a housing disrepair claim;
- (d) a claim for a specified benefit;
- (e) a criminal injury claim; and
- (f) an employment related claim.

89H. Advice, investigation or representation of a personal injury claim

Each of the following activities is a specified kind of activity when carried on in relation to a personal injury claim—

- (a) advising a claimant or potential claimant;
- (b) investigating a claim; and
- (c) representing a claimant.

89I. Advice, investigation or representation of a financial services or financial product claim

Each of the following activities is a specified kind of activity when carried on in relation to a financial services or financial product claim—

- (a) advising a claimant or potential claimant;
- (b) investigating a claim; or
- (c) or representing a claimant.

89J. Advice, investigation or representation of a housing disrepair claim

Each of the following activities is a specified kind of activity when carried on in relation to a housing disrepair claim—

- (a) advising a claimant or potential claimant;
- (b) investigating a claim; or
- (c) representing a claimant.

89K. Advice, investigation or representation of a claim for a specified benefit

Each of the following activities is a specified kind of activity when carried on in relation to a claim for a specified benefit—

(a) Section 21(10B) was substituted by section X of the Financial Guidance and Claims Act 2018 c.X.

- (a) advising a claimant or potential claimant;
- (b) investigating a claim; or
- (c) representing a claimant.

89L. Advice, investigation or representation of a criminal injury claim

Each of the following activities is a specified kind of activity when carried on in relation to a criminal injury claim—

- (a) advising a claimant or potential claimant;
- (b) investigating a claim; or
- (c) representing a claimant.

89M. Advice, investigation or representation of an employment related claim

Each of the following activities is a specified kind of activity when carried on in relation to an employment related claim—

- (a) advising a claimant or potential claimant;
- (b) investigating a claim; or
- (c) representing a claimant.

Exclusions

89N. Claims management activity conducted by legal professionals

(1) There is excluded from articles 89G to 89M any activity which is carried on by—

- (a) a legal practitioner;
- (b) a firm, organisation or body corporate that provides the service through a legal practitioner; or
- (c) an individual who provides the service at the direction, 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) But an activity mentioned in paragraph (1) is only excluded from articles 89G to 89M if the legal practitioner concerned acts in the normal course of practice in a way permitted by the professional rules to which that legal practitioner is subject.

(3) In this article “legal practitioner” means—

- (a) a solicitor, barrister or advocate of any part of England and Wales or Scotland 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(a);
- (d) a registered foreign lawyer, as defined in section 89(9) of the Courts and Legal Services Act 1990(b) or the Solicitors (Scotland) Act 1980(c);
- (e) any other member of a legal profession, of a jurisdiction other than England and Wales or Scotland that is –
 - (i) recognised by the Law Society of England and Wales or the General Council of the Bar as a regulated legal profession; or

(a) S.I. 1978/1910.
 (b) 1990 c.41.
 (c) 1980 c.46.

- (ii) recognised by the Law Society of Scotland or the Faculty of Advocates as a regulated legal profession.

89O. Claims management activity conducted by charities or not-for-profit agencies

(1) There is excluded from articles 89G to 89M any activity carried on 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(a) or the Charities and Trustee Investment (Scotland) Act 2005(b); or
- (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 entitled 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.

89P. Claims management activity conducted by Independent Complaints Reviewers

There is excluded from articles 89G to 89M any activity carried on by a person appointed by a statutory or other public body as—

- (a) an Independent Complaints Reviewer; or
- (b) an Independent Case Examiner;

in the course of carrying out that individual’s duties under that appointment.

89Q. Claims management activity conducted by the Motor Insurers’ Bureau

There is excluded from articles 89G to 89M an activity carried on by the Motor Insurers’ Bureau as set out in section 95(2) (notification of refusal of insurance on grounds of health) of the Road Traffic Act 1988(c).

89R. Claims management activity conducted by the Medical Protection Society or medical defence unions

There is excluded from articles 89G to 89M any activity carried out by—

- (a) the Medical Protection Society for its members;
- (b) the Medical Defence Union for its members; or
- (c) the Medical and Dental Defence Union of Scotland Limited for its members.

