

*Status: Point in time view as at 01/08/1991.*

*Changes to legislation: Financial Services Act 1986 (Repealed) is up to date with all changes known to be in force on or before 26 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Sections 1 and 2.

#### INVESTMENTS AND INVESTMENT BUSINESS

##### Modifications etc. (not altering text)

- C1** Sch. 1 amended by S.I. 1988/496, **art. 4**  
**C2** Sch. 1 amended by S.I. 1988/803, **art. 5**

### PART I

#### INVESTMENTS

##### *Shares etc.*

- 1 Shares and stock in the share capital of a company.

*Note.* In this paragraph “company” includes any body corporate and also any unincorporated body constituted under the law of a country or territory outside the United Kingdom [<sup>F1</sup>but does not, except in relation to any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986, include a building society incorporated under the law of, or of any part of, the United Kingdom, nor does it include an open-ended investment company or any body incorporated under the law of, or of any part of, the United Kingdom relating to industrial and provident societies or credit unions.].

##### Textual Amendments

- F1** Words in Sch. 1 para. 1 Note substituted by S.I. 1991/1104, **art. 2**

##### Modifications etc. (not altering text)

- C3** Sch. 1 para. 1 applied (6.4.1997) by 1995 c. 26, s. 40(2); S.I. 1997/664, art. 2(3), **Sch. Pt. II**  
Sch. 1 para. 1 applied (with modifications) (19.6.1995) by S.I. 1995/1537, **reg. 3(1)(b)(2)(a)-(d)**  
Sch. 1 para. 1 modified (1.1.1996) by S.I. 1995/3271, **art. 3**

##### *Debentures*

- 2 Debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness, not being instruments falling within paragraph 3 below.

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*Note.* This paragraph shall not be construed as applying—

- (a) to any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
- (b) to a cheque or other bill of exchange, a banker's draft or a letter of credit; or
- (c) to a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, a heritable security or an insurance policy.

**Modifications etc. (not altering text)**

- C4 Sch. 1 para. 2 applied (with modifications) (19.6.1995) by S.I. 1995/1537, **reg. 3(1)(b)(2)(a)-(d)**  
 Sch. 1 para. 2 applied (6.4.1997) by 1995 c. 26, **s. 40(2)**; S.I. 1997/664, art. 2(3), **Sch. Pt. II**
- C5 Sch. 1 para. 2 modified (1.1.1996) by S.I. 1995/3271, **art. 4**

*Government and public securities*

- 3 Loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority.

*Notes*

- (1) In this paragraph “government, local authority or public authority” means—
  - (a) the government of the United Kingdom, of Northern Ireland, or of any country or territory outside the United Kingdom;
  - (b) a local authority in the United Kingdom or elsewhere;
  - (c) any international organisation the members of which include the United Kingdom or another member State.
- (2) The Note to paragraph 2 above shall, so far as applicable, apply also to this paragraph.
- [<sup>F2</sup>(3) This paragraph does not apply to any instrument creating or acknowledging indebtedness in respect of money received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or in respect of money raised under the National Loans Act 1968 under the auspices of the Director of Savings or in respect of money treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972.]

**Textual Amendments**

- F2 Note added by S.I. 1990/349, **art. 2**

**Modifications etc. (not altering text)**

- C6 Sch. 1 para. 3: definitions in Note (1) of "government, local authority or public authority" applied by S.I. 1991/489, **art. 2(2)**

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### *Instruments entitling to shares or securities*

- 4 Warrants or other instruments entitling the holder to subscribe for investments falling within paragraph 1, 2 or 3 above.

#### *Notes*

- (1) It is immaterial whether the investments are for the time being in existence or identifiable.
- (2) An investment falling within this paragraph shall not be regarded as falling within paragraph 7, 8 or 9 below.

#### **Modifications etc. (not altering text)**

- C7 Sch. 1 para. 4 applied (with modifications) (19.6.1995) by S.I. 1995/1537, reg. 3(1)(b)(2)(a)-(d)  
Sch. 1 para. 4 applied (6.4.1997) by 1995 c. 26, s. 40(2); S.I. 1997/664, art. 2(3), Sch. Pt. II

### *Certificates representing securities*

- 5 Certificates or other instruments which confer—
- (a) property rights in respect of any investment falling within paragraph 1, 2, 3 or 4 above;
  - (b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or
  - (c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription.

*Note.* This paragraph does not apply to any instrument which confers rights in respect of two or more investments issued by different persons or in respect of two or more different investments falling within paragraph 3 above and issued by the same person.

#### **Modifications etc. (not altering text)**

- C8 Sch. 1 para. 5 applied (with modifications) (19.6.1995) by S.I. 1995/1537, reg. 3(1)(b)(2)(a)-(d)  
Sch. 1 para. 5 applied (6.4.1997) by 1995 c. 26, s. 40(2); S.I. 1997/664, art. 2(3), Sch. Pt. II

### *Units in collective investment scheme*

- 6 Units in a collective investment scheme, including shares in or securities of an open-ended investment company.

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### *Options*

- 7 Options to acquire or dispose of—
- (a) an investment falling within any other paragraph of this Part of this Schedule;
  - (b) currency of the United Kingdom or of any other country or territory;
  - (c) gold [<sup>F3</sup>, palladium, platinum] or silver; or
  - (d) an option to acquire or dispose of an investment falling within this paragraph by virtue of (a), (b) or (c) above.

#### **Textual Amendments**

**F3** Words inserted by [S.I. 1988/496, art. 2](#)

### *Futures*

- 8 Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made.

#### *Notes*

- (1) This paragraph does not apply if the contract is made for commercial and not investment purposes.
- (2) A contract shall be regarded as made for investment purposes if it is made or traded on a recognised investment exchange or made otherwise than on a recognised investment exchange but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.
- (3) A contract not falling within Note (2) above shall be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days.
- (4) The following are indications that any other contract is made for a commercial purpose and the absence of any of them is an indication that it is made for investment purposes—
  - (a) either or each of the parties is a producer of the commodity or other property or uses it in his business;
  - (b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.
- (5) It is an indication that a contract is made for commercial purposes that the price, the lot, the delivery date or the other terms are determined by the parties for the purposes of the particular contract and not by reference to regularly published prices, to standard lots or delivery dates or to standard terms.
- (6) The following are also indications that a contract is made for investment purposes—
  - (a) it is expressed to be as traded on a market or on an exchange;

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- (b) performance of the contract is ensured by an investment exchange or a clearing house;
  - (c) there are arrangements for the payment or provision of margin.
- (7) A price shall be taken to have been agreed upon when a contract is made—
- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
  - (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

*Contracts for differences etc.*

- 9 Rights under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

*[<sup>F4</sup>Notes]* .

[<sup>F5</sup>(1)] This paragraph does not apply where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.

[<sup>F6</sup>(2)] This paragraph does not apply to rights under any contract under which money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or raised under the National Loans Act 1968 under the auspices of the Director of Savings or under which money raised is treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972.]

**Textual Amendments**

- F4** Word substituted by [S.I. 1990/349, art. 2\(2\)](#)
- F5** Note numbered (1) by [S.I. 1990/349, art. 2\(2\)](#)
- F6** Note added by [S.I. 1990/349, art. 2\(2\)](#)

*Long term insurance contracts*

- 10 Rights under a contract the effecting and carrying out of which constitutes long term business within the meaning of the <sup>M1</sup>Insurance Companies Act 1982.

*Notes*

- (1) This paragraph does not apply to rights under a contract of insurance if—
- (a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
  - (b) no benefits are payable under the contract on a death (other than a death due to accident) unless it occurs within ten years of the date on which the life of the person in question was first insured under the contract or before that person attains a specified age not exceeding seventy years;

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- (c) the contract has no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium; and
  - (d) the contract does not make provision for its conversion or extension in a manner that would result in its ceasing to comply with paragraphs (a), (b) and (c) above.
- (2) Where the provisions of a contract of insurance are such that the effecting and carrying out of the contract—
- (a) constitutes both long term business within the meaning of the <sup>M2</sup>Insurance Companies Act 1982 and general business within the meaning of that Act; or
  - (b) by virtue of section 1(3) of that Act constitutes long term business notwithstanding the inclusion of subsidiary general business provisions,
- references in this paragraph to rights and benefits under the contract are references only to such rights and benefits as are attributable to the provisions of the contract relating to long term business.
- (3) This paragraph does not apply to rights under a reinsurance contract.
- (4) Rights falling within this paragraph shall not be regarded as falling within paragraph 9 above.

**Marginal Citations**

- M1** 1982 c. 50.  
**M2** 1982 c. 50.

*Rights and interests in investments*

- 11 Rights to and interests in anything which is an investment falling within any other paragraph of this Part of this Schedule.

*Notes*

- (1) This paragraph does not apply to interests under the trusts of an occupational pension scheme.
- (2) This paragraph does not apply to rights or interests which are investments by virtue of any other paragraph of this Part of this Schedule.

**PART II**

ACTIVITIES CONSTITUTING INVESTMENT BUSINESS

**Modifications etc. (not altering text)**

- C9** Sch. 1 Pt. II modified (I.1.1996) by S.I. 1995/3271, art. 5

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### *Dealing in investments*

- 12 Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as principal or as an agent.

#### *[<sup>F7</sup>Notes*

- (1) This paragraph does not apply to a person by reason of his accepting, or offering or agreeing to accept, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide.
- (2) The references in (1) above to a person accepting, or offering or agreeing to accept, an instrument include references to a person becoming, or offering or agreeing to become, a party to an instrument otherwise than as a debtor or a surety.]

#### **Textual Amendments**

**F7** Notes inserted by [S.I. 1988/803, art. 2](#)

### *Arranging deals in investments*

- 13 Making, or offering or agreeing to make—
- (a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment; or
  - (b) arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

#### *Notes*

- (1) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a transaction to which he will himself be a party as principal or which will be entered into by him as agent for one of the parties.
- (2) The arrangements in (a) above are arrangements which bring about or would bring about the transaction in question.
- [<sup>F8</sup>(3) This paragraph does not apply to a person (“the relevant person”) who is either a money-lending company within the meaning of section 338 of the Companies Act 1985 or a body corporate incorporated under the law of, or of any part of, the United Kingdom relating to building societies or a person whose ordinary business includes the making of loans or the giving of guarantees in connection with loans by reason of the relevant person making, or offering or agreeing to make, arrangements with a view to a person (“the authorised person”) who is either authorised under section 22 or 23 of this Act or who is authorised under section 31 of this Act and carries on insurance business which is investment business selling an investment which falls within paragraph 10 above or, so far as relevant to that paragraph, paragraph 11 above if the arrangements are either—

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- (a) that the authorised person or a person on his behalf will introduce persons to whom the authorised person has sold or proposes to sell an investment of the kind described above, or will advise such persons to approach, the relevant person with a view to the relevant person lending money on the security of that investment; or
  - (b) that the authorised person gives an assurance to the relevant person as to the amount which will or may be received by the relevant person, should that person lend money to a person to whom the authorised person has sold or proposes to sell an investment of the kind described above, on the surrender or maturity of that investment if it is taken as security for the loan.]
- [<sup>F9</sup>(4) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a person accepting, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide.
- (5) Arrangements do not fall within (b) above by reason of their having as their purpose the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.
- (6) This paragraph does not apply to arrangements for the introduction of persons to another person if—
- (a) the person to whom the introduction is made is an authorised or exempted person or is a person whose ordinary business involves him in engaging in activities which fall within this Part of this Schedule or would do apart from the provisions of Part III or Part IV and who is not unlawfully carrying on investment business in the United Kingdom; and
  - (b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion either—
    - (i) in relation to investments generally; or
    - (ii) in relation to any class of investments if the transaction or advice is or is to be with respect to an investment within that class.
- (7) The references in (4) above to a person accepting an instrument include references to a person becoming a party to an instrument otherwise than as a debtor or a surety.]

#### Textual Amendments

- F8** Note added by [S.I. 1988/318, art. 2](#)  
**F9** Notes added by [S.I. 1988/803, art. 3](#)

VALID FROM 01/06/1997

#### *[Custody of Investments]*

- [<sup>F10</sup>13A(1) Safeguarding and administering or arranging for the safeguarding and administration of assets belonging to another where—
- (a) those assets consist of or include investments; or



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- (b) the arrangements for their safeguarding and administration are such that those assets may consist of or include investments and the arrangements have at any time been held out as being arrangements under which investments would be safeguarded and administered.
- (2) Offering or agreeing to safeguard and administer, or to arrange for the safeguarding and administration of, assets belonging to another where the circumstances fall within sub-paragraph (1)(a) or (b) above.

*Notes*

- (1) This paragraph does not apply to a person by reason of his safeguarding and administering assets, or offering or agreeing to do so, under arrangements—
- (a) under which another person (“the primary custodian”), who is permitted to provide a service falling within this paragraph, undertakes to the person to whom the assets belong a responsibility in respect of the assets which is no less onerous than the responsibility which the primary custodian would undertake to that person if the primary custodian were safeguarding and administering the assets himself, and
  - (b) which are operated by the primary custodian in the course of carrying on in the United Kingdom investment business falling within this paragraph.
- (2) None of the following activities constitutes the administration of assets—
- (a) providing information as to the number of units or the value of any assets safeguarded;
  - (b) converting currency; and
  - (c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs.
- (3) For the purposes of this paragraph it is immaterial that the assets safeguarded and administered—
- (a) constitute units of a security, title to which is recorded on the relevant register of securities as being held in uncertificated form; or
  - (b) may be transferred to another person, subject to a commitment by the person safeguarding and administering them, or arranging for their safeguarding and administration, that they will be replaced by equivalent assets at some future date or when so requested by the person to whom they belong.
- (4) This paragraph does not apply to arrangements for the introduction of persons to another person if—
- (a) the person to whom the introduction is made is permitted to provide a service falling within this paragraph; and
  - (b) the introduction is made with a view to the provision in the United Kingdom of a service falling within this paragraph or the making of arrangements operated in the United Kingdom for the provision of a service falling within this paragraph by a person who is not connected with the person by whom the introduction is made.

For the purposes of this Note, the person making the introduction shall be regarded as connected with the other person if he is either a body corporate in the same group as that other person or remunerated by that other person.

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- (5) For the purposes of Notes (1) and (4) above, a person is permitted to provide a service falling within this paragraph if—
- (a) he is an authorised person who may provide that service—
    - (i) without contravening any rules that apply to him under section 48 of this Act; or
    - (ii) by virtue of his membership of a recognised self-regulating organisation or his certification by a recognised professional body; or
  - (b) he is an exempted person as respects any investment business which consists of or includes that service; or
  - (c) he is entitled to carry on investment business in the United Kingdom which consists of or includes that service pursuant either to regulation 5 of the Banking Coordination (Second Council Directive) Regulations 1992 <sup>F11</sup> or to regulation 5 of the Investment Services Regulations 1995 <sup>F12</sup>.]

**Textual Amendments**

- F10** Sch. 1 para. 13A inserted (1.6.1997) by S.I. 1996/2958, art. 3  
**F11** S.I. 1992/3218.  
**F12** S.I. 1995/3275.

*Managing investments*

- 14 Managing, or offering or agreeing to manage, assets belonging to another person if—
- (a) those assets consist of or include investments; or
  - (b) the arrangements for their management are such that those assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them and either they have at any time since the date of the coming into force of section 3 of this Act done so or the arrangements have at any time (whether before or after that date) been held out as arrangements under which they would do so.

*Investment advice*

- 15 Giving, or offering or agreeing to give, to persons in their capacity as investors or potential investors advice on the merits of their purchasing, selling, subscribing for or underwriting an investment, or exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

*Establishing etc. collective investment schemes*

- 16 Establishing, operating or winding up a collective investment scheme, including acting as trustee of an authorised unit trust scheme.

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VALID FROM 15/07/1996

*[<sup>F13</sup>Sending dematerialised instructions etc]*

**Textual Amendments**

**F13** Sch. 1 para. 16A and the preceding cross-heading added (15.7.1996) by S.I. 1996/1322, art. 2(1)

<sup>F14</sup>16A Sending on behalf of another person dematerialised instructions relating to an investment by means of a relevant system in respect of which an Operator is approved under the Uncertificated Securities Regulations 1995 <sup>F15</sup>, or offering or agreeing to do so, or causing on behalf of another person such instructions to be sent by such means or offering or agreeing to do so.

*Notes*

- (1) This paragraph does not apply to a person by reason of his sending, or causing the sending of, instructions on behalf of—
  - (a) a participating issuer or settlement bank acting in its capacity as such; or
  - (b) an offeror making a takeover offer,or by reason of his offering or agreeing to do so.
- (2) For the purposes of this paragraph a person shall be taken to cause, or to offer or agree to cause, the sending of a dematerialised instruction only if he is a system-participant.
- (3) In this paragraph—

“dematerialised instruction”, “participating issuer”, “relevant system”, “settlement bank”, “system-participant” and “Operator” have the meanings given by regulation 3 of the Uncertificated Securities Regulations 1995; and

“offeror” and “takeover offer” have the meanings given by section 428 of the Companies Act 1985 <sup>F16</sup>.

**Textual Amendments**

**F14** Sch. 1 para. 16A and the preceding cross-heading added (15.7.1996) by S.I. 1996/1322, art. 2(1)

**F15** S.I. 1995/3272.

**F16** 1985 c.6.

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### PART III

#### EXCLUDED ACTIVITIES

**Modifications etc. (not altering text)**

**C10** Sch. 1 Pt. III modified (1.1.1996) by S.,I. 1995/3271, arts. 5

#### *Dealings as principal*

- 17 (1) Paragraph 12 above applies to a transaction which is or is to be entered into by a person as principal only if—
- (a) he holds himself out as willing to enter into transactions of that kind at prices determined by him generally and continuously rather than in respect of each particular transaction; or
  - (b) he holds himself out as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
  - (c) he regularly solicits members of the public for the purpose of inducing them to enter as principals or agents into transactions to which that paragraph applies and the transaction is or is to be entered into as a result of his having solicited members of the public in that manner.
- (2) In sub-paragraph (1) above “buying” and “selling” means buying and selling by transactions to which paragraph 12 above applies and “members of the public”, in relation to the person soliciting them (“the relevant person”), means any other persons except—
- (a) authorised persons, exempted persons, or persons holding a permission under paragraph 23 below;
  - (b) members of the same group as the relevant person;
  - (c) persons who are, or propose to become, participators with the relevant person in a joint enterprise;
  - (d) any person who is solicited by the relevant person with a view to—
    - (i) the acquisition by the relevant person of 20 per cent. or more of the voting shares in a body corporate (that is to say, shares carrying not less than that percentage of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the body); or
    - (ii) if the relevant person (either alone or with other members of the same group as himself) holds 20 per cent. or more of the voting shares in a body corporate, the acquisition by him of further shares in the body or the disposal by him of shares in that body to the person solicited or to a member of the same group as that person; or
    - (iii) if the person solicited (either alone or with other members of the same group as himself) holds 20 per cent. or more of the voting shares in a body corporate, the disposal by the relevant person of further shares in that body to the person solicited or to a member of the same group as that person;

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- (e) any person whose head office is outside the United Kingdom, who is solicited by an approach made or directed to him at a place outside the United Kingdom and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.

