

Statutory Document No. 2017/0344



Financial Services Act 2008

REGULATED ACTIVITIES (AMENDMENT) ORDER 2017

Approved by Tynwald:

Coming into Operation:

1 January 2018

The Treasury makes the following Order under section 3(5) of the Financial Services Act 2008 after carrying out the consultations required by section 44(7) of that Act.

1 Title

This Order is the Regulated Activities (Amendment) Order 2017.

2 Commencement

If approved by Tynwald, this Order comes into operation on 1 January 2018.

3 Amendments to the Regulated Activities Order 2011

- (1) The Regulated Activities Order 2011¹ is amended as follows.
- (2) In article 4A (Saving for activities previously unregulated) —
 - (a) in paragraph (1)(a) for “Regulated Activities (Amendment) Order 2016” substitute —
“Regulated Activities (Amendment) Order 2017”; and
 - (b) in paragraph (2) for “1 November 2016” substitute —
“1 May 2018”.
- (3) In article 4A (Consequential provision in relation to Class 1 – Deposit Taking) for “4A” substitute “4B”.

4 Amendments to Schedule 1

- (1) Schedule 1 to the Regulated Activities Order 2011 is amended as follows.

¹ SD 884/11 as amended by SD 0373/2013, SD 2016/0099 and SD 2016/0188.

- (2) In Class 1 – Deposit Taking (Interpretation) –
- (a) at the beginning of the paragraph, omit “(1)”; and
 - (b) at the end of sub-paragraph (c) for “;” substitute **“.”**.
- (3) In Class 3 – Services to Collective Investment Schemes –
- (a) omit the exclusion set out in relation to paragraph (11) and insert **“The exclusion in relation to paragraph (11) has been removed.”**;
 - (b) under “Interpretation” –
 - (i) for “(1) For the purpose of Class 3 – (a) the following terms have the same meanings as in the Collective Investment Schemes Act 2008 –” substitute –
“For the purpose of Class 3 the following terms have the same meanings as in the Collective Investment Schemes Act 2008 –; and
 - (ii) omit paragraph (2).
- (4) In Class 8 – Money Transmission Services (Exclusions) –
- (a) for sub-paragraph 8(h)(b) substitute –
“payment transactions between the payer and the payee through a commercial agent authorised in an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of either the payer or the payee but not both the payer and the payee;”;
 - (b) for sub-paragraph 8(h)(e), for “payment service user” substitute –
“payer;”;
 - (c) for sub-paragraph 8(h)(f) substitute –
“cash-to-cash currency exchange operations where the funds are not held on a payment account;”;
 - (d) for sub-paragraph 8(h)(j)(iv) to (v) substitute –
 - “(iv) information technology;**
 - (v) communication network provision; and**
 - (vi) the provision and maintenance of terminals and devices used for payment services;”**;
 - (e) for sub-paragraph 8(h)(k) substitute –
“services based on specific payment instruments that can be used only in a limited way and –”

- (i) allow the holder to acquire goods or services only in the issuer's premises;
- (ii) allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer;
- (iii) may be used only to acquire a very limited range of goods or services; or
- (iv) are valid only in the Isle of Man or in a single jurisdiction, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer,

and for these purposes the "issuer" is the person who issues the instrument in question; **22**;

- (f) for sub-paragraph 8(h)(l) after "payment transactions" insert —
23, initiated through a provider of electronic communications networks or services, where such initiation is in addition to electronic communications services for a subscriber to the network or service **22**;
- (g) for sub-paragraph 8(h)(n) after "payment transactions" insert —
23 and related services **22**;
- (h) for sub-paragraph 8(h)(o) substitute —
23 cash withdrawals provided through automated teller machines, where the provider —
 - (i) is acting on behalf of one or more card issuers;
 - (ii) is not party to the framework contract with the customer withdrawing money from a payment account; and
 - (iii) does not conduct any other payment service. **22**;
- (i) for sub-paragraph 8(i)(a) substitute —
23(a) monetary value stored on instruments that can be used only in a limited way to acquire goods or services —
 - (i) in or on the electronic money issuer's premises; or
 - (ii) either within a limited network of service providers which have direct commercial agreements with the electronic money issuer;

- (iii) may be used only for a limited range of goods or services;
or
- (iv) are valid only in the Isle of Man or in a single jurisdiction, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer; **22**;

5 Amendments to Schedule 2 – Part 1 – Definitions

- (1) Part 1 of Schedule 2 to the Regulated Activities Order 2011 is amended as follows.
- (2) For the definition of “close relative”, substitute —
66 in relation to an individual, means a child, step-child, parent, step-parent, brother, sister, step-brother, step-sister or spouse of that individual; **22**.
- (3) For the definition of “investment” —
 - (a) in sub-paragraph (f), omit “including a share in, or security of, an open-ended investment company”;
 - (b) after sub-paragraph (j) insert —
66(ja) in relation to activities falling within paragraph (6) or (7) of Class 2 only, rights under a personal pension scheme; **22**.
- (4) After the definition of “nominee company”, insert —
66 occupational pension scheme has the meaning given in section 1 of the Pension Schemes Act 1993 (of Parliament) as it has effect in the Isle of Man; **22**.
- (5) Omit the definition of “open-ended investment company”.
- (6) For the definition of “payment transaction”, after “initiated by the payer or payee,” insert —
66 or on behalf of the payer, **22**.
- (7) After the definition of “person”, insert —
66 personal pension scheme means a scheme or arrangement which is not an occupational pension scheme and which is comprised of one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people —
 - (a) on retirement;
 - (b) on having reached a particular age; or

- (c) on termination of service in an employment; **22**.

MADE

A.L. CANNAN
Minister for the Treasury

FINAL DRAFT

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

This Order amends the Regulated Activities Order 2011 as follows —

- (a) to remove the exclusion for a person carrying on Class 3(11) regulated activity (acting as a manager, administrator, trustee, fiduciary custodian or custodian to an exempt or exempt-type collective investment scheme) where the activity is in relation to no more than one exempt or exempt-type collective investment scheme; as well as the related interpretation. This exclusion has been removed in place of an exemption which is to be included in the Financial Services (Exemptions) (Miscellaneous) (Amendment) Regulations 2017;
- (b) to amend a number of exclusions contained in Schedule 1 relating to Class 8 (Money Transmission Services) which reflect changes as a result of the implementation of the Payment Services Directive 2; and
- (c) to amend certain definitions in Part 1 of Schedule 2 to the Financial Services Act 2008, including extending the definition of “investment” to include personal pensions so that rights under a personal pension scheme become investments falling within the scope of regulation under that Act in connection with the provision of financial advice under Class 2(6) and (7). It also provides transitional arrangements for those persons advising on rights under a personal pension to be able to continue providing such advice provided that an application for a licence is made prior to 1 May 2018.