89S. Independent trade unions

(1) There are excluded from articles 89G to 89M any activity carried out by –

(a) 2011 c.25.
(b) 2005 asp 10.
(c) 1988 c.52.

- (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(a).

(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 the 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 the 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 carrying on a regulated 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 on [DATE].

89T. Claims management activity conducted by students’ unions

(1) There is excluded from articles 89G to 89M any activity carried on 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(b).

89U. Claims management activity conducted by insurance intermediaries

There is excluded from articles 89G to 89M any regulated activity of the kind specified in article 21, 25, 39A, 53 or 64 of this Order carried on by a person who has permission to carry on that activity in relation to a contract of insurance.

89V. Certain providers of referrals

(1) There is excluded from articles 89G the activity of referring details of a potential claim or potential claimant to another person if—

- (a) the person who refers those details (“the introducer”) provides 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 referring those details, has complied with the provisions of the Data Protection Act(c), Privacy and Electronic Communications Regulations

(a) 1992 c. 52.

(b) 1994 c.30.

(c) This is intended to be the Data Protection Act 2018, should the Data Protection Bill receive Royal Assent by the time this Order is laid. If not, it will be a reference to the Data Protection Act 1998 c.29.

2003(a), General Data Protection Regulation(b) and the Consumer Protection from Unfair Trading Regulations 2008(c).

(2) Paragraph (1)(e) does not apply in the case of a referral to a legal practitioner or firm, organisation or body corporate that provides the service through legal practitioners.

(3) In this article “legal practitioner” has the meaning given by article 89N(3).

89X. Services in connection with counterclaims and claims against third parties

There is excluded from articles 89G to 89M any activity carried on in circumstances where—

- (a) a claim has been made by a person (“the claimant”) against another person (“the defendant”); and
- (b) the activity being carried on consists of the provision of a service to the defendant in connection with—
 - (i) the making of a counterclaim against the claimant arising out of the same set of facts as the claim referred to in sub-paragraph (a); or
 - (ii) the making of a claim against a third party (whether for contribution, as a subrogated claim, or otherwise) which is incidental to, or consequent on, the claim referred to in sub-paragraph (a).”

Exclusion

6. Articles 89G to 89M are subject to the exclusion in article 72A (information society services).

The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

7. The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(d) is amended as follows.

8. In article 2 (interpretation: general), in the appropriate place, insert—

““controlled claims management activity” has the meaning given by article 4(1A) and Schedule 1;”

9. After article 4(1) (definition of controlled activities and controlled investments) insert—

“(1A) For the purposes of section 21(10B)(e) of the Act a controlled claims management activity carried on in Great Britain is an activity of a kind specified in paragraph 11A of Schedule 1.”

10. In article 8 (interpretation: solicited and unsolicited real time communications) in paragraph (3), sub-paragraph (b) after “controlled activities or investments” insert “or controlled claims management activities”.

11. In paragraph (1) of article 11 (combination of different exemptions) in sub-paragraph (a) for “paragraphs 3 to 11” substitute “paragraphs 3 to 11A”.

12. In article 12 (communications to overseas recipients) insert—

“(8) The exemption in this article does not apply to communications in respect of controlled claims management activity.”

13. In paragraph (1) of article 13 (communications from customers and potential customers)—

- (a) in sub-paragraph (a)

(a) S.I. 2003/2426.

(b) Regulation (EU) 2016/679.

(c) S.I. 2008/1277.

(d) S.I. 2005/1529.

(e) Inserted by Financial Guidance and Claims Act 2018 c.