[<sup>F17</sup>(3) Sub-paragraph (1) above applies only—

- (a) if the investment to which the transaction relates or will relate falls within any of paragraphs 1 to 6 above or, so far as relevant to any of those paragraphs, paragraph 11 above; or
- (b) if the transaction is the assignment (or, in Scotland, the assignation) of an investment falling within paragraph 10 above or is the assignment (or, in Scotland, the assignation) of an investment falling within paragraph 11 above which confers rights to or interests in an investment falling within paragraph 10 above.]

(4) Paragraph 12 above does not apply to [<sup>F18</sup>any transaction . . . <sup>F19</sup> which relates or is to relate to an investment which falls within paragraph 10 above or, so far as relevant to that paragraph, paragraph 11 above nor does it apply to a transaction which relates or is to relate to an investment which falls within any of paragraphs 7 to 9 above or, so far as relevant to any of those paragraphs, paragraph 11 above being a transaction which, in either case,] is or is to be entered into by a person as principal if he is not an authorised person and the transaction is or is to be entered into by him—

- (a) with or through an authorised person, an exempted person or a person holding a permission under paragraph 23 below; or
- (b) through an office outside the United Kingdom, maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business is such as is mentioned in sub-paragraph (2)(e) above.

#### Textual Amendments

- F17** Sch. 1 para. 17(3) substituted by S.I. 1988/318, art. 3(1)
- F18** Words substituted by S.I. 1988/318, art. 3(2)
- F19** Words repealed by S.I. 1990/349, art. 3

#### Modifications etc. (not altering text)

- C11** Sch. 1 para. 17 amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para. 44(1).  
Sch. 1 para. 17 extended (1.1.1996) by S.I. 1995/3275, reg. 32, Sch. 7 para. 42(1)  
Sch. 1 paras. 17-19 restricted (1.1.1996) by S.I. 1995/3271, art. 6(1)  
Sch. 1 para. 17-19 restricted (1.1.1997) by S.I. 1997/2996, art. 2(1)

#### *Groups and joint enterprises*

- 18 (1) Paragraph 12 above does not apply to any transaction which is or is to be entered into by a person as principal with another person if—
- (a) they are bodies corporate in the same group; or
  - (b) they are, or propose to become, participators in a joint enterprise and the transaction is or is to be entered into for the purposes of, or in connection with, that enterprise.

*Status: Point in time view as at 01/08/1991.*

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- (2) Paragraph 12 above does not apply to any transaction which is or is to be entered into by any person as agent for another person in the circumstances mentioned in sub-paragraph (1)(a) or (b) above if—
- (a) where the investment falls within any of paragraphs 2 to 6 above or, so far as relevant to any of those paragraphs, paragraph 11 above, the agent does not—
    - (i) hold himself out (otherwise than to other bodies corporate in the same group or persons who are or propose to become participators with him in a joint enterprise) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
    - (ii) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which paragraph 12 above applies;
 and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner;
  - (b) where the investment is not as mentioned in paragraph (a) above—
    - (i) the agent enters into the transaction with or through an authorised person, an exempted person or a person holding a permission under paragraph 23 below; or
    - (ii) the transaction is effected through an office outside the United Kingdom, maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.
- (3) Paragraph 13 above does not apply to arrangements which a person makes or offers or agrees to make if—
- (a) that person is a body corporate and the arrangements are with a view to another body corporate in the same group entering into a transaction of the kind mentioned in that paragraph; or
  - (b) that person is or proposes to become a participator in a joint enterprise and the arrangements are with a view to another person who is or proposes to become a participator in the enterprise entering into such a transaction for the purposes of or in connection with that enterprise.
- (4) Paragraph 14 above does not apply to a person by reason of his managing or offering or agreeing to manage the investments of another person if—
- (a) they are bodies corporate in the same group; or
  - (b) they are, or propose to become, participators in a joint enterprise and the investments are or are to be managed for the purposes of, or in connection with, that enterprise.
- (5) Paragraph 15 above does not apply to advice given by a person to another person if—
- (a) they are bodies corporate in the same group; or
  - (b) they are, or propose to become, participators in a joint enterprise and the advice is given for the purposes of, or in connection with, that enterprise.

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- (6) The definitions in paragraph 17(2) above shall apply also for the purposes of sub-paragraph (2)(a) above except that the relevant person referred to in paragraph 17(2)(d) shall be the person for whom the agent is acting.

**Modifications etc. (not altering text)**

- C12** Sch. 1 para. 18 amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para. 44(2).  
Sch. 1 paras. 17-19 restricted (1.1.1996) by S.I. 1995/3271, art. 6(1)  
Sch. 1 para. 18 extended (1.1.1996) by S.I. 1995/3275, reg. 32, Sch. 7 para. 42(2)

*Sale of goods and supply of services*

- 19 (1) [<sup>F20</sup>Subject to sub-paragraph (9) below] this paragraph has effect where a person (“the supplier”) sells or offers or agrees to sell goods to another person (“the customer”) or supplies or offers or agrees to supply him with services and the supplier’s main business is to supply goods or services and not to engage in activities falling within Part II of this Schedule.
- (2) Paragraph 12 above does not apply to any transaction which is or is to be entered into by the supplier as principal if it is or is to be entered into by him with the customer for the purposes of or in connection with the sale or supply or a related sale or supply (that is to say, a sale or supply to the customer otherwise than by the supplier but for or in connection with the same purpose as the first-mentioned sale or supply).
- (3) Paragraph 12 above does not apply to any transaction which is or is to be entered into by the supplier as agent for the customer if it is or is to be entered into for the purposes of or in connection with the sale or supply or a related sale or supply and—
- (a) where the investment falls within any of paragraphs 1 to [<sup>F215</sup>] above or, so far as relevant to any of those paragraphs, paragraph 11 above, the supplier does not—
- (i) hold himself out (otherwise than to the customer) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
- (ii) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which paragraph 12 above applies;
- and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner;
- (b) where the investment is not as mentioned in paragraph (a) above, the supplier enters into the transaction—
- (i) with or through an authorised person, an exempted person or a person holding a permission under paragraph 23 below; or
- (ii) through an office outside the United Kingdom, maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.

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- (4) Paragraph 13 above does not apply to arrangements which the supplier makes or offers or agrees to make with a view to the customer entering into a transaction for the purposes of or in connection with the sale or supply or a related sale or supply.
- (5) Paragraph 14 above does not apply to the supplier by reason of his managing or offering or agreeing to manage the investments of the customer if they are or are to be managed for the purposes of or in connection with the sale or supply or a related sale or supply.
- (6) Paragraph 15 above does not apply to advice given by the supplier to the customer for the purposes of or in connection with the sale or supply or a related sale or supply or to a person with whom the customer proposes to enter into a transaction for the purposes of or in connection with the sale or supply or a related sale or supply.
- (7) Where the supplier is a body corporate and a member of a group sub-paragraphs (2) to (6) above shall apply to any other member of the group as they apply to the supplier; and where the customer is a body corporate and a member of a group references in those sub-paragraphs to the customer include references to any other member of the group.
- (8) The definitions in paragraph 17(2) above shall apply also for the purposes of sub-paragraph (3)(a) above.
- [<sup>F22</sup>(9) This paragraph does not have effect where either—
- (a) the customer is an individual; or
  - (b) the transaction in question is the purchase or sale of an investment which falls within paragraph 6 or 10 above or, so far as relevant to either of those paragraphs, paragraph 11 above; or
  - (c) the investments which the supplier manages or offers or agrees to manage consist of investments falling within paragraph 6 or 10 above or, so far as relevant to either of those paragraphs, paragraph 11 above;
- or
- (d) the advice which the supplier gives is advice on an investment falling within the paragraph 6 or 10 above or, so far as relevant to either of those paragraphs, paragraph 11 above.]

#### **Textual Amendments**

**F20** Words inserted by [S.I. 1988/496, art. 3\(a\)](#)

**F21** Figure substituted by [S.I. 1990/1493, art. 3](#)

**F22** [Sch. 1 para. 19\(9\)](#) inserted by [S.I. 1988/496, art. 3\(b\)](#)

#### **Modifications etc. (not altering text)**

**C13** [Sch. 1 paras. 17-19](#) restricted (1.1.1996) by [S.I. 1995/3271, art. 6\(1\)](#)

[Sch. 1 paras. 17-19](#) restricted (1.1.1997) by [S.I. 1996/2996, art. 2\(1\)](#)

### *Employees' share schemes*

- 20 (1) Paragraphs 12 and 13 above do not apply to anything done by a body corporate, a body corporate connected with it or a relevant trustee for the purpose of enabling



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or facilitating transactions in shares in or debentures of the first-mentioned body between or for the benefit of any of the persons mentioned in sub-paragraph (2) below or the holding of such shares or debentures by or for the benefit of any such persons.

- (2) The persons referred to in sub-paragraph (1) above are—
- (a) the bona fide employees or former employees of the body corporate or of another body corporate in the same group; or
  - (b) the wives, husbands, widows, widowers, or children or step-children under the age of eighteen of such employees or former employees.
- (3) In this paragraph “a relevant trustee” means a person holding shares in or debentures of a body corporate as trustee in pursuance of arrangements made for the purpose mentioned in sub-paragraph (1) above by, or by a body corporate connected with, that body corporate.
- (4) In this paragraph “shares” and “debentures” include any investment falling within paragraph 1 or 2 above and also include any investment falling within paragraph 4 or 5 above so far as relating to those paragraphs or any investment falling within paragraph 11 above so far as relating to paragraph 1, 2, 4 or 5.
- (5) For the purposes of this paragraph a body corporate is connected with another body corporate if—
- (a) they are in the same group; or
  - (b) one is entitled, either alone or with any other body corporate in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other body corporate or of its holding company.

*[<sup>F23</sup>Sale of body corporate]*

#### Textual Amendments

**F23** Heading substituted by S.I. 1988/318, art. 4(a)

- 21 (1) Paragraphs 12 and 13 above do not apply to the acquisition or disposal of, or to anything done for the purposes of the acquisition or disposal of, shares in a [<sup>F24</sup>body corporate other than an open-ended investment company], and paragraph 15 above does not apply to advice given in connection with the acquisition or disposal of such shares, if—
- (a) the shares consist of or include shares carrying 75 per cent. or more of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the [<sup>F25</sup>body corporate]; or
  - (b) the shares, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights; and
  - (c) in either case, the acquisition and disposal is, or is to be, between parties each of whom is a body corporate, a partnership, a single individual or a group of connected individuals.
- (2) For the purposes of subsection (1)(c) above “a group of connected individuals”, in relation to the party disposing of the shares, means persons each of whom is, or is a

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close relative of, a director or manager of the [<sup>F25</sup>body corporate] and, in relation to the party acquiring the shares, means persons each of whom is, or is a close relative of, a person who is to be a director or manager of the [<sup>F25</sup>body corporate].

- (3) In this paragraph . . . <sup>F26</sup>“close relative” means a person’s spouse, his children and step-children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters.

#### Textual Amendments

- F24** Words substituted by S.I. 1988/318, art. 4(b)  
**F25** Words substituted by S.I. 1988/318, art. 4(d)  
**F26** Words repealed by S.I. 1988/318, art. 4(c)

#### Modifications etc. (not altering text)

- C14** Sch. 1 para. 21 restricted (I.I.1996) by S.I. 1995/3271, art. 6(1)  
 Sch. 1 para. 21 restricted (I.I.1997) by S.I. 1996/2996, art. 2(1)

### *Trustees and personal representatives*

- 22 (1) Paragraph 12 above does not apply to a person by reason of his buying, selling or subscribing for an investment or offering or agreeing to do so if—
- (a) the investment is or, as the case may be, is to be held by him as bare trustee or, in Scotland, as nominee for another person;
  - (b) he is acting on that person’s instructions; and
  - (c) he does not hold himself out as providing a service of buying and selling investments.
- (2) Paragraph 13 above does not apply to anything done by a person as trustee or personal representative with a view to—
- (a) a fellow trustee or personal representative and himself engaging in their capacity as such in an activity falling within paragraph 12 above; or
  - (b) a beneficiary under the trust, will or intestacy engaging in any such activity, unless that person is remunerated for what he does in addition to any remuneration he receives for discharging his duties as trustee or personal representative.
- (3) Paragraph 14 above does not apply to anything done by a person as trustee or personal representative unless he holds himself out as offering investment management services or is remunerated for providing such services in addition to any remuneration he receives for discharging his duties as trustee or personal representative.
- (4) Paragraph 15 above does not apply to advice given by a person as trustee or personal representative to—
- (a) a fellow trustee or personal representative for the purposes of the trust or estate; or
  - (b) a beneficiary under the trust, will or intestacy concerning his interest in the trust fund or estate,
- unless that person is remunerated for doing so in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

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- (5) Sub-paragraph (1) above has effect to the exclusion of paragraph 17 above as respects any transaction in respect of which the conditions in sub-paragraph (1)(a) and (b) are satisfied.

*Dealings in course of non-investment business*

- 23 (1) Paragraph 12 above does not apply to anything done by a person—
- (a) as principal;
  - (b) if that person is a body corporate in a group, as agent for another member of the group; or
  - (c) as agent for a person who is or proposes to become a participator with him in a joint enterprise and for the purposes of or in connection with that enterprise, if it is done in accordance with the terms and conditions of a permission granted to him by the Secretary of State under this paragraph.
- (2) Any application for permission under this paragraph shall be accompanied or supported by such information as the Secretary of State may require and shall not be regarded as duly made unless accompanied by the prescribed fee.
- (3) The Secretary of State may grant a permission under this paragraph if it appears to him—
- (a) that the applicant's main business, or if he is a member of a group the main business of the group, does not consist of activities for which a person is required to be authorised under this Act;
  - (b) that the applicant's business is likely to involve such activities which fall within paragraph 12 above; and
  - (c) that, having regard to the nature of the applicant's main business and, if he is a member of a group, the main business of the group taken as a whole, the manner in which, the persons with whom and the purposes for which the applicant proposes to engage in activities that would require him to be an authorised person and to any other relevant matters, it is inappropriate to require him to be subject to regulation as an authorised person.
- (4) Any permission under this paragraph shall be granted by a notice in writing; and the Secretary of State may by a further notice in writing withdraw any such permission if for any reason it appears to him that it is not appropriate for it to continue in force.
- (5) The Secretary of State may make regulations requiring persons holding permissions under this paragraph to furnish him with information for the purpose of enabling him to determine whether those permissions should continue in force; and such regulations may, in particular, require such persons—
- (a) to give him notice forthwith of the occurrence of such events as are specified in the regulations and such information in respect of those events as is so specified;
  - (b) to furnish him at such times or in respect of such periods as are specified in the regulations with such information as is so specified.
- (6) Section 61 of this Act shall have effect in relation to a contravention of any condition imposed by a permission under this paragraph as it has effect in relation to any such contravention as is mentioned in subsection (1)(a) of that section.

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- (7) Section 104 of this Act shall apply to a person holding a permission under this paragraph as if he were authorised to carry on investment business as there mentioned; and sections 105 and 106 of this Act shall have effect as if anything done by him in accordance with such permission constituted the carrying on of investment business.

**Modifications etc. (not altering text)**

**C15** Sch. 1 para. 23 modified (1.1.1996) by [S.I. 1995/3271](#), **art. 6(2)**

*Advice given [F27 or arrangements made] in course of profession or non-investment business*

**Textual Amendments**

**F27** Words inserted by [S.I. 1988/803](#), **art. 4(1)**

- 24 (1) Paragraph 15 above does not apply to advice—
- (a) which is given in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and
  - (b) the giving of which is a necessary part of other advice or services given in the course of carrying on that profession or business.

[F28(2) Paragraph 13 above does not apply to arrangements—

- (a) which are made in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and
- (b) the making of which is a necessary part of other services provided in the course of carrying on that profession or business.

- (3) Advice shall not be regarded as falling within sub-paragraph (1)(b) above and the making of arrangements shall not be regarded as falling within sub-paragraph (2)(b) above if the giving of the advice or the making of the arrangements is remunerated separately from the other advice or services.]

**Textual Amendments**

**F28** Sch. 1 para. 24(2)(3) substituted for paragraph 24(2) by [S.I. 1988/803](#), **art. 4(2)**

VALID FROM 01/06/1997

*[ Custody of group pension funds by certain insurance companies ]*

- F29**24A(1) Paragraph 13A above does not apply to anything done by a relevant insurance company in relation to the investments of any pension fund which is established solely for the benefit of the officers or employees and their dependants of that company or of any other body corporate in the same group as that company.

*Status: Point in time view as at 01/08/1991.*

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(2) In sub-paragraph (1) above “relevant insurance company” means an insurance company to which Part II of the Insurance Companies Act 1982 <sup>F30</sup> applies but to which section 22 of this Act does not apply.

**Textual Amendments**

**F29** Sch. 1 para. 24A inserted (1.6.1997) by S.I. 1996/2958, art. 9

**F30** 1982 c.50.

*Newspapers*

- 25 (1) Paragraph 15 above does not apply to advice given in a newspaper, journal, magazine or other periodical publication if the principal purpose of the publication, taken as a whole and including any advertisements contained in it, is not to lead persons to invest in any particular investment.
- (2) The Secretary of State may, on the application of the proprietor of any periodical publication, certify that it is of the nature described in sub-paragraph (1) above and revoke any such certificate if he considers that it is no longer justified.
- (3) A certificate given under sub-paragraph (2) above and not revoked shall be conclusive evidence of the matters certified.