- (i) after “controlled investment” insert “or controlled claims management activity”;
 - (ii) omit “or”;
 - (b) in sub-paragraph (b) after “supplier” insert “; or”;
 - (c) insert “(c) in order that the customer can be supplied with services in respect of a controlled claims management activity by that supplier.”.
- 14.** In paragraph (2) of article 14 (follow up non-real time communications and solicited real-time communications) in sub-paragraph (d) after “and the same controlled investment” insert “or relates to the same controlled claims management activity falling within paragraph 11A of Schedule 1”.
- 15.** In paragraph (1A) of article 15 (introductions) after sub-paragraph (c) insert—
“(d) paragraph 11A of that Schedule.”.
- 16.** In article 16 (exempt persons) in paragraph (1) sub-paragraph (c) after “controlled activity” insert “or controlled claims management activity”.
- 17.** In article 17 (generic promotions)—
- (a) in sub-paragraph (b) after “that investment” insert “; or”;
 - (b) after sub-paragraph (b) insert—
“(c) does not identify (directly or indirectly) any person as a person who carries on a controlled claims management activity of the kind falling within paragraph 11A of Schedule 1.”.
- 18.** In article 19 (investment professionals)—
“(7) The exemption in this article does not apply to communications in respect of controlled claims management activity.”
- 19.** In article 20 (communications by journalists) in paragraph (3)—
- (a) in sub-paragraph (b) after “paragraph (4)” insert “or a controlled claims management activity of a kind falling within paragraph 11A of Schedule 1”;
 - (b) in sub-paragraph (c) after “controlled investment” insert “or a controlled claims management activity”.
- 20.** In article 27 (application of exemptions in Part 6) —
- (a) after sub-paragraph (b) insert—
“(c) a controlled claims management activity falling within paragraph 11A of Schedule 1;
 - (d) in this Part, controlled activity includes a controlled claims management activity, except where the exemption provides otherwise.”.
- 21.** In article 28 (one off non-real time communications and solicited real time communications) in paragraph (3) sub-paragraph (a) after “investment activity” insert “or controlled claims management activity”.
- 22.** In article 28A (one off unsolicited real time communications) insert—
“(4) The exemption in this article does not apply to communications in respect of controlled claims management activity.”
- 23.** In article 49 (high net worth companies, unincorporated associations etc) insert—
“(8) The exemption in this article does not apply to communications in respect of controlled claims management activity.”
- 24.** In article 55A (non-real time communication by members of professions)—
- (a) in paragraph (2) after “investment and consumer credit-related” insert “and claims management-related”;

- (b) in paragraph (3) after “investment and consumer credit-related” insert “and claims management-related”.

25. In article 61 (sale of goods and supply of services) in paragraph (1) in the definition of “supplier” after “paragraphs 3 to 7, 10BA and 10BB” insert “paragraph 11A”.

26. In article 73 (advice centres) in paragraph (2)—

- (a) omit “or” at the end of sub-paragraph (e);
- (b) insert “; or” at the end of sub-paragraph (f); and
- (c) after sub-paragraph (f) insert—
 - “(g) claims management activity within the meaning of paragraph 11A of Schedule 1.”.

27. After article 74 (revocation) insert—

“PART 7

EXEMPT COMMUNICATIONS: CONTROLLED CLAIMS MANAGEMENT ACTIVITIES

75. Application of exemptions in this Part

The exemptions in this Part apply to communications which relate to a controlled claims management activity of a type specified in paragraph 11A of Schedule 1.

76. Communications made by a legal practitioner

(1) The financial promotion restriction does not apply to a communication which relates to a controlled claims management activity falling within paragraph 11A of Schedule 1 made by—

- (a) a legal practitioner;
- (b) a firm, organisation or body corporate that provides the service through a legal practitioner; or
- (c) an individual who provides the service at the direction, 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 this article “legal practitioner” means—

- (a) a solicitor, barrister, or advocate of any part of England and Wales or Scotland 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^(a);
- (d) a registered foreign lawyer, as defined in section 89(9) of the Courts and Legal Services Act 1990^(b) or the Solicitors (Scotland) Act 1980^(c);
- (e) any other member of a legal profession, of a jurisdiction other than England and Wales or Scotland that is—
 - (i) recognised by the Law Society of England and Wales or the General Council of the Bar as a regulated legal profession; or

(a) S.I. 1978/1910.