*[<sup>F31</sup> Advice given in sound, television or cable programmes]*

**Textual Amendments**

**F31** Sch. 1 para. 25A added by S.I. 1988/318, art. 5 (which art. 5 was repealed by S.I. 1990/349, art. 8(a)) and substituted by S.I. 1990/349, art. 5

25A (1) Paragraph 15 above does not apply in respect of any advice given in any programme [<sup>F32</sup>included, or made for inclusion, in a programme service.]

[<sup>F33</sup>(2) In this paragraph—

- (a) “programme”, in relation to a programme service, includes an advertisement and any other item included in that service; and
- (b) “programme service” has the same meaning as in the Broadcasting Act 1990.]

**Textual Amendments**

**F32** Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), Sch. 20 para. 45(2)(a)

**F33** Sub-paragraph (2) substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), Sch. 20 para. 45(2)(b)

*Status: Point in time view as at 01/08/1991.*

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### *International Securities Self-regulating organisations*

[<sup>F34</sup>25B] (1) An activity within paragraph 13 above engaged in for the purposes of carrying out the functions of a body or association which is approved under this paragraph as an international securities self-regulating organisation, whether by the organisation or by any person acting on its behalf, shall not constitute the carrying on of investment business in the United Kingdom for the purposes of Chapter II of Part I of this Act.

(2) In this paragraph—

“International securities business” means the business of buying, selling, subscribing for or underwriting investments (or offering or agreeing to do so, either as principal or agent) which fall within any of the paragraphs in Part I above other than paragraph 10 and, so far as relevant to paragraph 10, paragraph 11 and which, by their nature, and the manner in which the business is conducted, may be expected normally to be bought or dealt in by persons sufficiently expert to understand any risks involved, where either the transaction is international or each of the parties may be expected to be indifferent to the location of the other, and, for the purposes of this definition, the fact that the investments may ultimately be bought otherwise than in the course of international securities business by persons not so expert shall be disregarded; and

“international securities self-regulating organisation” means a body corporate or unincorporated association which

- (a) does not have its head office in the United Kingdom;
- (b) is not eligible for recognition under section 37 or section 39 of this Act on the ground that (whether or not it has applied, and whether or not it would be eligible on other grounds) it is unable to satisfy the requirements of section 40(2)(a) or (c) of this Act;
- (c) has a membership composed of persons falling within any of the following categories, that is to say, authorised persons, exempted persons, persons holding a permission under paragraph 23 above and persons whose head offices are outside the United Kingdom and whose ordinary business is such as is mentioned in paragraph 17(2)(e) above; and
- (d) which facilitates and regulates the activity of its members in the conduct of international securities business.

(3) The Secretary of State may approve as an international securities self-regulating organisation any body or association appearing to him to fall within subparagraph (2) above if, having regard to such matters affecting international trade, overseas earnings and the balance of payments or otherwise as he considers relevant, it appears to him that to do so would be desirable and not result in any undue risk to investors.

(4) Any approval under this paragraph shall be given by notice in writing; and the Secretary of State may by a further notice in writing withdraw any such approval if for any reason it appears to him that it is not appropriate for it to continue in force.]

#### **Textual Amendments**

**F34** Sch. 1 para. 25B inserted by S.I. 1988/318, art. 6.

*Status: Point in time view as at 01/08/1991.*

*Changes to legislation: Financial Services Act 1986 (Repealed) is up to date with all changes known to be in force on or before 26 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## PART IV

### ADDITIONAL EXCLUSIONS FOR PERSONS WITHOUT PERMANENT PLACE OF BUSINESS IN UNITED KINGDOM

#### *Transactions with or through authorised or exempted persons*

- 26 (1) Paragraph 12 above does not apply to any transaction by a person not falling within section 1(3)(a) of this Act (“an overseas person”) with or through—
- (a) an authorised person; or
  - (b) an exempted person acting in the course of business in respect of which he is exempt.
- (2) Paragraph 13 above does not apply if—
- (a) the arrangements are made by an overseas person with, or the offer or agreement to make them is made by him to or with, an authorised person or an exempted person and, in the case of an exempted person, the arrangements are with a view to his entering into a transaction in respect of which he is exempt; or
  - (b) the transactions with a view to which the arrangements are made are, as respects transactions in the United Kingdom, confined to transactions by authorised persons and transactions by exempted persons in respect of which they are exempt.

#### **Modifications etc. (not altering text)**

- C16** Sch. 1 para. 26 amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para. 44(3).  
Sch. 1 para. 26 (1.1.1996) by S.I. 1995/3275, reg. 32, Sch. 7 para. 42(3)

#### *Unsolicited or legitimately solicited transactions etc. with or for other persons*

- 27 (1) Paragraph 12 above does not apply to any transaction entered into by an overseas person as principal with, or as agent for, a person in the United Kingdom, paragraphs 13, 14 and 15 above do not apply to any offer made by an overseas person to or agreement made by him with a person in the United Kingdom and paragraph 15 above does not apply to any advice given by an overseas person to a person in the United Kingdom if the transaction, offer, agreement or advice is the result of—
- (a) an approach made to the overseas person by or on behalf of the person in the United Kingdom which either has not been in any way solicited by the overseas person or has been solicited by him in a way which has not contravened section 56 or 57 of this Act; or
  - (b) an approach made by the overseas person which has not contravened either of those sections.
- (2) Where the transaction is entered into by the overseas person as agent for a person in the United Kingdom, sub-paragraph (1) above applies only if—
- (a) the other party is outside the United Kingdom; or

*Status: Point in time view as at 01/08/1991.*

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- (b) the other party is in the United Kingdom and the transaction is the result of such an approach by the other party as is mentioned in sub-paragraph (1)(a) above or of such an approach as is mentioned in sub-paragraph (1)(b) above.

## PART V

### INTERPRETATION

- 28 (1) In this Schedule—
- (a) “property” includes currency of the United Kingdom or any other country or territory;
  - (b) references to an instrument include references to any record whether or not in the form of a document;
  - (c) references to an offer include references to an invitation to treat;
  - (d) references to buying and selling include references to any acquisition or disposal for valuable consideration.
- (2) In sub-paragraph (1)(d) above “disposal” includes—
- (a) in the case of an investment consisting of rights under a contract or other arrangements, assuming the corresponding liabilities under the contract or arrangements;
  - (b) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;
  - (c) in the case of an investment consisting of rights under a contract, surrendering, assigning or converting those rights.
- (3) A company shall not by reason of issuing its own shares or share warrants, and a person shall not by reason of issuing his own debentures or debenture warrants, be regarded for the purposes of this Schedule as disposing of them or, by reason of anything done for the purpose of issuing them, be regarded as making arrangements with a view to a person subscribing for or otherwise acquiring them or underwriting them.
- (4) In sub-paragraph (3) above “company” has the same meaning as in paragraph 1 above, “shares” and “debentures” include any investments falling within paragraph 1 or 2 above and “share warrants” and “debenture warrants” means any investment which falls within paragraph 4 above and relates to shares in the company concerned or, as the case may be, to debentures issued by the person concerned.
- 29 For the purposes of this Schedule a transaction is entered into through a person if he enters into it as agent or arranges for it to be entered into by another person as principal or agent.
- [<sup>F35</sup>30 (1) For the purposes of this Schedule a group shall be treated as including any body corporate in which a member of the group holds a qualifying capital interest.
- (2) A qualifying capital interest means an interest in relevant shares of the body corporate which the member holds on a long-term basis for the purpose of securing a



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contribution to its own activities by the exercise of control or influence arising from that interest.

- (3) Relevant shares means shares comprised in the equity share capital of the body corporate of a class carrying rights to vote in all circumstances at general meetings of the body.
- (4) A holding of 20 per cent or more of the nominal value of the relevant shares of a body corporate shall be presumed to be a qualifying capital interest unless the contrary is shown.
- (5) In this paragraph “equity share capital” has the same meaning as in the Companies Act 1985 and the Companies (Northern Ireland) Order 1986.]

#### Textual Amendments

**F35** Sch. 1 para. 30 substituted by Companies Act 1989 (c. 40, SIF 27), s. 23, Sch. 10 para. 36(3)

- 31 In this Schedule “a joint enterprise” means an enterprise into which two or more persons (“the participators”) enter for commercial reasons related to a business or businesses (other than investment business) carried on by them; and where a participator is a body corporate and a member of a group each other member of the group shall also be regarded as a participator in the enterprise.
- 32 Where a person is an exempted person as respects only part of the investment business carried on by him anything done by him in carrying on that part shall be disregarded in determining whether any paragraph of Part III or IV of this Schedule applies to anything done by him in the course of business in respect of which he is not exempt.
- 33 In determining for the purposes of this Schedule whether anything constitutes an investment or the carrying on of investment business section 18 of the <sup>M3</sup>Gaming Act 1845, section 1 of the <sup>M4</sup>Gaming Act 1892, any corresponding provision in force in Northern Ireland and any rule of the law of Scotland whereby a contract by way of gaming or wagering is not legally enforceable shall be disregarded.

#### Marginal Citations

**M3** 1845 c. 109.

**M4** 1892 c. 9.

- [<sup>F36</sup>34 (1) For the purposes of this Schedule arrangements are not a collective investment scheme if—
- (a) the property to which the arrangements relate (other than cash awaiting investment) consists of shares;
  - (b) they constitute a complying fund;

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- (c) each participant is the owner of a part of the property to which the arrangements relate and, to the extent that his part of that property–
    - (i) comprises relevant shares of a class which are admitted to the Official List of any member State or to dealings on a recognised investment exchange, he is entitled to withdraw it at any time after the end of the period of five years beginning with the date on which the shares in question were issued;
    - (ii) comprises relevant shares which do not fall within sub-paragraph (i) above, he is entitled to withdraw it at any time after the end of the period of two years beginning with the date upon which the period referred to in sub-paragraph (i) above expired;
    - (iii) comprises any other shares, he is entitled to withdraw it at any time after the end of the period of six months beginning with the date upon which the shares in question ceased to be relevant shares; and
    - (iv) comprises cash which the operator has not agreed (conditionally or unconditionally) to apply in subscribing for shares, he is entitled to withdraw it at any time; and
  - (d) the arrangements would meet the conditions described in section 75(5)(c) of this Act were it not for the fact that the operator is entitled to exercise all or any of the rights conferred by shares included in the property to which the arrangements relate.
- (2) For the purposes of this paragraph–
- (a) “shares” means investments falling within paragraph 1 of this Schedule;
  - (b) shares shall be regarded as being relevant shares if and so long as they are shares in respect of which neither–
    - (i) a claim for relief made in accordance with section 306 of the Income and Corporation Taxes Act 1988 has been disallowed; nor
    - (ii) an assessment has been made pursuant to section 307 of that Act withdrawing or refusing relief by reason of the body corporate in which the shares are held having ceased to be a body corporate which is a qualifying company for the purposes of section 293 of that Act; and
  - (c) arrangements shall be regarded as constituting a complying fund if they provide that–
    - (i) the operator will, so far as practicable, make investments each of which, subject to each participant’s individual circumstances, qualify for relief by virtue of Chapter III of Part VII of the Income and Corporation Taxes Act 1988; and
    - (ii) the minimum subscription to the arrangements made by each participant must be not less than £2,000.]

#### Textual Amendments

**F36** Sch. 1 paras. 34, 35 inserted by S.I. 1990/349, art. 7

[<sup>F37</sup>35 For the purposes of this Schedule the following are not collective investment schemes–

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- (a) arrangements where the entire contribution of each participant is a deposit within the meaning of section 5 of the Banking Act 1987 or a sum of a kind described in subsection (3) of that section;
- (b) arrangements under which the rights or interests of the participants are represented by the following—
  - (i) investments falling within paragraph 2 of this Schedule which are issued by a single body corporate which is not an open-ended investment company or which are issued by a single issuer which is not a body corporate and are guaranteed by the government of the United Kingdom, of Northern Ireland, or of any country or territory outside the United Kingdom; or
  - (ii) investments falling within sub-paragraph (i) above which are convertible into or exchangeable for investments falling within paragraph 1 of this Schedule provided that those latter investments are issued by the same person as issued the investments falling within sub-paragraph (i) above or are issued by a single other issuer; or
  - (iii) investments falling within paragraph 3 of this Schedule issued by the same government, local authority or public authority; or
  - (iv) investments falling within paragraph 4 of this Schedule which are issued otherwise than by an open-ended investment company and which confer rights in respect of investments, issued by the same issuer, falling within paragraph 1 of this Schedule or within sub-paragraph (i), (ii) or (iii) above;
- (c) arrangements which would fall within paragraph (b) above were it not for the fact that the rights or interests of a participant (“the counterparty”) whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from Part III or IV are or include rights or interests under a swap arrangement, that is to say, an arrangement the purpose of which is to facilitate the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things, being an arrangement under which—
  - (i) the counterparty is entitled to receive amounts (whether representing principal or interest) payable in respect of any property subject to the scheme or sums determined by reference to such amounts; and
  - (ii) the counterparty makes payments (whether or not of the same amount and whether or not in the same currency as those referred to in sub-paragraph (i) above) which are calculated in accordance with an agreed formula by reference to the amounts or sums referred to in sub-paragraph (i) above;
- (d) arrangements under which the rights or interests of participants are rights to or interests in money held in a common account in circumstances in which the money so held is held on the understanding that an amount representing the contribution of each participant is to be applied either in making payments to him or in satisfaction of sums owed by him or in the acquisition of property or the provision of services for him;
- (e) arrangements under which the rights and interests of participants are rights and interests in a fund which is a trust fund within the meaning of section 42(1) of the Landlord and Tenant Act 1987.

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- [ arrangements where—
- <sup>F38</sup>(f) (i) each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, or child (including, in Northern Ireland, adopted child) or step-child under the age of eighteen of such an employee or former employee) of any of the following bodies corporate, that is to say, The National Grid Company plc, Electricity Association Services Limited or any other body corporate in the same group as either of them [<sup>F39</sup>being arrangements which are] operated by any of those bodies corporate; and
- (ii) the property to which the arrangements relate consists of shares or debentures (as defined in paragraph 20(4) above) in or of a body corporate which is an electricity successor company for the purposes of Part II of the Electricity Act 1989 or a body corporate which would be regarded as connected with such an electricity successor company for the purposes of paragraph 20 above.

and for the purposes of this paragraph references to former employees shall have the same meaning as in the Financial Services Act 1986 (Electricity Industry Exemptions) Order 1990.]]

#### Textual Amendments

**F37** Sch. 1 paras. 34, 35 inserted by S.I. 1990/349, art. 7

**F38** Para. 35(f) added by S.I. 1990/1493, art. 2

**F39** Words in Sch. 1 para. 35(f)(i) substituted by S.I. 1991/1516, art. 2.

VALID FROM 01/01/1997

- [<sup>F40</sup>36 (1) For the purposes of this Schedule, arrangements are not a collective investment scheme if they are operated by a body corporate, a body corporate connected with it or a relevant trustee, for the purpose of enabling or facilitating transactions in shares in or debentures of the first-mentioned body between or for the benefit of any of the persons mentioned in sub-paragraph (2) below or the holding of such shares or debentures by or for the benefit of any such persons.
- (2) The persons referred to in sub-paragraph (1) above are—
- (a) the bona fide employees or former employees of the body corporate or of another body corporate in the same group; or
- (b) the wives, husbands, widows, widowers, or children or step-children under the age of eighteen of such employees or former employees.
- (3) In this paragraph, “a relevant trustee” means a person holding shares in or debentures of a body corporate as trustee in pursuance of arrangements mentioned in sub-paragraph (1) above which were made by, or by a body corporate connected with, that body corporate.
- (4) In this paragraph “shares” and “debentures” include any investment falling within paragraph 1 or 2 above and also include any investment falling within paragraph 4 or 5 above so far as relating to those paragraphs or any investment falling within paragraph 11 above so far as relating to paragraphs 1, 2, 4 or 5.

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- (5) For the purposes of this paragraph a body corporate is connected with another body corporate if—
- (a) they are in the same group; or
  - (b) one is entitled, either alone or with any other body corporate in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other body corporate or its holding company..]

#### Textual Amendments

**F40** Sch. 1 para. 36 inserted (1.1.1997) by S.I. 1996/2996, art. 3(2)

VALID FROM 06/02/1997

- [<sup>F41</sup>37 For the purposes of this Schedule, arrangements are not a collective investment scheme if—
- (a) the purpose of the arrangements is that participants should receive, by way of reward, payments or other benefits in respect of the introduction by any person of other persons who become participants;
  - (b) the arrangements are such that the payments or other benefits referred to in paragraph (a) above are to be wholly or mainly funded out of the contributions of other participants; and
  - (c) the only reason why the arrangements have either or both of the characteristics mentioned in section 75(3) of this Act is because, pending their being used to fund those payments or other benefits, contributions of participants are managed as a whole by or on behalf of the operator of the scheme.]

#### Textual Amendments

**F41** Sch. 1 para. 37 inserted (6.2.1997) by S.I. 1997/32, art. 2(2)

VALID FROM 01/05/2001

- [<sup>F42</sup>38 For the purpose of this Schedule, arrangements are not prevented from being a collective investment scheme merely because they constitute a limited liability partnership.]

#### Textual Amendments

**F42** Sch. 1 para. 38 inserted (1.5.2001) by S.I. 2001/1421, art. 2(4)

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## SCHEDULE 2

Section 10.

### REQUIREMENTS FOR RECOGNITION OF SELF-REGULATING ORGANISATION

#### *Members to be fit and proper persons*

- 1
- (1) The rules and practices of the organisation must be such as to secure that its members are fit and proper persons to carry on investment business of the kind with which the organisation is concerned.
  - (2) Where the organisation is concerned with investment business of different kinds its rules and practices must be such as to secure that a member carrying on investment business of any of those kinds is a fit and proper person to carry on investment business of that kind.
  - (3) The matters which may be taken into account under the rules in determining whether a person is a fit and proper person must include those that the Secretary of State may take into account under section 27 above.
  - (4) This paragraph does not apply to a person who is not an authorised person by virtue of being a member of the organisation.

**Modifications etc. (not altering text)**

**C17** Sch. 2 para. 1 extended (1.1.1996) by S.I. 1995/3275, reg. 21(2)

#### *Admission, expulsion and discipline*

- 2
- The rules and practices of the organisation relating to—
- (a) the admission and expulsion of members; and
  - (b) the discipline it exercises over its members,
- must be fair and reasonable and include adequate provision for appeals.

**Modifications etc. (not altering text)**

**C18** Sch. 2 para. 2 amended (1.1.1993) by S.I. 1992/3218, reg. 48(2).  
 Sch. 2 para. 2 amended (1.7.1994) by S.I. 1994/1696, reg. 56(1)  
 Sch. 2 para. 2 appl.(mods) (18.7.1996) by S.I. 1996/1669, reg. 9(4)  
 Sch. 2 para. 2 extended (1.1.1996) by S.I. 1995/3275, reg. 21(5)  
 Sch. 2 para. 2 extended (1.1.1996) by S.I. 1995/3275, reg. 32, Sch. 7, para. 43(1)  
 Sch. 2 para. 2 amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para. 45(1).

#### *Safeguards for investors*

- 3 [F43(1) The organisation must have rules governing the carrying on of investment business by its members which, together with the statements of principle, rules, regulations

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and codes of practice to which its members are subject under Chapter V of Part I of this Act, are such as to afford an adequate level of protection for investors.

- (2) In determining in any case whether an adequate level of protection is afforded for investors of any description, regard shall be had to the nature of the investment business carried on by members of the organisation, the kinds of investors involved and the effectiveness of the organisation's arrangements for enforcing compliance.]
- (3) The organisation must, so far as practicable, have powers for purposes corresponding to those of Chapter VI of Part I of this Act.
- (4) The rules of the organisation must enable it to prevent a member resigning from the organisation if the organisation considers that any matter affecting him should be investigated as a preliminary to a decision on the question whether he should be expelled or otherwise disciplined or if it considers that it is desirable that a prohibition or requirement should be imposed on him under the powers mentioned in sub-paragraph (3) above or that any prohibition or requirement imposed on him under those powers should continue in force.

#### Textual Amendments

**F43** Sch. 2 para. 3(1)(2) substituted by Companies Act 1989 (c. 40, SIF 27), s. 203(1)

#### Modifications etc. (not altering text)

**C19** Sch. 2 para. 3 amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para. 45(2).

Sch. 2 para. 3 amended (1.7.1994) by S.I. 1994/1696, reg. 56(2)

Sch. 2 para. 3 extended (1.1.1996) by S.I. 1995/3275, reg. 32, Sch. 7 para. 43(2)(3)

**C20** Sch. 2 para. 3(3) amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para. 45(3)(a).

*[<sup>F44</sup> Taking account of costs of compliance]*

#### Textual Amendments

**F44** Sch. 2 para. 3A inserted (with saving) by Companies Act 1989 (c. 40, SIF 27), s. 204(1)(2)(3)

- 3A The organisation must have satisfactory arrangements for taking account, in framing its rules, of the cost to those to whom the rules would apply of complying with those rules and any other controls to which they are subject.

#### *Monitoring and enforcement*

- 4 (1) The organisation must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and with any [<sup>F45</sup>statement of principle, rules, regulations or codes of practice] to which its members are subject under Chapter V of Part I of this Act in respect of investment business of a kind regulated by the organisation.

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- (2) The arrangements for monitoring may make provision for that function to be performed on behalf of the organisation (and without affecting its responsibility) by any other body or person who is able and willing to perform it.

#### **Textual Amendments**

**F45** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 20](#)

#### *The governing body*

- 5 (1) The arrangements of the organisation with respect to the appointment, removal from office and functions of the persons responsible for making or enforcing the rules of the organisation must be such as to secure a proper balance—
- (a) between the interests of the different members of the organisation; and
  - (b) between the interests of the organisation or its members and the interests of the public.
- (2) The arrangements shall not be regarded as satisfying the requirements of this paragraph unless the persons responsible for those matters include a number of persons independent of the organisation and its members sufficient to secure the balance referred to in sub-paragraph (1)(b) above.

#### *Investigation of complaints*

- 6 (1) The organisation must have effective arrangements for the investigation of complaints against the organisation or its members.
- (2) The arrangements may make provision for the whole or part of that function to be performed by and to be the responsibility of a body or person independent of the organisation.

#### *Promotion and maintenance of standards*

- 7 The organisation must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of investment business and to cooperate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

#### **Modifications etc. (not altering text)**

**C21** [Sch. 2 para. 7](#) amended (1.1.1993) by [S.I. 1992/3218, reg. 55](#), [Sch. 9 para. 45\(4\)](#).  
[Sch. 2 para. 7](#) amended (1.7.1994) by [S.I. 1994/1696, reg. 56\(4\)](#)  
[Sch. 2 para. 7](#) extended (1.1.1996) by [S.I. 1995/3275, reg. 32](#), [Sch. 7 para. 43\(4\)](#)



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## SCHEDULE 3

Section 18.

### REQUIREMENTS FOR RECOGNITION OF PROFESSIONAL BODY

#### Modifications etc. (not altering text)

- C22** Sch. 3 continued (1.12.2001) by S.I. 2001/2657, arts. 1(1), 20(1); S.I. 2001/3538, art. 2(1) (which S.I. was revoked (8.10.2001) by S.I. 2001/3083, arts. 1(2), 23)  
Sch. 3 continued (1.12.2001) by S.I. 2001/3083, arts. 1(2), 20(1); S.I. 2001/3538, art. 2(1)

#### *Statutory status*

- 1 The body must—
- (a) regulate the practice of a profession in the exercise of statutory powers; or
  - (b) be recognised (otherwise than under this Act) for a statutory purpose by a Minister of the Crown or by, or by the head of, a Northern Ireland department; or
  - (c) be specified in a provision contained in or made under an enactment as a body whose members are qualified to exercise functions or hold offices specified in that provision.

#### *Certification*

- 2
- (1) The body must have rules, practices and arrangements for securing that no person can be certified by the body for the purposes of Part I of this Act unless the following conditions are satisfied.
  - (2) The certified person must be either—
    - (a) an individual who is a member of the body; or
    - (b) a person managed and controlled by one or more individuals each of whom is a member of a recognised professional body and at least one of whom is a member of the certifying body.
  - (3) Where the certified person is an individual his main business must be the practice of the profession regulated by the certifying body and he must be practising that profession otherwise than in partnership; and where the certified person is not an individual that person's main business must be the practice of the profession or professions regulated by the recognised professional body or bodies of which the individual or individuals mentioned in sub-paragraph (2)(b) above are members.
  - (4) In the application of sub-paragraphs (2) and (3) above to a certificate which is to be or has been issued to a partnership constituted under the law of England and Wales or Northern Ireland or the law of any other country or territory under which a partnership is not a legal person, references to the certified person shall be construed as references to the partnership.

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**Modifications etc. (not altering text)**

**C23** Sch. 3 para. 2 extended (with modifications) (1.1.1996) by S.I. 1995/3275, reg. 31

*Safeguards for investors*

- [<sup>F463</sup> (1) The body must have rules regulating the carrying on of investment business by persons certified by it which, together with the statements of principle, rules, regulations and codes of practice to which those persons are subject under Chapter V of Part I of this Act, afford an adequate level of protection for investors.
- (2) In determining in any case whether an adequate level of protection is afforded for investors of any description, regard shall be had to the nature of the investment business carried on by persons certified by the body, the kinds of investors involved and the effectiveness of the body's arrangements for enforcing compliance.]

**Textual Amendments**

**F46** Sch. 3 para. 3 substituted by Companies Act 1989 (c. 40, SIF 27), s. 203(2)

*[<sup>F47</sup> Taking account of costs of compliance]*

**Textual Amendments**

**F47** Sch. 3 para. 3A inserted (with saving) by Companies Act 1989 (c. 40, SIF 27), s. 204(1)(2)(3)

- 3A The body must have satisfactory arrangements for taking account, in framing its rules, of the cost to those to whom the rules would apply of complying with those rules and any other controls to which they are subject.

*Monitoring and enforcement*

- 4 (1) The body must have adequate arrangements and resources for the effective monitoring of the continued compliance by persons certified by it with the conditions mentioned in paragraph 2 above and rules, practices and arrangements for the withdrawal or suspension of certification (subject to appropriate transitional provisions) in the event of any of those conditions ceasing to be satisfied.
- (2) The body must have adequate arrangements and resources for the effective monitoring and enforcement of compliance by persons certified by it with the rules of the body relating to the carrying on of investment business and with any [<sup>F48</sup>statements of principle, rules, regulations or codes of practice] to which those persons are subject under Chapter V of Part I of this Act in respect of business of a kind regulated by the body.

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- (3) The arrangements for enforcement must include provision for the withdrawal or suspension of certification and may include provision for disciplining members of the body who manage or control a certified person.
- (4) The arrangements for enforcement may make provision for the whole or part of that function to be performed by and to be the responsibility of a body or person independent of the professional body.
- (5) The arrangements for enforcement must be such as to secure a proper balance between the interests of persons certified by the body and the interests of the public; and the arrangements shall not be regarded as satisfying that requirement unless the persons responsible for enforcement include a sufficient number of persons who are independent of the body and its members and of persons certified by it.
- (6) The arrangements for monitoring may make provision for that function to be performed on behalf of the body (and without affecting its responsibility) by any other body or person who is able and willing to perform it.

#### **Textual Amendments**

**F48** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 21](#)

#### *Investigation of complaints*

- 5 (1) The body must have effective arrangements for the investigation of complaints relating to—
  - (a) the carrying on by persons certified by it of investment business in respect of which they are subject to its rules; and
  - (b) its regulation of investment business.
- (2) Paragraph 4(4) above applies also to arrangements made pursuant to this paragraph.

#### *Promotion and maintenance of standards*

- 6 The body must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of investment business and to cooperate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

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## SCHEDULE 4

Sections 36 and 37.

### REQUIREMENTS FOR RECOGNITION OF INVESTMENT EXCHANGE

**Modifications etc. (not altering text)**

**C24** Sch. 4 modified (1.3.1994) by S.I. 1994/188, reg. 4(a)

#### *Financial resources*

- 1           The exchange must have financial resources sufficient for the proper performance of its functions.

#### *Safeguards for investors*

- 2           (1) The rules and practices of the exchange must ensure that business conducted by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors.
- (2) The exchange must—
- (a) limit dealings on the exchange to investments in which there is a proper market; and
- (b) where relevant, require issuers of investments dealt in on the exchange to comply with such obligations as will, so far as possible, afford to persons dealing in the investments proper information for determining their current value.
- (3) In the case of securities to which Part IV of this Act applies compliance by The Stock Exchange with the provisions of that Part shall be treated as compliance by it with sub-paragraph (2) above.
- (4) The exchange must either have its own arrangements for ensuring the performance of transactions effected on the exchange or ensure their performance by means of services provided under clearing arrangements made by it with a recognised clearing house.
- (5) The exchange must either itself have or secure the provision on its behalf of satisfactory arrangements for recording the transactions effected on the exchange.
- (6) Sub-paragraphs (2), (4) and (5) above are without prejudice to the generality of sub-paragraph (1) above.

#### *Monitoring and enforcement*

- 3           (1) The exchange must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and any clearing arrangements made by it.

*Status: Point in time view as at 01/08/1991.*

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- (2) The arrangements for monitoring may make provision for that function to be performed on behalf of the exchange (and without affecting its responsibility) by any other body or person who is able and willing to perform it.

#### *Investigation of complaints*

- 4 The exchange must have effective arrangements for the investigation of complaints in respect of business transacted by means of its facilities.

#### *Promotion and maintenance of standards*

- 5 The exchange must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of investment business and to cooperate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

*[<sup>F49</sup> Supplementary]*

#### **Textual Amendments**

**F49** Sch. 4 para. 6 inserted (*retrospectively*) by Companies Act 1989 (c. 40, SIF 27), s. 205(1)(2)

- 6 (1) The provisions of this Schedule relate to an exchange only so far as it provides facilities for the carrying on of investment business; and nothing in this Schedule shall be construed as requiring an exchange to limit dealings on the exchange to dealings in investments.
- (2) The references in this Schedule, and elsewhere in this Act, to ensuring the performance of transactions on an exchange are to providing satisfactory procedures (including default procedures) for the settlement of transactions on the exchange.

## SCHEDULE 5

Section 43.

### LISTED MONEY MARKET INSTITUTIONS

#### **Modifications etc. (not altering text)**

**C25** Sch. 5 amended by S.I. 1990/696, art. 2

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*Status: Point in time view as at 01/08/1991.*

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## PART I

### TRANSACTIONS NOT SUBJECT TO MONETARY LIMIT

- 1 This Part of this Schedule applies to any transaction entered into by the listed institution as principal (or as agent for another listed institution) with another listed institution or the Bank of England (whether acting as principal or agent) if the transaction falls within paragraph 2 or 3 below.
- 2 (1) A transaction falls within this paragraph if it is in respect of an investment specified in sub-paragraph (2) below and—
- (a) in the case of an investment within any of paragraphs (a) to (d) of that sub-paragraph, the transaction is not regulated by the rules of a recognised investment exchange; and
  - (b) in the case of any other investment specified in that sub-paragraph, the transaction is not made on such an exchange or expressed to be as so made.
- (2) The investments referred to above are—
- (a) a debenture or other instrument falling within paragraph 2 of Schedule 1 to this Act which is issued—
    - (i) by [<sup>F50</sup>an authorised institution within the meaning of the Banking Act 1987] or a building society incorporated in, or in any part of, the United Kingdom; and
    - (ii) on terms requiring repayment not later than five years from the date of issue;
  - (b) any other debenture or instrument falling within paragraph 2 of Schedule 1 to this Act which is issued on terms requiring repayment not later than one year from the date of issue;
  - (c) loan stock, or any other instrument, falling within paragraph 3 of Schedule 1 to this Act which is issued on terms requiring repayment not later than one year or, if issued by a local authority in the United Kingdom, five years from the date of issue;
  - (d) a warrant or other instrument falling within paragraph 4 of Schedule 1 to this Act which entitles the holder to subscribe for an investment within paragraph (a), (b) or (c) above;
  - (e) any certificate or other instrument falling within paragraph 5 or 11 of Schedule 1 to this Act and relating to an investment within paragraph (a), (b) or (c) above;
  - (f) an option falling within paragraph 7 of Schedule 1 to this Act and relating to—
    - (i) an investment within paragraph (a), (b) or (c) above;
    - (ii) currency of the United Kingdom or of any other country or territory;
    - or
    - (iii) gold or silver;
  - (g) rights under a contract falling within paragraph 8 of Schedule 1 to this Act for the sale of—
    - (i) an investment within paragraph (a), (b) or (c) above;

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- (ii) currency of the United Kingdom or of any other country or territory;  
or
- (iii) gold or silver;
- (h) rights under a contract falling within paragraph 9 of Schedule 1 to this Act by reference to fluctuations in—
  - (i) the value or price of any investment falling within any of the foregoing paragraphs; or
  - (ii) currency of the United Kingdom or of any other country or territory;  
or
  - (iii) the rate of interest on loans in any such currency or any index of such rates;
- (i) an option to acquire or dispose of an investment within paragraph (f), (g) or (h) above.

#### Textual Amendments

**F50** Words substituted by [Banking Act 1987 \(c. 22, SIF 10\)](#), s. 108(1), [Sch. 6 para. 27\(6\)](#)

#### Modifications etc. (not altering text)

**C26** [Sch. 5 Pt. I para. 2\(2\)](#) amended (1.1.1993) by [S.I. 1992/3218, reg. 82\(1\)](#), [Sch. 10 Pt. I para.23](#).

- 3
- (1) A transaction falls within this paragraph if it is a transaction by which one of the parties agrees to sell or transfer an investment falling within paragraph 2 or 3 of Schedule 1 to this Act and by the same or a collateral agreement that party agrees, or acquires an option, to buy back or re-acquire that investment or an equivalent amount of a similar investment within twelve months of the sale or transfer.
  - (2) For the purposes of this paragraph investments shall be regarded as similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights.

## PART II

### TRANSACTIONS SUBJECT TO MONETARY LIMIT

- 4
- (1) This Part of this Schedule applies to any transaction entered into by the listed institution—
    - (a) as principal (or as agent for another listed institution) with an unlisted person (whether acting as principal or agent);
    - (b) as agent for an unlisted person with a listed institution or the Bank of England (whether acting as principal or agent); or
    - (c) as agent for an unlisted person with another unlisted person (whether acting as principal or agent),if the transaction falls within paragraph 2 or 3 above and the conditions in paragraph 5 or, as the case may be, paragraph 7 below are satisfied.
  - (2) In this Part of this Schedule and in Part III below “unlisted person” means a person who is neither a listed institution nor the Bank of England.

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- 5
- (1) In the case of a transaction falling within paragraph 2 above the conditions referred to above are as follows but subject to paragraph 6 below.
  - (2) The consideration for a transaction in respect of an investment falling within paragraph 2(2)(a), (b), (c) or (e) above must be not less than £100,000.
  - (3) The consideration payable on subscription in the case of an investment falling within paragraph 2(2)(d) must not be less than £500,000.
  - (4) The value or price of the property in respect of which an option within paragraph 2(2)(f) above is granted must not be less than £500,000.
  - (5) The price payable under a contract within paragraph 2(2)(g) above must be not less than £500,000.
  - (6) The value or price the fluctuation in which, or the amount the fluctuation in the interest on which, is relevant for the purposes of a contract within paragraph 2(2)(h) above must not be less than £500,000.
  - (7) In the case of an option falling within paragraph 2(2)(i) above the condition in subparagraph (4), (5) or (6) above, as the case may be, must be satisfied in respect of the investment to which the option relates.
- 6
- The conditions in paragraph 5 above do not apply to a transaction entered into by the listed institution as mentioned in paragraph (a), (b) or (c) of paragraph 4(1) above if—
- (a) the unlisted person mentioned in paragraph (a) or (b) or, as the case may be, each of the unlisted persons mentioned in paragraph (c) has in the previous eighteen months entered into another transaction in respect of an investment specified in paragraph 2(2) above;
  - (b) those conditions were satisfied in the case of that other transaction; and
  - (c) that other transaction was entered into by that person (whether acting as principal or agent) with the listed institution (whether acting as principal or agent) or was entered into by that person through the agency of that institution or was entered into by him (whether acting as principal or agent) as a result of arrangements made by that institution.
- 7
- In the case of a transaction falling within paragraph 3 above the condition referred to in paragraph 4 above is that the consideration for the sale or transfer must be not less than £100,000.
- 8
- The monetary limits mentioned in this Part of this Schedule refer to the time when the transaction is entered into; and where the consideration, value, price or amount referred to above is not in sterling it shall be converted at the rate of exchange prevailing at that time.