(b) 1990 c.41.

(c) 1980 c.46.

- (ii) recognised by the Law Society of Scotland or the Faculty of Advocates as a regulated legal profession.

(3) A communication mentioned in paragraph (1) is only excluded from the financial promotion restriction if the legal practitioner concerned acts in the normal course of practice in a way permitted by the professional rules to which that legal practitioner is subject.

77. 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 falling within paragraph 11A of Schedule 1 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^(a) or the Charities and Trustee Investment (Scotland) Act 2005^(b); or
- (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 entitled 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.

78. Communications made by a person appointed by a statutory or other public body

(1) The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity falling within paragraph 11A of Schedule 1 made by a person appointed by a statutory or other public body as—

- (a) an Independent Complaints Reviewer; or
- (b) an Independent Case Examiner

when the communication is made in the course of carrying out the duties under that appointment.

79. Communications made by the Motor Insurers’ Bureau

The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity falling within paragraph 11A of Schedule 1 when that communication is made by the Motor Insurers’ Bureau in the course of carrying on activity as set out in section 95(2) (notification of refusal of insurance on grounds of health) of the Road Traffic Act 1988^(c).

80. Communications made by the Medical Protection Society or other medical defence union

(a) 2011 c.25.
(b) 2005 asp 10.
(c) 1988 c.52.

The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity falling within paragraph 11A of Schedule 1 carried out by—

- (a) the Medical Protection Society for its members;
- (b) the Medical Defence Union for its members; or
- (c) the Medical and Dental Defence Union of Scotland Limited for its members.

81. 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 falling within paragraph 11A of Schedule 1 carried out by—

- (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(a).

(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 the 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 on [DATE].

82. 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 falling within paragraph 11A of Schedule 1 carried out 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(b).

83. Communications made an insurance intermediary

The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity falling within paragraph 11A of Schedule 1 carried out 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 contracts of insurance.

84. Communications made by certain providers of referrals

(a) 1992 c.52.
(b) 1994 c.30.

(1) The financial promotion restriction does not apply to any communication which relates to the controlled activity falling within paragraph 11A(2) of 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”) provides 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 referring those details has complied with the provisions of the Data Protection Act(a), Privacy and Electronic Communications Regulations 2003(b), General Data Protection Regulation(c) and the Consumer Protection from Unfair Trading Regulations 2008(d).”.

28. After paragraph 11 of Schedule 1 (controlled activities) insert—

“PART 1A

CONTROLLED CLAIMS MANAGEMENT ACTIVITY

11A.—(1) A claims management activity carried out in Great Britain is a controlled claims management activity.

(2) For the purposes of this article, a claims management activity is one of the following activities:

- (a) Seeking out persons who may have a claim, referring details of a claim or potential claim or potential claimant to another person (including a person having the right to conduct litigation), or identifying a potential claim or potential claimant in respect of a—
 - (i) personal injury claim;
 - (ii) financial services or product claim;
 - (iii) housing disrepair claim;
 - (iv) a claim for a specified benefit;
 - (v) criminal injury claim; or
 - (vi) employment related claim.
- (b) Advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a personal injury claim;
- (c) Advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a claim for financial services or financial product;
- (d) Advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a housing disrepair claim;
- (e) Advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a claim for a specified benefit;

(a) This is intended to be the Data Protection Act 2018, should the Data Protection Bill receive Royal Assent by the time this Order is laid. If not, it will be a reference to the Data Protection Act 1998 c.29.

(b) S.I. 2003/2426.

(c) Regulation (EU) 2016/679.

(d) S.I. 2008/1529.

- (f) Advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a criminal injury claim; or
 - (g) Advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of an employment related claim;
- (3) In this paragraph—
- (a) “personal injury claim” means a claim within the meaning of the Civil Procedure Rules 1998^(a) in England and Wales and an action of damages for, or arising from, personal injuries within the meaning set out in section 8(7) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill ^(b) in Scotland;
 - (b) “housing disrepair claim” means a claim under section 11 of the Landlord and Tenant Act 1985^(c) or section 4 of the Defective Premises Act 1972^(d) in England and Wales or an application in respect of the repairing standard under section 22 of the Housing (Scotland) Act 2006^(e), or claims in relation to the disrepair of premises under a term of a tenancy agreement or lease or under the common law relating to nuisance but does not include claims for statutory nuisance under section 82 of the Environmental Protection Act 1990^(f);
 - (c) “a claim for a specified benefit” means a claim for one of the following benefits—
 - (i) industrial injuries benefit, within the meaning given by section 94 of the Social Security Contributions and Benefits Act 1992^(g);
 - (ii) any supplement or additional allowance, or increase or benefit or allowance to which a recipient of an industrial injuries benefit may be entitled under the Social Security Contributions and Benefits Act 1992 or any other Act;
 - (iii) a benefit under a scheme referred to in paragraph 2 or 4 of Schedule 8 to the Social Security Contributions and Benefits Act 1992; or
 - (iv) a benefit under the Pneumoconiosis etc. (Workers’ Compensation) Act 1979^(h)
 - (d) “criminal injury claim” means a claim under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995⁽ⁱ⁾;
 - (e) “employment related claim” includes a claim in relation to wages and salaries and other employment related payments and claims in relation to wrongful or unfair dismissal, redundancy, discrimination and harassment;
 - (f) “investigating” means carrying out an investigation or commissioning the investigation of, the circumstances, merits or foundation of a claim with a view to the use of the results in pursuing the claim; and
 - (g) “representing” means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made.”

(a) S.I. 1998/3132.
 (b) Bill of the Scottish Government 2017.
 (c) 1985 c.70.
 (d) 1972 c.35.
 (e) 2006 asp 1.
 (f) 1990 c.43.
 (g) 1992 c.4.
 (h) 1979 c. 41.
 (i) 1995 c.53.

PART 3

Rules and guidance

Claims management related rules and guidance made by the FCA

29.—(1) This article applies in respect of rules made or guidance given by the FCA which relate to regulated claims management activity or the carrying on of such activity.

(2) Section 1B(4) of the Act (competition duty) does not apply to the extent that –

- (a) the claims management related rules are the same as, or substantially the same as, or have the same, or substantially the same, effect as any of the Compensation Act 2006(a) provisions in force immediately before the Compensation Act 2006 was repealed; or
- (b) the claims management related guidance is the same as, or substantially the same as, or which has the same or substantially the same, effect as any of the Compensation Act 2006 provisions in force immediately before the Compensation Act 2006 was repealed.

(3) Any requirement imposed on the FCA—

- (a) to publish a draft of rules, guidance or any other instrument or document and invite representations about it; or
- (b) to consult particular persons

may be satisfied by things done by the FCA before the date on which this article comes into force.

(4) The Compensation Act 2006 provisions are to be treated as if they had effect in Scotland for the purposes of—

- (a) paragraph (3); and
- (b) paragraph 7 of Schedule 5 to the Financial Guidance and Claims Act 2018

(5) For the purposes of this article, the “Compensation Act 2006 provisions” are—

- (a) the Compensation Act 2006; and
- (b) any subordinate legislation or rules made or guidance or codes of practice issued under that Act in force immediately before the Compensation Act 2006 was repealed.

(6) Section 138I of the Act applies for the purpose of the FCA’s cost benefit analysis in respect of the regulation of claims management activity as if for subsections (7) and (8) there were substituted –

“(7) “Cost benefit analysis” means—

- (a) an analysis of the difference between the costs and benefits of the Compensation Act provisions and the costs and benefits that will arise in the application to England and Wales and Scotland –
 - (i) if the proposed rules are made, or
 - (ii) if subsection (5) applies, from the rules that have been made, and
- (b) subject to subsection (8), an estimate of that difference.