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### PART III

#### TRANSACTIONS ARRANGED BY LISTED INSTITUTIONS

- 9 Subject to paragraphs 10 and 11 below, this Part of this Schedule applies to any transaction arranged by the listed institution which—
- (a) is entered into by another listed institution as principal (or as agent for another listed institution) with another listed institution or the Bank of England (whether acting as principal or agent);
  - (b) is entered into by another listed institution (whether acting as principal or agent) with an unlisted person (whether acting as principal or agent); or
  - (c) is entered into between unlisted persons (whether acting as principal or agent),
- if the transaction falls within paragraph 2 or 3 above.
- 10 In the case of a transaction falling within paragraph 2 above paragraph 9(b) and (c) above do not apply unless either the conditions in paragraph 5 above are satisfied or—
- (a) the unlisted person mentioned in paragraph (b) or, as the case may be, each of the unlisted persons mentioned in paragraph (c) has in the previous eighteen months entered into another transaction in respect of an investment specified in paragraph 2(2) above;
  - (b) those conditions were satisfied in the case of that other transaction; and
  - (c) that other transaction was entered into by that person (whether acting as principal or agent) with the listed institution making the arrangements (whether acting as principal or agent) or through the agency of that institution or was entered into by that person (whether acting as principal or agent) as a result of arrangements made by that institution.
- 11 In the case of a transaction falling within paragraph 3 above paragraph 9(b) and (c) above do not apply unless the condition in paragraph 7 above is satisfied.

#### SCHEDULE 6

Section 96(6).

#### THE FINANCIAL SERVICES TRIBUNAL

**Modifications etc. (not altering text)**

**C27** It is provided that [ss. 96, 97\(6\), 99-101, Sch. 6](#) shall continue (with modifications) (1.12.2001) by [S.I. 2001/3592, arts. 105, 108](#) (with [art. 23\(2\)](#))

**C28** [Sch. 6](#) extended (12.2.1992) by [S.I. 1992/225, reg. 103\(6\)](#)

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### *Term of office of members*

- 1 (1) A person appointed to the panel mentioned in section 96(2) of this Act shall hold and vacate his office in accordance with the terms of his appointment and on ceasing to hold office shall be eligible for re-appointment.
- (2) A member of the panel appointed by the Lord Chancellor may resign his office by notice in writing to the Lord Chancellor; and a member of the panel appointed by the Secretary of State may resign his office by notice in writing to the Secretary of State.

### *Expenses*

- 2 The Secretary of State shall pay to the persons serving as members of the Tribunal such remuneration and allowances as he may determine and shall defray such other expenses of the Tribunal as he may approve.

### *Staff*

- 3 The Secretary of State may provide the Tribunal with such officers and servants as he thinks necessary for the proper discharge of its functions.

### *Procedure*

- 4 (1) The Secretary of State may make rules for regulating the procedure of the Tribunal, including provision for the holding of any proceedings in private, for the awarding of costs (or, in Scotland, expenses) and for the payment of expenses to persons required to attend before the Tribunal.
- (2) The Tribunal may appoint counsel or a solicitor to assist it in proceedings before the Tribunal.

### *Evidence*

- 5 (1) The Tribunal may by summons require any person to attend, at such time and place as is specified in the summons, to give evidence or to produce any document in his custody or under his control which the Tribunal considers it necessary to examine.
- (2) The Tribunal may take evidence on oath and for that purpose administer oaths or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matters in respect of which he is examined.
- (3) Any person who without reasonable excuse—
- (a) refuses or fails to attend in obedience to a summons issued by the Tribunal or to give evidence; or
  - (b) alters, suppresses, conceals or destroys or refuses to produce a document which he may be required to produce for the purposes of proceedings before the Tribunal,

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shall be guilty of an offence.

- (4) A person guilty of an offence under paragraph (a) of sub-paragraph (3) above shall be liable on summary conviction to a fine not exceeding the fifth level on the standard scale; and a person guilty of an offence under paragraph (b) of that sub-paragraph shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (5) A person shall not under this paragraph be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session except that a lawyer may be required to furnish the name and address of his client.
- (6) Any reference in this paragraph to the production of a document includes a reference to the production of a legible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

#### *Appeals and supervision by Council on Tribunals*

- 6 The <sup>M5</sup>Tribunals and Inquiries Act 1971 shall be amended as follows—
  - (a) in section 8(2) after “6A” there shall be inserted “6B”;
  - (b) in section 13(1) after “6” there shall be inserted “6B”;
  - (c) in Schedule 1, after paragraph 6A there shall be inserted—

#### **Financial services.**

“6B The Financial Services Tribunal established by section 96 of the Financial Services Act 1986.”

#### **Marginal Citations**

**M5** 1971 c. 62.

#### *Parliamentary disqualification*

- 7 (1) In Part III of Schedule 1 to the <sup>M6</sup>House of Commons Disqualification Act 1975 (disqualifying offices) there shall be inserted at the appropriate place “Any member of the Financial Services Tribunal in receipt of remuneration”.
- (2) A corresponding amendment shall be made in Part III of Schedule 1 to the <sup>M7</sup>Northern Ireland Assembly Disqualification Act 1975.

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**Marginal Citations**

**M6** 1975 c. 24.

**M7** 1975 c. 25.

SCHEDULE 7

Section 114.

QUALIFICATIONS OF DESIGNATED AGENCY

*Constitution*

- 1 (1) The constitution of the agency must provide for it to have—
- (a) a chairman; and
  - (b) a governing body consisting of the chairman and other members;
- and the provisions of the constitution relating to the chairman and the other members of the governing body must comply with the following provisions of this paragraph.
- (2) The chairman and other members of the governing body must be persons appointed and liable to removal from office by the Secretary of State and the Governor of the Bank of England acting jointly.
- (3) The members of the governing body must include—
- (a) persons with experience of investment business of a kind relevant to the functions or proposed functions of the agency; and
  - (b) other persons, including regular users on their own account or on behalf of others of services provided by persons carrying on investment business of any such kind;
- and the composition of that body must be such as to secure a proper balance between the interests of persons carrying on investment business and the interests of the public.

*Arrangements for discharge of functions*

- 2 (1) The agency's arrangements for the discharge of its functions must comply with the following provisions of this paragraph.
- (2) Any [<sup>F51</sup>statements of principle, rules, regulations and codes of practice must be issued or made] by the governing body of the agency.
- (3) Any decision taken in the exercise of other functions must be taken at a level appropriate to the importance of the decision.
- (4) In the case of functions to be discharged by the governing body, the members falling respectively within paragraphs (a) and (b) of paragraph 1(3) above must, so far as practicable, have an opportunity to express their opinions.

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- (5) Subject to sub-paragraphs (2) to (4) above, the arrangements may enable any functions to be discharged by a committee, sub-committee, officer or servant of the agency.

**Textual Amendments**

**F51** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 22](#)

**Modifications etc. (not altering text)**

**C29** [Sch. 7 para. 2](#) excluded (18.6.2001) by S.I. 2001/1821, [art. 2\(1\)\(a\)](#)

*[<sup>F52</sup> Taking account of costs of compliance]*

**Textual Amendments**

**F52** [Sch. 7 para. 2A](#) inserted (with saving) by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. [204\(4\)\(5\)](#)

- 2A (1) The agency must have satisfactory arrangements for taking account, in framing any provisions which it proposes to make in the exercise of its legislative functions, of the cost to those to whom the provisions would apply of complying with those provisions and any other controls to which they are subject.
- (2) In this paragraph “legislative functions” means the functions of issuing or making statements of principle, rules, regulations or codes of practice.

*Monitoring and enforcement*

- 3 (1) The agency must have a satisfactory system—
- (a) for enabling it to determine whether persons regulated by it are complying with the obligations which it is the responsibility of the agency to enforce; and
  - (b) for the discharge of the agency’s responsibility for the enforcement of those obligations.
- (2) The system may provide for the functions mentioned in sub-paragraph (1)(a) to be performed on its behalf (and without affecting its responsibility) by any other body or person who is able and willing to perform them.

*Investigation of complaints*

- 4 (1) The agency must have effective arrangements for the investigation of complaints arising out of the conduct of investment business by authorised persons or against any recognised self-regulating organisation, professional body, investment exchange or clearing house.

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- (2) The arrangements must make provision for the investigation of complaints in respect of authorised persons to be carried out in appropriate cases independently of the agency and those persons.

**Modifications etc. (not altering text)**

- C30** Sch. 7 para. 4 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 46(1)**.  
 Sch. 7 para. 4 extended (with modifications) (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7, para. 44(1)**

*Promotion and maintenance of standards*

- 5 The agency must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of investment business and to co-operate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

**Modifications etc. (not altering text)**

- C31** Sch. 7 para. 5 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 46(2)**.  
 Sch. 7 para. 5 amended (1.7.1994) by S.I. 1994/1696, **reg. 61**  
 Sch. 7 para. 5 extended (with modifications) (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 44(2)**

*Records*

- 6 The agency must have satisfactory arrangements for recording decisions made in the exercise of its functions and for the safe-keeping of those records which ought to be preserved.

SCHEDULE 8

Section 114.

PRINCIPLES APPLICABLE TO DESIGNATED AGENCY’S <sup>F53</sup>LEGISLATIVE PROVISIONS]

**Textual Amendments**

- F53** Words substituted by **Companies Act 1989 (c. 40, SIF 27)**, s. 206(1), **Sch. 23 para. 23(2)**

**Modifications etc. (not altering text)**

- C32** Sch. 8 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.47**.  
 Sch. 8 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 45**

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## *[<sup>F54</sup> Introduction]*

### **Textual Amendments**

**F54** Sch. 8 paras. 1, 1A with headings substituted for paragraph 1 and the crossheading preceding it by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(3)**

- 1 (1) In this Schedule “legislative provisions” means the provisions of statements of principle, rules, regulations and codes of practice issued or made under Part I of this Act.
- (2) References in this Schedule to “conduct of business provisions” are to rules made under section 48 of this Act and statements of principle and codes of practice so far as they relate to matters falling within that rule-making power.
- (3) References in this Schedule to provisions made for the purposes of a specified section or Chapter are to rules or regulations made under that section or Chapter and statements of principle and codes of practice so far as they relate to matters falling within that power to make rules or regulations.

### *Standards*

- 1A The conduct of business provisions and the other legislative provisions must promote high standards of integrity and fair dealing in the conduct of investment business.
- 2 The [<sup>F55</sup>conduct of business provisions] must make proper provision for requiring an authorised person to act with due skill, care and diligence in providing any service which he provides or holds himself out as willing to provide.

### **Textual Amendments**

**F55** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(4)**

- 3 The [<sup>F56</sup>conduct of business provisions] must make proper provision for requiring an authorised person to subordinate his own interests to those of his clients and to act fairly between his clients.

### **Textual Amendments**

**F56** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 23(4)**

- 4 The [<sup>F57</sup>conduct of business provisions] must make proper provision for requiring an authorised person to ensure that, in anything done by him for the persons with whom he deals, due regard is had to their circumstances.

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**Textual Amendments**

**F57** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 23\(4\)](#)

*Disclosure*

- 5 The [<sup>F58</sup>conduct of business provisions] must make proper provision for the disclosure by an authorised person of interests in, and facts material to, transactions which are entered into by him in the course of carrying on investment business or in respect of which he gives advice in the course of carrying on such business, including information as to any commissions or other inducements received or receivable from a third party in connection with any such transaction.

**Textual Amendments**

**F58** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 23\(4\)](#)

- 6 The [<sup>F59</sup>conduct of business provisions] must make proper provision for the disclosure by an authorised person of the capacity in which and the terms on which he enters into any such transaction.

**Textual Amendments**

**F59** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 23\(4\)](#)

- 7 The [<sup>F60</sup>conduct of business provisions], or [<sup>F61</sup>those provisions and provisions made for the purposes of] section 51 of this Act, must make proper provision for requiring an authorised person who in the course of carrying on investment business enters or offers to enter into a transaction in respect of an investment with any person, or gives any person advice about such a transaction, to give that person such information as to the nature of the investment and the financial implications of the transaction as will enable him to make an informed decision.

**Textual Amendments**

**F60** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 23\(4\)](#)

**F61** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 23\(5\)](#)

- 8 [<sup>F62</sup>Provisions made for the purposes of] section 48 of this Act regulating action for the 2001 purpose of stabilising the price of investments must make proper provision for ensuring that where action is or is to be taken in conformity with the rules adequate arrangements exist for making known that the price of the investments in respect of which the action is or is to be taken (and, where relevant, of any other investments) may be affected by that action and the period during which it may be



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affected; and where a transaction is or is to be entered into during a period when it is known that the price of the investment to which it relates may be affected by any such action the information referred to in paragraph 7 above includes information to that effect.

#### Textual Amendments

**F62** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 23\(6\)](#)

#### Protection

- 9 The [<sup>F63</sup>conduct of business provisions] and any [<sup>F64</sup>provisions made for the purposes of] 200section 55 of this Act must make proper provision for the protection of property for which an authorised person is liable to account to another person.

#### Textual Amendments

**F63** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 23\(4\)](#)

**F64** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 23\(7\)](#)

- 10 [<sup>F65</sup>Provisions made for the purposes of] sections 53 and 54 of this Act must make the best provision that can reasonably be made [<sup>F65</sup>for the purposes of those sections].

#### Textual Amendments

**F65** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 23\(8\)](#)

#### Records

- 11 The [<sup>F66</sup>conduct of business provisions] must require the keeping of proper records and make provision for their inspection in appropriate cases.

#### Textual Amendments

**F66** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 23\(4\)](#)

#### Classes of investors

- 12 The [<sup>F67</sup>conduct of business provisions] and the other [<sup>F68</sup>provisions made for the purposes of] Chapter V of Part I of this Act must take proper account of the fact that provisions that are appropriate for regulating the conduct of business in relation

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to some classes of investors may not (by reason of their knowledge, experience or otherwise) be appropriate in relation to others.

#### Textual Amendments

- F67** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 23\(4\)](#)  
**F68** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 23\(9\)](#)

## SCHEDULE 9

Section 116.

### DESIGNATED AGENCIES: STATUS AND EXERCISE OF TRANSFERRED FUNCTIONS

#### *Status*

- 1 (1) A designated agency shall not be regarded as acting on behalf of the Crown and its members, officers and servants shall not be regarded as Crown servants.
- (2) In Part III of Schedule 1 to the <sup>M8</sup>House of Commons Disqualification Act 1975 (disqualifying offices) there shall be inserted at the appropriate place—  
 “Chairman of a designated agency within the meaning of the Financial Services Act 1986 if he is in receipt of remuneration”.
- (3) An amendment corresponding to that in sub-paragraph (2) above shall be made in Part III of Schedule 1 to the <sup>M9</sup>Northern Ireland Assembly Disqualification Act 1975.

#### Marginal Citations

- M8** 1975 c. 24.  
**M9** 1975 c. 25.

#### *Exemption from requirement of “limited” in name of designated agency*

- 2 (1) A company is exempt from the requirements of the <sup>M10</sup>Companies Act 1985 relating to the use of “limited” as part of the company name if—  
 (a) it is a designated agency; and  
 (b) its memorandum or articles comply with the requirements specified in paragraph (b) of subsection (3) of section 30 of that Act.
- (2) In subsection (4) of that section (statutory declaration of compliance with requirements entitling company to exemption) the reference to the requirements of subsection (3) of that section shall include a reference to the requirements of sub-paragraph (1) above.
- (3) In section 31 of that Act (provisions applicable to exempted companies) the reference to a company which is exempt under section 30 of that Act shall include a reference to a company that is exempt under this paragraph and, in relation to such a company,

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the power conferred by subsection (2) of that section (direction to include “limited” in company name) shall be exercisable on the ground that the company has ceased to be a designated agency instead of the ground mentioned in paragraph (a) of that subsection.

- (4) In this paragraph references to the said Act of 1985 and sections 30 and 31 of that Act include references to the corresponding provisions in force in Northern Ireland.

#### Marginal Citations

**M10** 1985 c. 6.

#### *The Tribunal*

- 3 (1) Where a case is referred to the Tribunal by a designated agency the Tribunal shall send the Secretary of State a copy of any report made by it to the agency in respect of that case.
- (2) Where the powers which the Tribunal could, apart from any delegation order, require the Secretary of State to exercise are, by virtue of such an order or of an order resuming any function transferred by it, exercisable partly by the Secretary of State and partly by a designated agency or designated agencies the Tribunal may require any of them to exercise such of those powers as are exercisable by them respectively.

#### *Legislative functions*

- 4 (1) A designated agency shall send the Secretary of State a copy of [<sup>F69</sup>any statements of principles, rules, regulations, or codes of practice issued or made] by it by virtue of functions transferred to it by a delegation order and give him written notice of any amendment or revocation of or addition to any such rules or regulations.
- (2) A designated agency shall—
- (a) send the Secretary of State a copy of any guidance issued by the agency which is intended to have continuing effect and is issued in writing or other legible form; and
- (b) give him written notice of any amendment, revocation of or addition to guidance issued by it;
- but notice need not be given of the revocation of guidance other than such as is mentioned in paragraph (a) above or of any amendment or addition which does not result in or consist of such guidance as is there mentioned.

#### Textual Amendments

**F69** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 24\(2\)](#)

*Status: Point in time view as at 01/08/1991.*

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- [<sup>F70</sup>5 Paragraphs 6 to 9 below have effect instead of section 205A of this Act in relation to statements of principle, rules, regulations and codes of practice issued or made by a designated agency in the exercise of powers transferred to it by a delegation order.]

**Textual Amendments**

**F70** Sch. 9 paras. 5, 6 substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 24\(3\)](#)

- 6 Any such power is exercisable by instrument in writing and includes power to make different provision for different cases.

- 7 The instrument shall specify the provision of this Act under which it is made.

- 8 (1) Immediately after an instrument [<sup>F71</sup>is issued or made] it shall be printed and made available to the public with or without payment.

- (2) A person shall not be taken to have contravened any [<sup>F72</sup>statement of principle, rule, regulation or code of practice] if he shows that at the time of the alleged contravention the instrument containing the [<sup>F72</sup>statement of principle, rule, regulation or code of practice] had not been made available as required by this paragraph.

**Textual Amendments**

**F71** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 24\(4\)\(a\)](#)

**F72** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 24\(4\)\(b\)](#)

- 9 (1) The production of a printed copy of an instrument purporting to be [<sup>F73</sup>made or issued by the agency] on which is endorsed a certificate signed by an officer of the agency authorised by it for that purpose and stating—

- (a) that the instrument was [<sup>F73</sup>made or issued by the agency];  
 (b) that the copy is a true copy of the instrument; and  
 (c) that on a specified date the instrument was made available to the public as required by paragraph 8 above,

shall be prima facie evidence, or, in Scotland, sufficient evidence of the facts stated in the certificate.

- (2) Any certificate purporting to be signed as mentioned in sub-paragraph (1) above shall be deemed to have been duly signed unless the contrary is shown.

- (3) Any person wishing in any legal proceedings to cite an instrument made by the agency may require the agency to cause a copy of it to be endorsed with such a certificate as is mentioned in this paragraph.

**Textual Amendments**

**F73** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 24\(5\)](#)

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#### **Modifications etc. (not altering text)**

**C33** By **Companies Act 1989 (c. 40, SIF 27)**, s. 206(1), **Sch. 23 para. 24(5)** it is provided that in paragraph 9 for “made by the agency” (twice) there is substituted “made or issued by the agency”

### *Fees*

- 10 (1) A designated agency may retain any fees payable to it by virtue of the delegation order.
- (2) Any such fees shall be applicable for meeting the expenses of the agency in discharging its functions under the order and for any purposes incidental thereto.
- (3) Any fees payable to a designated agency by virtue of a delegation order made before the coming into force of section 3 of this Act may also be applied for repaying the principal of, and paying interest on, any money borrowed by the agency (or by any other person whose liabilities in respect of the money are assumed by the agency) which has been used for the purpose of defraying expenses incurred before the making of the order (whether before or after the passing of this Act) in making preparations for the agency becoming a designated agency.
- 11 If the function of prescribing the amount of any fee, or of making a scheme under section 112 above, is exercisable by a designated agency it may prescribe or make provision for such fees as will enable it to defray any such expenses as are mentioned in paragraph 10 above.

### *Consultation*

- [<sup>F74</sup>12 (1) Where a designated agency proposes, in the exercise of powers transferred to it by a delegation order, to issue or make any statements of principle, rules, regulations or codes of practice, it shall publish the proposed instrument in such manner as appears to it best calculated to bring the proposals to the attention of the public, together with a statement that representations about the proposals (and, in particular, representations as to the cost of complying with the proposed provisions) can be made to the agency within a specified time.
- (2) Before issuing or making the instrument the agency shall have regard to any representations duly made in accordance with that statement.
- (3) The above requirements do not apply—
- (a) where the agency considers that the delay involved in complying with them would be prejudicial to the interests of investors;
- (b) to the issuing or making of an instrument in the same, or substantially the same, terms as a proposed instrument which was furnished by the agency to the Secretary of State for the purposes of section 114(9) of this Act.]

#### **Textual Amendments**

**F74** Sch. 9 para. 12 substituted by **Companies Act 1989 (c. 40, SIF 27)**, s. 206(1), **Sch. 23 para. 24(6)**

*Status: Point in time view as at 01/08/1991.*

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### *Exchange of information*

- 13 (1) The Secretary of State may communicate to a designated agency any information in his possession of which he could have availed himself for the purpose of exercising any function which by virtue of a delegation order is for the time being exercisable by the agency.
- (2) A designated agency may in the exercise of any function which by virtue of a delegation order is for the time being exercisable by it communicate to any other person any information which has been communicated to the agency by the Secretary of State and which the Secretary of State could have communicated to that person in the exercise of that function.
- (3) No communication of information under sub-paragraph (1) above shall constitute publication for the purposes of the law of defamation.

**Modifications etc. (not altering text)**

**C34** [Sch. 9 para. 13](#): certain functions of the Secretary of State made exercisable concurrently by the Secretary of State and the Treasury (7.6.1992) by [S.I. 1992/1315, art. 5](#), [Sch. 3 para.2](#).

## SCHEDULE 10

Section 129.

### REGULATED INSURANCE COMPANIES

#### *Preliminary*

- 1 In this Part of this Schedule “a regulated insurance company” means any such company as is mentioned in section 129 of this Act.

#### *Authorisations for investment business and insurance business*

- 2 (1) An insurance company to which section 22 of this Act applies shall not be an authorised person except by virtue of that section.
- (2) If an insurance company to which Part II of the <sup>M11</sup>Insurance Companies Act 1982 applies but to which section 22 of this Act does not apply becomes an authorised person by virtue of any other provision of this Act it shall be an authorised person only as respects the management of the investments of any pension fund which is established solely for the benefit of the officers or employees and their dependants of that company or of any other body corporate in the same group as that company.
- (3) An insurance company to which section 31 of this Act applies shall not, so long as it is an authorised person by virtue of that section, be an authorised person by virtue of any other provision of this Act.

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- (4) None of the provisions of Part I of this Act shall be construed as authorising any person to carry on insurance business in any case in which he could not lawfully do so apart from those provisions.

**Marginal Citations**

M11 1982 c. 50.

*Recognition of self-regulating organisation with insurance company members*

- 3 (1) In the case of a self-regulating organisation whose members include or may include regulated insurance companies the requirements of Schedule 2 to this Act shall include a requirement that the rules of the organisation must take proper account of Part II of the <sup>M12</sup>Insurance Companies Act 1982 or, as the case may be, of the provisions for corresponding purposes in the law of any member State in which such companies are established.
- (2) Where the function of making or revoking a recognition order in respect of such a self-regulating organisation is exercisable by a designated agency it shall not regard that requirement as satisfied unless the Secretary of State has certified that he also regards it as satisfied.
- (3) A delegation order—
- (a) may reserve to the Secretary of State the function of revoking a recognition order in respect of such a self-regulating organisation as is mentioned in sub-paragraph (1) above on the ground that the requirement there mentioned is not satisfied; and
  - (b) shall not transfer to a designated agency the function of revoking any such recognition order on the ground that the organisation has contravened sub-paragraphs (3) or (4) of paragraph 6 below as applied by sub-paragraph (5) of that paragraph.
- (4) In the case of such a self-regulating organisation as is mentioned in sub-paragraph (1) above the requirements of Schedule 2 to this Act referred to in section 187(2)(a) of this Act shall include the requirement mentioned in that sub-paragraph.

**Marginal Citations**

M12 1982 c. 50.

*Modification of provisions as to conduct of investment business*

- 4 (1) The rules under section 48 of this Act shall not apply to a regulated insurance company except so far as they make provision as respects the matters mentioned in sub-paragraph (2) below.
- (2) The matters referred to in sub-paragraph (1) above are—

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- (a) procuring proposals for policies the rights under which constitute an investment for the purposes of this Act and advising persons on such policies and the exercise of the rights conferred by them;
- (b) managing the investments of pension funds, procuring persons to enter into contracts for the management of such investments and advising persons on such contracts and the exercise of the rights conferred by them;
- (c) matters incidental to those mentioned in paragraph (a) and (b) above.

[<sup>F75</sup>(2A) Sub-paragraphs (1) and (2) also apply to statements of principle under section 47A and codes of practice under section 63A so far as they relate to matters falling within the rule-making power in section 48.]

- (3) The rules under section 49 of this Act shall not apply to an insurance company which is an authorised person by virtue of section 31 of this Act.
- (4) The rules under sections 53 and 54 of this Act shall not apply to loss arising as a result of a regulated insurance company being unable to meet its liabilities under a contract of insurance.
- (5) A direction under section 59 of this Act shall not prohibit the employment of a person by a regulated insurance company except in connection with—
  - (a) the matters mentioned in sub-paragraph (2) above; or
  - (b) investment business carried on in connection with or for the purposes of those matters.
- (6) The Secretary of State shall not make a delegation order transferring any functions of making rules or regulations under Chapter V of Part I of this Act in relation to a regulated insurance company unless he is satisfied that those rules and regulations will take proper account of Part II of the <sup>M13</sup>Insurance Companies Act 1982 or, as the case may be, of the provisions for corresponding purposes in the law of the member State in which the company is established; and in section 115(5) of this Act the reference to the requirements of section 114(9)(b) shall include a reference to the requirements of this sub-paragraph.

**Textual Amendments**

**F75** Sch. 10 para. 4(2A) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 25(2)**

**Marginal Citations**

**M13** 1982 c. 50.

*Restriction of provisions as to conduct of insurance business*

- 5 (1) Regulations under section 72 of the Insurance Companies Act 1982 (insurance advertisements) shall not apply to so much of any advertisement issued by an authorised person as relates to a contract of insurance the rights under which constitute an investment for the purposes of this Act.
- (2) No requirement imposed under section 74 of that Act (intermediaries in insurance transactions) shall apply in respect of an invitation issued by, or by an appointed



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representative of, an authorised person in relation to a contract of insurance the rights under which constitute an investment for the purposes of this Act.

- (3) Subject to sub-paragraph (4) below, sections 75 to 77 of that Act (right to withdraw from long-term policies) shall not apply to a regulated insurance company in respect of a contract of insurance the rights under which constitute an investment for the purposes of this Act.
- (4) Sub-paragraph (3) above does not affect the operation of the said sections 75 to 77 in a case in which the statutory notice required by those sections has been or ought to have been served before the coming into force of that sub-paragraph.

*Exercise of powers of intervention etc.*

- 6 (1) The powers conferred by Chapter VI of Part I of this Act shall not be exercisable in relation to a regulated insurance company on the ground specified in section 64(1) (a) of this Act for reasons relating to the ability of the company to meet its liabilities to policy holders or potential policy holders.
- (2) The powers conferred by sections 66 and 68 of this Act, and those conferred by section 67 of this Act so far as applicable to assets belonging to the authorised person, shall not be exercisable in relation to a regulated insurance company.
- (3) A designated agency shall not in the case of a regulated insurance company impose any prohibition or requirement under section 65 or 67 of this Act, or vary any such prohibition or requirement, unless it has given reasonable notice of its intention to do so to the Secretary of State and informed him—
  - (a) of the manner in which and the date on or after which it intends to exercise that power; and
  - (b) in the case of a proposal to impose a prohibition or requirement, on which of the grounds specified in section 64(1) of this Act it proposes to act and its reasons for considering that the ground in question exists and that it is necessary to impose the prohibition or requirement.
- (4) A designated agency shall not exercise any power to which sub-paragraph (3) above applies if the Secretary of State has before the date specified in accordance with sub-paragraph (3), above served on it a notice in writing directing it not to do so; and the Secretary of State may serve such a notice if he considers it desirable for protecting policy holders or potential policy holders of the company against the risk that it may be unable to meet its liabilities or to fulfil the reasonable expectations of its policy holders or potential policy holders.
- (5) Sub-paragraphs (3) and (4) above shall, with the necessary modifications, apply also where a recognised self-regulating organisation proposes to exercise, in the case of a member who is a regulated insurance company, any powers of the organisation for purposes corresponding to those of Chapter VI of Part I of this Act.
- (6) The powers conferred by sections 72 and 73 of this Act shall not be exercisable in relation to a regulated insurance company.

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### *Withdrawal of insurance business authorisation*

- 7 (1) At the end of section 11(2)(a) of the <sup>M14</sup>Insurance Companies Act 1982 (withdrawal of authorisation in respect of new business where insurance company has failed to satisfy an obligation to which it is subject by virtue of that Act) there shall be inserted the words “or the Financial Services Act 1986 or, if it is a member of a recognised self-regulating organisation within the meaning of that Act, an obligation to which it is subject by virtue of the rules of that organisation”.
- (2) After subsection (2) of section 13 of that Act (final withdrawal of authorisation) there shall be inserted—
- “(2A) The Secretary of State may direct that an insurance company shall cease to be authorised to carry on business which is insurance business by virtue of section 95(c)(ii) of this Act if it appears to him that the company has failed to satisfy an obligation to which it is subject by virtue of the Financial Services Act 1986 or, if it is a member of a recognised self-regulating organisation within the meaning of that Act, an obligation to which it is subject by virtue of the rules of that organisation.
- (2B) Subsections (3), (5) and (6) of section 11 and subsections (1) and (5) to (8) of section 12 above shall apply to a direction under subsection (2A) above as they apply to a direction under section 11.”
- [<sup>F76</sup>(3) The disciplinary action which may be taken by virtue of section 47A(3) of this Act (failure to comply with statement of principle) includes—
- (a) the withdrawal of authorisation under section 11(2)(a) of the Insurance Companies Act 1982, and
- (b) the giving of a direction under section 13(2A) of that Act;
- and subsection (6) of section 47A (duty of the Secretary of State as to exercise of powers) has effect accordingly.]

#### **Textual Amendments**

**F76** Sch. 10 para. 7(3) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 25\(3\)](#)

#### **Marginal Citations**

**M14** 1982 c. 50.

### *Termination of investment business authorisation of insurer established in other member State*

- 8 (1) Sections 33(1)(b) and 34 of this Act shall not apply to a regulated insurance company.
- (2) A direction under section 33(1)(a) of this Act in respect of such an insurance company may provide that the company shall cease to be an authorised person except as respects investment business of a kind specified in the direction and shall not make it unlawful for the company to effect a contract of insurance in pursuance of a subsisting contract of insurance.
- (3) Where the Secretary of State proposes to give a direction under section 33(1)(a) of this Act in respect of such an insurance company he shall give it written notice of his

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intention to do so, giving particulars of the grounds on which he proposes to act and of the rights exercisable under sub-paragraph (4) below.

- (4) An insurance company on which a notice is served under sub-paragraph (3) above may within fourteen days after the date of service make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State; and the Secretary of State shall have regard to any representations made in accordance with this sub-paragraph in determining whether to give the direction.
- (5) After giving a direction under section 33(1)(a) of this Act in respect of a regulated insurance company the Secretary of State shall inform the company in writing of the reasons for giving the direction.
- (6) A delegation order shall not transfer to a designated agency the function of giving a direction under section 33(1)(a) of this Act in respect of a regulated insurance company.

**Modifications etc. (not altering text)**

**C35** Sch. 10 para. 8(2)-(5): Certain functions of the Secretary of State made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, Sch. 2 para. 6

*Powers of Tribunal*

- 9 In the case of a regulated insurance company the provisions mentioned in section 98(4) of this Act shall include sections 11 and 13(2A) of the <sup>M15</sup>Insurance Companies Act 1982 but where the Tribunal reports that the appropriate decision would be to take action under either of those sections or under section 33(1)(a) of this Act the Secretary of State shall take the report into consideration but shall not be bound to act upon it.

**Marginal Citations**

**M15** 1982 c. 50.

*Consultation with designated agencies*

- 10 (1) Where any functions under this Act are for the time being exercisable by a designated agency in relation to regulated insurance companies the Secretary of State shall, before issuing an authorisation under section 3 of the <sup>M16</sup>Insurance Companies Act 1982 to an applicant who proposes to carry on in the United Kingdom insurance business which is investment business—
- (a) seek the advice of the designated agency with respect to any matters which are relevant to those functions of the agency and relate to the applicant, his proposed business or persons who will be associated with him in, or in connection with, that business; and

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- (b) take into account any advice on those matters given to him by the agency before the end of the period within which the application is required to be decided.
- (2) The Secretary of State may for the purpose of obtaining the advice of a designated agency under sub-paragraph (1) above furnish it with any information obtained by him in connection with the application.
- (3) If a designated agency by which any functions under this Act are for the time being exercisable in relation to regulated insurance companies has reasonable grounds for believing that any such insurance company has failed to comply with an obligation to which it is subject by virtue of this Act it shall forthwith give notice of that fact to the Secretary of State so that he can take it into consideration in deciding whether to give a direction in respect of the company under section 11 or 13(2A) of the said Act of 1982 or section 33 of this Act.
- (4) A notice under sub-paragraph (3) above shall contain particulars of the obligation in question and of the agency's reasons for considering that the company has failed to satisfy that obligation.
- (5) A designated agency need not give a notice under sub-paragraph (3) above in respect of any matter unless it considers that that matter (either alone or in conjunction with other matters) would justify the withdrawal of authorisation under section 28 of this Act in the case of a person to whom that section applies.

#### Marginal Citations

M16 1982 c. 50.

## SCHEDULE 11

Section 140.

### FRIENDLY SOCIETIES

#### Modifications etc. (not altering text)

C36 Sch. 11 amended (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40) s. 98, Sch. 18 Pt. II para. 10; S.I. 1993/16, art. 2, Sch.4; S.I. 1993/2213, art. 2(1), Sch.5.

## PART I

### PRELIMINARY

1 In this Schedule—

“a regulated friendly society” means a society which is an authorised person by virtue of section 23 of this Act as respects such investment business as is mentioned in that section;

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“regulated business”, in relation to a regulated friendly society, means investment business as respects which the society is authorised by virtue of that section;

“a self-regulating organisation for friendly societies” means a self-regulating organisation which is permitted under its rules to admit regulated friendly societies as members and to regulate the carrying on by such societies of regulated business;

“a recognised self-regulating organisation for friendly societies” means a body declared by an order of the Registrar for the time being in force to be a recognised self-regulating organisation for friendly societies for the purposes of this Schedule;

“a member society” means a regulated friendly society which is a member of an appropriate recognised self-regulating organisation for friendly societies and is subject to its rules in carrying on all its regulated business and, for the purposes of this definition, “an appropriate recognised self-regulating organisation for friendly societies” means—

- (a) in the case of any such society as is mentioned in section 23(1) of this Act, an organisation declared by an order of the Chief Registrar of friendly societies for the time being in force to be a recognised self-regulating organisation for friendly societies for the purposes of this Schedule; and
- (b) in the case of any such society as is mentioned in section 23(2) of this Act, an organisation declared by an order of the Registrar of Friendly Societies for Northern Ireland for the time being in force to be such an organisation;

“the Registrar” means—

- (a) in relation to any such society as is mentioned in section 23(1) of this Act, or to any self-regulating organisation for friendly societies which has applied for or been granted a recognition order made by him, the Chief Registrar of friendly societies; and
- (b) in relation to any such society as is mentioned in section 23(2) of this Act, or to any self-regulating organisation for friendly societies which has applied for or been granted a recognition order made by him, the Registrar of Friendly Societies for Northern Ireland.