(7A) For the purposes of subsection (7), the “Compensation Act provisions” are—

- (a) the Compensation Act 2006;
- (b) any subordinate legislation or rules made, or guidance or codes of practice issued, under that Act.

(7B) For the purpose of subsection (7), the Compensation Act provisions are to be treated as if they had effect in Scotland.

(8) If, in the opinion of the FCA—

- (a) the difference referred to in subsection (7) cannot reasonably be estimated; or

(a) 2006 c.293.

(b) it is not reasonably practicable to produce an estimate,
the cost benefit analysis need not estimate the difference but include a statement of the FCA’s opinion and an explanation of it.”.

(7) The requirements of section 138I of the Act (as modified above) in so far as they apply to a proposal to make rules to which this article applies may be satisfied by things done (wholly or in part) before the date on which this article comes into force.

(8) It is immaterial for the purposes of paragraph (4) if, when the things were done, they were not compatible with section 138I of the Act.

PART 4

Miscellaneous

Meaning of “the UK financial system”

30.—(1) For the purposes of section 1D(a) (the integrity objective) and section 1I(b) (meaning of “the UK financial system”) of the Act, regulated claims management activity in Great Britain is to be treated as part of the UK financial system.

(2) For the purposes of paragraph (1) “regulated claims management activity in Great Britain” has the meaning given by section 417(1)(c) of the Act.

Definition of “consumer”

31.—(1) For the purposes of the provisions listed in paragraph (3), “consumers” includes persons—

- (a) who before [DATE] received services from persons authorised, or ought to have been authorised by any person exercising functions under section 5 of the Compensation Act 2006;
- (b) who have rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons;
- (c) who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them; or
- (d) in respect of whom a person carries on an activity specified in Article 89G of the RAO or would do so but for an exclusion provided for by the RAO or under the Act.

(2) For the purposes of paragraph (1) —

- (a) a “relevant claims management service” is a service within the meaning of section 417 of the Act;
- (b) “legal practitioner” has the meaning within article 89N(3) of the Regulated Activities Order 2001.

(3) The provisions are—

- (a) section 1G of the Act(d) (meaning of consumer);
- (b) section 1Q of the Act(e) (Consumer Panel);
- (c) section 391(6)(b) of the Act(f) (publication);
- (d) section 404E of the Act(g) (meaning of “consumers”);

(a) Section 1B was substituted by the Financial Services Act 2012 c.21.

(b) Section 1I was substituted by the Financial Services Act 2012 c.21.

(c) Section 417(1) was inserted by the Financial Guidance and Claims Act 2018 c.

(d) Section 1G was inserted by the Financial Services Act 2012, section 6.

(e) Section 1Q was inserted by the Financial Services Act 2012.

(f) Section 391(6) was substituted by the Financial Services Act 2012, Schedule 9, paragraph 30(6).

(g) Section 404E was substituted by the by the Financial Services Act 2010 c.28.

- (e) section 425A of the Act^(a) (consumers: regulated activities etc carried on by authorised persons); and
 - (f) section 68 of the Financial Services Act 2012^(b) (cases in which Treasury may arrange independent inquiries).
- (4) For the purposes of this article—
- (a) where a person provided a service mentioned in paragraph (1) as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used, or may use the service; and
 - (b) a person who deals, or dealt, with another person (“A”) in the course of A providing a service mentioned in paragraph (1) is to be treated as using, or having used, the service.

Review

- 32.**—(1) The Treasury must, from time to time—
- (a) carry out a review of articles 2 to 30 of this Order; and
 - (b) publish a report setting out the conclusions of the review.
- (2) The first report under this regulation must be published on or before **[DATE]**.
- (3) Subsequent reports must be published at intervals not exceeding five years.

Signatory text

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

EXPLANATORY NOTE
(This note is not part of the Order)

Explanatory note text to be inserted here.

(a) Section 425A was inserted by the Financial Services Act 2010, section 24(1).
(b) 2012 c.21.