## PART II

### SELF-REGULATING ORGANISATIONS FOR FRIENDLY SOCIETIES

#### *Recognition*

- 2 (1) A self-regulating organisation for friendly societies may apply to the Chief Registrar of friendly societies or the Registrar of Friendly Societies for Northern Ireland for an order declaring it to be a recognised self-regulating organisation for friendly societies for the purposes of this Schedule.
- (2) An application under sub-paragraph (1) above—
  - (a) shall be made in such manner as the Registrar may direct; and
  - (b) shall be accompanied by such information as the Registrar may reasonably require for the purpose of determining the application.

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*Status: Point in time view as at 01/08/1991.*

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- (3) At any time after receiving an application and before determining it the Registrar may require the applicant to furnish additional information.
  - (4) The directions and requirements given or imposed under sub-paragraphs (2) and (3) above may differ as between different applications.
  - (5) Any information to be furnished to the Registrar under this paragraph shall, if he so requires, be in such form or verified in such manner as he may specify.
  - (6) Every application shall be accompanied by a copy of the applicant's rules and of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form.
- 3
- (1) If, on an application duly made in accordance with paragraph 2 above and after being furnished with all such information as he may require under that paragraph, it appears to the Registrar from that information and having regard to any other information in his possession that the requirements mentioned in paragraph 4 below are satisfied as respects that organisation, he may, with the consent of the Secretary of State and subject to sub-paragraph (2) below, make an order ("a recognition order") declaring the applicant to be a recognised self-regulating organisation for friendly societies.
  - (2) Where the Registrar proposes to grant an application for a recognition order he shall send to the Secretary of State a copy of the application together with a copy of the rules and any guidance accompanying the application and the Secretary of State shall not consent to the making of the recognition order unless he is satisfied that the rules and guidance of which copies have been sent to him under this sub-paragraph [F77, together with any statements of principle, rules, regulations or codes of practice to which members of the organisation would be subject by virtue of this Schedule,] do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.
  - (3) Section 122 of this Act shall apply in relation to the decision whether to consent to the making of a recognition order under this paragraph as it applies to the decisions mentioned in subsection (1) of that section.
  - (4) Subsections (1) and (2) of section 128 of this Act shall apply for the purposes of this paragraph as if the powers there mentioned included the power of refusing consent to the making of a recognition order under this paragraph and subsection (5) of that section shall apply for that purpose as if the reference to Chapter XIV of Part I included a reference to this paragraph.
  - (5) The Registrar may refuse to make a recognition order in respect of an organisation if he considers that its recognition is unnecessary having regard to the existence of one or more other organisations which are concerned with such investment business as is mentioned in section 23 of this Act and which have been or are likely to be recognised under this paragraph.
  - (6) Where the Registrar refuses an application for a recognition order he shall give the applicant a written notice to that effect specifying a requirement which in the opinion of the Registrar is not satisfied, stating that the application is refused on the ground mentioned in sub-paragraph (5) above or stating that the Secretary of State has refused to consent to the making of the order.

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(7) A recognition order shall state the date on which it takes effect.

#### Textual Amendments

**F77** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 Pt. II para. 27](#)

#### Modifications etc. (not altering text)

**C37** [Sch. 11 para. 3](#): certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in [S.I. 1990/354](#), [art. 5\(2\)](#)

- 4 (1) The requirements referred to in paragraph 3 above are that mentioned in sub-paragraph (2) below and those set out in paragraphs 2 to 7 of Schedule 2 to this Act as modified in sub-paragraphs (3) to (5) below.
- (2) The rules of the organisation must take proper account of the <sup>M17</sup>Friendly Societies Act 1974, or as the case may be, the <sup>M18</sup>Friendly Societies Act (Northern Ireland) 1970.
- (3) References in paragraphs 2, 3, 4 and 6 of Schedule 2 to members are to members who are regulated friendly societies.
- (4) In paragraph 3 of that Schedule—
- (a) in sub-paragraph (1) for the reference to Chapter V of Part I of this Act there shall be substituted a reference to paragraphs 14 to [F7822D] below; and
  - (b) .....<sup>F79</sup>
  - (c) in sub-paragraph (3) for the reference to Chapter VI of that Part there shall be substituted a reference to the powers exercisable by the Registrar by virtue of paragraph 23 below.
- (5) In paragraph 4 of that Schedule for the reference to Chapter V of Part I of this Act there shall be substituted references to paragraphs 14 to [F8022D] below.

#### Textual Amendments

**F78** “22D” substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 Pt. II para. 28\(2\)\(a\)](#)

**F79** [Sch. 11 para. 4\(b\)](#) repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 206(1), 212, [Sch. 23 Pt. II para. 28\(2\)\(b\)](#), [Sch. 24](#)

**F80** “22D” substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 Pt. II para. 28\(3\)](#)

#### Modifications etc. (not altering text)

**C38** [Sch. 11 para. 4](#) modified by [S.R. 1987/440](#), [art. 3](#)

**C39** [Sch. 11 para. 4](#): certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in [S.I. 1990/354](#), [art. 5\(2\)](#)

#### Marginal Citations

**M17** 1974 c. 46.

**M18** 1970 c. 31 (N.I.)

*Status: Point in time view as at 01/08/1991.*

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### *Revocation of recognition*

- 5 (1) A recognition order may be revoked by a further order made by the Registrar if at any time it appears to him—
- (a) that any requirement mentioned in paragraph 4(1) above is not satisfied in the case of the organisation to which the recognition order relates (“the recognised organisation”);
  - (b) that the recognised organisation has failed to comply with any obligation to which it is subject by virtue of this Act; or
  - (c) that the continued recognition of the organisation is undesirable having regard to the existence of one or more other organisations which have been or are to be recognised under paragraph 3 above.
- (2) Subsections (2) to (9) of section 11 of this Act shall have effect in relation to the revocation of a recognition order under this paragraph as they have effect in relation to the revocation of a recognition order under subsection (1) of that section but with the substitution—
- (a) for references to the Secretary of State of references to the Registrar;
  - (b) for the reference in subsection (3) to members of a reference to members of the organisation which are member societies in relation to it; and
  - (c) for the reference in subsection (6) to investors of a reference to members of the societies which are member societies in relation to the organisation.

### *Compliance orders*

- 6 (1) If at any time it appears to the Registrar—
- (a) that any requirement mentioned in paragraph 3 above is not satisfied in the case of a recognised self-regulating organisation for friendly societies; or
  - (b) that such an organisation has failed to comply with any obligation to which it is subject by virtue of this Act,
- he may, instead of revoking the recognition order under paragraph 5 above, make an application to the court under this paragraph.
- (2) If on any such application the court decides that the requirement in question is not satisfied or, as the case may be, that the organisation has failed to comply with the obligation in question it may order the organisation concerned to take such steps as the court directs for securing that that requirement is satisfied or that that obligation is complied with.
- (3) The jurisdiction conferred by this paragraph shall be exercisable by the High Court and the Court of Session.



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### Textual Amendments

**F81** Sch. 11 para. 7 repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 Pt. II para. 29, Sch. 24

- 8
- (1) The Registrar or the Secretary of State may make regulations requiring a recognised self-regulating organisation for friendly societies to give the Registrar or, as the case may be, the Secretary of State forthwith notice of the occurrence of such events relating to the organisation or its members as are specified in the regulations and such information in respect of those events as is so specified.
  - (2) The Registrar or the Secretary of State may make regulations requiring a recognised self-regulating organisation for friendly societies to furnish the Registrar or, as the case may be, the Secretary of State at such times or in respect of such periods as are specified in the regulations with such information relating to the organisation or its members as is so specified.
  - (3) The notices and information required to be given or furnished under the foregoing provisions of this paragraph shall be such as the Registrar or, as the case may be, the Secretary of State may reasonably require for the exercise of his functions under this Act.
  - (4) Regulations under the foregoing provisions of this paragraph may require information to be given in a specified form and to be verified in a specified manner.
  - (5) A notice or information required to be given or furnished under the foregoing provisions of this paragraph shall be given in writing or such other manner as the Registrar or, as the case may be, the Secretary of State may approve.
  - (6) Where a recognised self-regulating organisation for friendly societies amends, revokes or adds to its rules or guidance it shall within seven days give the Registrar written notice of the amendment, revocation or addition; but notice need not be given of the revocation of guidance other than such as is mentioned in paragraph 2(6) above or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned.
  - (7) The Registrar shall send the Secretary of State a copy of any notice given to him under sub-paragraph (6) above.
  - (8) Contravention of or of regulations under this paragraph shall not be an offence.
- 9
- (1) A recognised self-regulating organisation for friendly societies shall not exercise any powers for purposes corresponding to those of the powers exercisable by the Registrar by virtue of paragraph 23 below in relation to a regulated friendly society unless it has given reasonable notice of its intention to do so to the Registrar and informed him—
    - (a) of the manner in which and the date on or after which it intends to exercise the power; and
    - (b) in the case of a proposal to impose a prohibition or requirement, of the reason why it proposes to act and its reasons for considering that that reason exists and that it is necessary to impose the prohibition or requirement.

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- (2) A recognised self-regulating organisation for friendly societies shall not exercise any power to which sub-paragraph (1)(a) above applies if before the date given in the notice in pursuance of that sub-paragraph the Registrar has served on it a notice in writing directing it not to do so; and the Registrar may serve such a notice if he considers it is desirable for protecting members or potential members of the society against the risk that it may be unable to meet its liabilities or to fulfil the reasonable expectations of its members or potential members.

*Prevention of restrictive practices*

- 10 (1) The powers conferred by sub-paragraph (2) below shall be exercisable by the Secretary of State if at any time it appears to him that—
- (a) any rules made or guidance issued by a recognised self-regulating organisation for friendly societies;
  - (b) any practices of any such organisation; or
  - (c) any practices of persons who are members of, or otherwise subject to the rules made by, any such organisation, [<sup>F82</sup>together with any statements of principle, rules, regulations or codes of practice to which members of the organisation are subject by virtue of this Schedule,]
- have, or are intended or likely to have, to a significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is necessary for the protection of investors.
- (2) The powers exercisable under this sub-paragraph are to direct the Registrar—
- (a) to revoke the recognition order of the organisation;
  - (b) to direct the organisation to take specified steps for the purpose of securing that [<sup>F83</sup>its rules, or the], guidance or practices in question do not have the effect mentioned in sub-paragraph (1) above;
  - (c) to make alterations in [<sup>F84</sup>its rules] for that purpose;
- and subsections (2) to (5), (7) and (9) of section 11 of this Act, as applied by sub-paragraph (2) of paragraph 5 above, shall have effect in relation to the revocation of a recognition order by virtue of a direction under this sub-paragraph as they have effect in relation to the revocation of such an order under sub-paragraph (1) of that paragraph.
- (3) The practices referred to in paragraph (b) of sub-paragraph (1) above are practices of the organisation in its capacity as such; . . . <sup>F85</sup>
- [<sup>F86</sup>(3A) The practices referred to in paragraph (c) of sub-paragraph (1) above are practices in relation to business in respect of which the persons in question are subject to—
- (a) the rules of the organisation, or
  - (b) statements of principle, rules, regulations or codes of practice to which its members are subject by virtue of this Schedule,
- and which are required or contemplated by the rules of the organisation or by those statements, rules, regulations or codes, or by guidance issued by the organisation, or which are otherwise attributable to the conduct of the organisation as such.]
- (4) Subsections (3) to (8) of section 122 of this Act shall apply for the purposes of this paragraph as if—

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- (a) the reference to a notice in subsection (3) included a notice received under paragraph 8(7) above or 33(4) below;
  - (b) the references to rules and guidance in subsection (4) included such rules and guidance as are mentioned in sub-paragraph (1) above;
  - (c) the reference to practices in subsection (6) included such practices as are mentioned in sub-paragraph (1) above; and
  - (d) the reference to the Secretary of State's powers in subsection (7) included his powers under sub-paragraph (2) above.
- (6) Section 128 of this Act shall apply for the purposes of this paragraph as if—
- (a) the powers referred to in subsection (1) of that section included the powers conferred by sub-paragraph (2)(b) and (c) above;
  - (b) the references to Chapter XIV of Part I included references to this paragraph; and
  - (c) the reference to a recognised self-regulating organisation included a reference to a recognised self-regulating organisation for friendly societies.

#### Textual Amendments

- F82** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), **Sch. 23 Pt. II para. 30(2)**
- F83** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), **Sch. 23 Pt. II para. 30(3)(a)**
- F84** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), **Sch. 23 Pt. II para. 30(3)(c)**
- F85** Words repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 206(1), 212, **Sch. 23 Pt. II para. 30(4)**, **Sch. 24**
- F86** **Sch. 11 para. 10(3A)** inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), **Sch. 23 Pt. II para. 30(4)**

#### Modifications etc. (not altering text)

- C40** **Sch. 11 para. 10**: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in [S.I. 1990/354](#), **art. 5(2)**

#### *Fees*

- 11 (1) An applicant for a recognition order under paragraph 3 above shall pay such fees in respect of his application as may be required by a scheme made and published by the Registrar; and no application for such an order shall be regarded as duly made unless this sub-paragraph is complied with.
- (2) Subsections (2) to (4) of section 112 of this Act apply to a scheme under sub-paragraph (1) above as they apply to a scheme under subsection (1) of that section.
- (3) Every recognised self-regulating organisation for friendly societies shall pay such periodical fees to the Registrar as he may by regulations prescribe.

#### *Application of provisions of this Act*

- 12 (1) Subject to the following provisions of this paragraph, sections 44(7), 102(1)(c), 124, 125, 126, 180(1)(n), 181, 187, 192 and 200(4) of this Act shall apply in relation to recognised self-regulating organisations for friendly societies as they apply in relation to recognised self-regulating organisations.

*Status: Point in time view as at 01/08/1991.*

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- (2) In its application by virtue of sub-paragraph (1) above section 126(1) of this Act shall have effect as if the reference to section 119(2) were a reference to paragraph 10(1) above.
- (3) In its application by virtue of sub-paragraph (1) above subsection (2) of section 187 of this Act shall have effect as if—
- (a) the reference in paragraph (a) to paragraphs 1 to 6 of Schedule 2 were to paragraphs 2 to 6 of that Schedule (as they apply by virtue of paragraph 4 above) and to sub-paragraph (2) of paragraph 4 above; and
  - (b) paragraph (d) referred to the powers of the organisation under paragraph 23(4) below.
- (4) A direction under subsection (1) of section 192 of this Act as it applies by virtue of sub-paragraph (1) above shall direct the Registrar to direct the organisation not to take or, as the case may be, to take the action in question; and where the function of making or revoking a recognition order in respect of a self-regulating organisation for friendly societies is exercisable by a transferee body any direction under that subsection as it applies as aforesaid shall be a direction requiring the Registrar to direct the transferee body to give the organisation such a direction as is specified in the direction given by the Secretary of State.
- (5) Subsection (5) of that section shall not apply to a direction given to the Registrar by virtue of this paragraph.

### PART III

#### REGISTRAR'S POWERS IN RELATION TO REGULATED FRIENDLY SOCIETIES

##### *Special provisions for regulated friendly societies*

- 13 [F87Paragraphs 13A to 25] below shall have effect in connection with the exercise of powers for the regulation of regulated friendly societies in relation to regulated business, but nothing in this Part of this Schedule shall affect the exercise of any power conferred by this Act in relation to a regulated friendly society which is an authorised person by virtue of section 25 of this Act to the extent that the power relates to other investment business.

#### Textual Amendments

**F87** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 Pt. II para. 31](#)

#### Modifications etc. (not altering text)

**C41** [Sch. 11 para. 13](#): certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in [S.I. 1990/354](#), [art. 5\(2\)](#)

*Status: Point in time view as at 01/08/1991.*

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### *Conduct of investment business*

- [<sup>F88</sup>13A(1) The Registrar may issue statements of principle with respect to the conduct expected of regulated friendly societies.
- (2) The conduct expected may include compliance with a code or standard issued by another person, as for the time being in force, and may allow for the exercise of discretion by any person pursuant to any such code or standard.
- (3) Failure to comply with a statement of principle under this paragraph is a ground for the taking of disciplinary action or the exercise of powers of intervention, but it does not give rise to any right of action by investors or other persons affected or affect the validity of any transaction.
- (4) The disciplinary action which may be taken by virtue of sub-paragraph (3) is—
- (a) the making of a public statement under paragraph 21, or
  - (b) the application by the Registrar for an injunction, interdict or other order under paragraph 22(1), or
  - (c) any action under paragraph 26 or 27 of this Schedule;
- and the reference in that sub-paragraph to powers of intervention is to the powers conferred by Chapter VI of Part I of this Act.
- (5) Where a statement of principle relates to compliance with a code or standard issued by another person, the statement of principle may provide—
- (a) that failure to comply with the code or standard shall be a ground for the taking of disciplinary action, or the exercise of powers of intervention, only in such cases and to such extent as may be specified; and
  - (b) that no such action shall be taken, or any such power exercised, except at the request of the person by whom the code or standard in question was issued.
- (6) The Registrar shall exercise his powers in such manner as appears to him appropriate to secure compliance with statements of principle under this paragraph.]

#### **Textual Amendments**

**F88** Sch. 11 para. 13A inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 Pt. II para. 32 and brought into force by S.I. 1990/354, art. 3

#### **Modifications etc. (not altering text)**

**C42** Sch. 11 para. 13A: functions transferred by S.I. 1990/354, art. 5(1)

**C43** Sch. 11 paras. 13A, 13B: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, art. 5(2)

- [<sup>F89</sup>13B(1) The relevant regulatory authority may on the application of a regulated friendly society—
- (a) modify a statement of principle issued under paragraph 13A so as to adapt it to the circumstances of the society or to any particular kind of business carried on by it, or
  - (b) dispense the society from compliance with any such statement of principle, generally or in relation to any particular kind of business carried on by it.

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- (2) The powers conferred by this paragraph shall not be exercised unless it appears to the relevant regulatory authority—
- (a) that compliance with the statement of principle in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and
  - (b) that the exercise of those powers will not result in any undue risk to investors.
- (3) The powers conferred by this paragraph may be exercised unconditionally or subject to conditions; and paragraph 13A(3) applies in the case of failure to comply with a condition as in the case of failure to comply with a statement of principle.
- (4) The relevant regulatory authority for the purposes of this paragraph is—
- (a) in the case of a member society of a recognised self-regulating organisation for friendly societies, in relation to investment business in the carrying on of which it is subject to the rules of the organisation, that organisation;
  - (b) in any other case, or in relation to other investment business, the Registrar.
- (5) The reference in paragraph 4(1) of Schedule 2 as applied by paragraph 4 above (requirements for recognition of self-regulating organisation for friendly societies) to monitoring and enforcement of compliance with statements of principle includes monitoring and enforcement of compliance with conditions imposed by the organisation under this paragraph.]

#### Textual Amendments

**F89** Sch. 11 para. 13B inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 Pt. II para. 32

#### Modifications etc. (not altering text)

**C44** Sch. 11 paras. 13A, 13B: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, art. 5(2)

- 14 (1) The rules under section 48 of this Act shall not apply to a regulated friendly society but the Registrar may, with the consent of the Secretary of State, make such rules as may be made under that section regulating the conduct of any such society . . . <sup>F90</sup> as respects the matters mentioned in sub-paragraph (2) below.
- (2) The matters referred to in sub-paragraph (1) above are—
- (a) procuring persons to transact regulated business with it and advising persons as to the exercise of rights conferred by investments acquired from the society in the course of such business;
  - (b) managing the investment of pension funds, procuring persons to enter into contracts for the management of such investments and advising persons on such contracts and the exercise of the rights conferred by them;
  - (c) matters incidental to those mentioned in paragraphs (a) and (b) above.

[<sup>F91</sup>(2A) Paragraph 22B below has effect as regards the application of rules under this paragraph to member societies in respect of investment business in the carrying on of which they are subject to the rules of a recognised self-regulating organisation for friendly societies.]

*Status: Point in time view as at 01/08/1991.*

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- (3) Section 50 of this Act shall apply in relation to rules under this paragraph as it applies in relation to rules under section 48 except that—
- (a) for the reference to the Secretary of State there shall be substituted a reference to the Registrar; . . . <sup>F92</sup>
  - (b) the Registrar shall not exercise the power under subsection (1) to alter the requirement of rules made under this paragraph without the consent of the Secretary of State <sup>F93</sup>; and]
  - <sup>F93</sup>(c) for the references in subsection (4) to section 63B and a recognised self-regulating organisation there shall be substituted references to paragraph 13B and a recognised self-regulating organisation for friendly societies.]

#### Textual Amendments

- F90** Words repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 206(1), 212, Sch. 23 Pt. II para. 33(2), **Sch. 24**
- F91** [Sch. 11 para. 14\(2A\)](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), **Sch. 23 Pt. II para. 33(3)**
- F92** Word repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 206(1), 212, Sch. 23 Pt. II para. 33(4), **Sch. 24**
- F93** [Sch. 11 para. 14\(3\)\(c\)](#) and “; and” preceding it inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), **Sch. 23 Pt. II para. 33(4)**

#### Modifications etc. (not altering text)

- C45** [Sch. 11 para. 14](#): certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in [S.I. 1990/354](#), **art. 5(2)**

- 15 (1) The rules under section 51 of this Act shall not apply to any investment agreement which a person has entered or offered to enter into with a regulated friendly society if, as respects the society, entering into the agreement constitutes the carrying on of regulated business but the Registrar may, with the consent of the Secretary of State, make rules for enabling a person who has entered or offered to enter into such an agreement to rescind the agreement or withdraw the offer within such period and in such manner as may be specified in the rules.
- (2) Subsection (2) of section 51 of this Act shall apply in relation to rules under this paragraph as it applies in relation to rules under that section but with the substitution for the reference to the Secretary of State of a reference to the Registrar.
- 16 (1) Regulations under section 52 of this Act shall not apply to any regulated friendly society but the Registrar may, with the consent of the Secretary of State, make such regulations as may be made under that section imposing requirements on regulated friendly societies other than member societies.
- (2) Any notice or information required to be given or furnished under this paragraph shall be given in writing or in such other manner as the Registrar may approve.
- 17 (1) Rules under section 53 of this Act shall not apply to any regulated friendly society but <sup>F94</sup>the Commission] may, with the consent of the Secretary of State make rules concerning indemnity against any claim in respect of any description of civil liability incurred by a regulated friendly society in connection with any regulated business.

*Status: Point in time view as at 01/08/1991.*

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- (2) Such rules shall not apply to a member society of a recognised self-regulating organisation for friendly societies unless that organisation has requested that such rules should apply to it; and any such request shall not be capable of being withdrawn after rules giving effect to it have been made but without prejudice to the power of [<sup>F94</sup>the Commission] to revoke the rules if [<sup>F95</sup>the Commission] and the Secretary of State think fit.
- (3) Subsections (3) and (4) of section 53 of this Act shall apply in relation to such rules as they apply to rules under that section but with the substitution for references to the Secretary of State of references to [<sup>F94</sup>the Commission].

#### Textual Amendments

- F94** Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, Sch. 18 Pt. II para. 10(1) (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, Sch.4; S.I. 1993/2213, art. 2(1), Sch.5.
- F95** Words in Sch. 11 substituted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, Sch. 18 Pt. II para. 10(2)(3) (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, Sch.4; S.I. 1993/2213, art. 2(1), Sch.5.

- 17 (1) Rules under section 53 of this Act shall not apply to any regulated friendly society but the Registrar may, with the consent of the Secretary of State make rules concerning indemnity against any claim in respect of any description of civil liability incurred by a regulated friendly society in connection with any regulated business.
- (2) Such rules shall not apply to a member society of a recognised self-regulating organisation for friendly societies unless that organisation has requested that such rules should apply to it; and any such request shall not be capable of being withdrawn after rules giving effect to it have been made but without prejudice to the power of the Registrar to revoke the rules if he and the Secretary of State think fit.
- (3) Subsections (3) and (4) of section 53 of this Act shall apply in relation to such rules as they apply to rules under that section but with the substitution for references to the Secretary of State of references to the Registrar.
- 18 (1) No scheme established by rules under section 54 shall apply in cases where persons who are or have been regulated friendly societies are unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with any regulated business but the Registrar may, with the consent of the Secretary of State, by rules establish a scheme for compensating investors in such cases.
- (2) Subject to sub-paragraph (3) below, subsections (2) to (4) and (6) of that section shall apply in relation to such rules as they apply to rules under that section but with the substitution for the references to the Secretary of State, authorised persons, members and a recognised self-regulating organisation of references respectively to the Registrar, regulated friendly societies, member societies and a recognised self-regulating organisation for friendly societies.



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- (3) Subsection (3) of that section shall have effect with the substitution for the words “the Secretary of State is satisfied” of the words “the Registrar and the Secretary of State are satisfied”.
- (4) The references in section 179(3)(b) and 180(1)(e) of this Act to the body administering a scheme established under section 54 of this Act shall include the body administering a scheme established under this paragraph.
- 19 (1) Regulations under section 55 of this Act shall not apply to money held by regulated friendly societies but the Registrar may, with the consent of the Secretary of State, make regulations with respect to money held by a regulated friendly society in such circumstances as may be specified in the regulations.
- (2) Regulations under this paragraph shall not provide that money held by a regulated friendly society shall be held as mentioned in paragraph (a) of subsection (2) of that section but paragraphs (b) to (f) of that subsection and subsections (3) and (4) of that section shall apply in relation to regulations made under this paragraph as they apply in relation to regulations under that section [F96 (but with the substitution for the reference in paragraph (e) of subsection (2) to the Secretary of State of a reference to the Registrar)].
- [F97 (3) Paragraph 22B below has effect as regards the application of regulations under this paragraph to member societies in respect of investment business in the carrying on of which they are subject to the rules of a recognised self-regulating organisation for friendly societies.]

#### Textual Amendments

**F96** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 34\(2\)](#)

**F97** [Sch. 11 para. 19\(3\)](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 Pt. II para. 34\(3\)](#)

#### Modifications etc. (not altering text)

**C46** [Sch. 11 para. 19](#): certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in [S.I. 1990/354](#), [art. 5\(2\)](#)

- [F98 (1) Regulations under section 56(1) of this Act shall not permit anything to be done by a regulated friendly society but that section shall not apply to anything done by such a society in the course of or in consequence of an unsolicited call which, as respects the society, constitutes the carrying on of regulated business, if it is permitted to be done by the society by regulations made by the Registrar with the consent of the Secretary of State.
- (2) Paragraph 22B below has effect as regards the application of regulations under this paragraph to member societies in respect of investment business in the carrying on of which they are subject to the rules of a recognised self-regulating organisation for friendly societies.
- (3) As it applies to such persons in respect of such business, the reference in subparagraph (1) above to conduct permitted by regulations made by the Registrar with the consent of the Secretary of State shall be construed—

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- (a) where or to the extent that the regulations do not apply, as a reference to conduct permitted by the rules of the organisation; and
- (b) where or to the extent that the regulations do apply but are expressed to have effect subject to the rules of the organisation, as a reference to conduct permitted by the regulations together with the rules of the organisation.]

#### Textual Amendments

**F98** Sch. 11 para. 20 substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 Pt. II para. 35

#### Modifications etc. (not altering text)

**C47** Sch. 11 para. 20: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, art. 5(2)

- 21 (1) If it appears to the Registrar that a regulated friendly society other than a member society has contravened—
- (a) any provision of rules or regulations made under this Schedule or of section 56 or 59 of this Act;
  - (b) any condition imposed under section 50 of this Act as it applies by virtue of paragraph 14(3) above;
  - (c) any prohibition or requirement imposed under Chapter VI of Part I of this Act as it applies by virtue of paragraph 23 below; or
  - (d) any requirement imposed under paragraph 24 below;
- he may publish a statement to that effect.
- (2) Subsections (2) to (5) of section 60 above shall apply in relation to the power under sub-paragraph (1) above as they apply in relation to the power in subsection (1) of that section but with the substitution for the references to the Secretary of State of references to the Registrar.

#### Modifications etc. (not altering text)

**C48** Sch. 11 paras. 21, 22: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, art. 5(2)

- 22 (1) If on the application of the Registrar the court is satisfied—
- (a) that there is a reasonable likelihood that any regulated friendly society will contravene any provision of—
    - (i) any prohibition or requirement imposed under Chapter VI of Part I of this Act as it applies by virtue of paragraph 23 below;
    - (ii) the rules or regulations made under this Schedule;
    - (iii) any requirement imposed under paragraph 24 below;
    - (iv) section 47, 56 or 59 of this Act;
    - (v) the rules of a recognised self-regulating organisation for friendly societies in relation to which it is a member society,
- or any condition imposed under section 50 of this Act as it applies by virtue of paragraph 14(3) above;

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- (b) that any regulated friendly society has contravened any such provision or condition and that there is a reasonable likelihood that the contravention will continue or be repeated; or
- (c) that any person has contravened any such provision or condition and that there are steps that could be taken for remedying the contravention,

the court may grant an injunction restraining the contravention or, in Scotland, an interdict prohibiting the contravention or, as the case may be, make an order requiring the society and any other person who appears to the court to have been knowingly concerned in the contravention to take steps to remedy it.

(2) No application shall be made by the Registrar under sub-paragraph (1) above in respect of any such rules as are mentioned in paragraph (a)(v) of that sub-paragraph unless it appears to him that the organisation is unable or unwilling to take appropriate steps to restrain the contravention or to require the society concerned to take such steps as are mentioned in sub-paragraph (1) above.

(3) Subsections (3) to (9) of section 61 of this Act apply to such a contravention as is mentioned in sub-paragraph (1)(a) above as they apply to such a contravention as is mentioned in subsection (3) of that section, but with the substitution for the references to the Secretary of State of references to the Registrar.

(4) Without prejudice to the preceding provisions of this paragraph—

- (a) a contravention of any rules or regulations made under this Schedule;
- (b) a contravention of any prohibition or requirement imposed under Chapter VI of Part I of this Act as it applies by virtue of paragraph 23 below;
- (c) a contravention of any requirement imposed under paragraph 24 below;
- (d) a contravention by a member society of any rules of the recognised self-regulating organisation for friendly societies of which it is a member relating to a matter in respect of which rules or regulations have been or could be made under this Schedule or of any requirement or prohibition imposed by the organisation in the exercise of powers for purposes corresponding to those of the said Chapter VI or paragraph 24;

shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty, but no person shall be guilty of an offence by reason of any such contravention and no such contravention shall invalidate any transaction.

(5) This paragraph is without prejudice to any equitable remedy available in respect of property which by virtue of a requirement under section 67 of this Act as it applies by virtue of paragraph 23 below is subject to a trust.

**Modifications etc. (not altering text)**

**C49** Sch. 11 paras. 21, 22: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, art. 5(2)

**C50** Sch. 11 para. 22 saved by S.I. 1991/488, art. 4

Sch. 11 para. 22 restricted (1.11.1992) by S.R. 1980/346, Order 93, rule 7 (as inserted by S.R. 1992/399, rule15).

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- [<sup>F99</sup>22A(1) No action in respect of a contravention to which paragraph 22(4) above applies shall lie at the suit of a person other than a private investor, except in such circumstances as may be specified by regulations made by the Registrar.
- (2) The meaning of the expression “private investor” for the purposes of sub-paragraph (1) shall be defined by regulations made by the Registrar.
- (3) Regulations under sub-paragraph (1) may make different provision with respect to different cases.
- (4) The Registrar shall, before making any regulations affecting the right to bring an action in respect of a contravention of any rules or regulations made by a person other than himself, consult that person.]

#### Textual Amendments

**F99** Sch. 11 para. 22A inserted by Companies Act 1989 (c. 40, SIF 27), s. 193(3) (the insertion being wholly in force at 1.4.1991) by S.I. 1990/354, art. 3 and 1991/488, art.2(4) (with art. 4)

- [<sup>F100</sup>22B(1) The Registrar may in rules and regulations under—
- (a) paragraph 14 (conduct of business rules),
- (b) paragraph 19 (clients’ money regulations), or
- (c) paragraph 20 (regulations as to unsolicited calls),
- designate provisions which apply, to such extent as may be specified, to a member society in respect of investment business in the carrying on of which it is subject to the rules of a recognised self-regulating organisation for friendly societies.
- (2) It may be provided that the designated rules or regulations have effect, generally or to such extent as may be specified, subject to the rules of the organisation.
- (3) A member society which contravenes a rule or regulation applying to it by virtue of this paragraph shall be treated as having contravened the rules of the relevant recognised self-regulating organisation for friendly societies.
- (4) It may be provided that, to such extent as may be specified, the designated rules or regulations may not be modified or waived (under paragraph 22C below or section 50) in relation to a member society.
- Where such provision is made any modification or waiver previously granted shall cease to have effect, subject to any transitional provision or saving contained in the rules or regulations.
- (5) Except as mentioned in sub-paragraph (1), the rules and regulations referred to in that sub-paragraph do not apply to a member society in respect of investment business in the carrying on of which it is subject to the rules of a recognised self-regulating organisation for friendly societies.]

#### Textual Amendments

**F100** Sch. 11 para. 22B inserted by Companies Act 1989 (c. 40, SIF 27), s. 193(3) (the insertion being wholly in force at 1.4.1991) by S.I. 1990/354, art. 3 and S.I. 1991/488, art. 2(4) (with art. 4).

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**Modifications etc. (not altering text)**

- C51** Sch. 11 paras. 22B–22D: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, art. 5(2).
- C52** Sch. 11 paras. 22B, 22D: functions transferred by S.I. 1990/354, art. 5(1).

- [<sup>F101</sup>22(1)] A recognised self-regulating organisation for friendly societies may on the application of a society which is a member of the organisation—
- (a) modify a rule or regulation designated under paragraph 22B so as to adapt it to the circumstances of the society or to any particular kind of business carried on by it, or
  - (b) dispense the society from compliance with any such rule or regulation, generally or in relation to any particular kind of business carried on by it.
- (2) The powers conferred by this paragraph shall not be exercised unless it appears to the organisation—
- (a) that compliance with the rule or regulation in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and
  - (b) that the exercise of those powers will not result in any undue risk to investors.
- (3) The powers conferred by this paragraph may be exercised unconditionally or subject to conditions; and paragraph 22B(3) applies in the case of a contravention of a condition as in the case of contravention of a designated rule or regulation.
- (4) The reference in paragraph 4(1) of Schedule 2 as applied by paragraph 4 above (requirements for recognition of self-regulating organisation for friendly societies) to monitoring and enforcement of compliance with rules and regulations includes monitoring and enforcement of compliance with conditions imposed by the organisation under this paragraph.]

**Textual Amendments**

- F101** Sch. 11 paras. 22B, 22C, 22D inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 Pt. II para. 36

**Modifications etc. (not altering text)**

- C53** Sch. 11 paras. 22B–22D: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, art. 5(2)

- [<sup>F102</sup>22(f)] The Registrar may issue codes of practice with respect to any matters dealt with by statements of principle issued under paragraph 13A or by rules or regulations made under any provision of this Schedule.
- (2) In determining whether a society has failed to comply with a statement of principle—
- (a) a failure by it to comply with any relevant provision of a code of practice may be relied on as tending to establish failure to comply with the statement of principle, and
  - (b) compliance by it with the relevant provisions of a code of practice may be relied on as tending to negative any such failure.

*Status: Point in time view as at 01/08/1991.*

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- (3) A contravention of a code of practice with respect to a matter dealt with by rules or regulations shall not of itself give rise to any liability or invalidate any transaction; but in determining whether a society's conduct amounts to contravention of a rule or regulation—
- (a) contravention by it of any relevant provision of a code of practice may be relied on as tending to establish liability, and
  - (b) compliance by it with the relevant provisions of a code of practice may be relied on as tending to negative liability.
- (4) Where by virtue of paragraph 22B (application of designated rules and regulations to member societies) rules or regulations—
- (a) do not apply, to any extent, to a member society of a recognised self-regulating organisation for friendly societies, or
  - (b) apply, to any extent, subject to the rules of the organisation,
- a code of practice with respect to a matter dealt with by the rules or regulations may contain provision limiting its application to a corresponding extent.]

#### Textual Amendments

**F102** Sch. 11 paras. 22B, 22C, 22D inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 Pt. II para. 36

#### Modifications etc. (not altering text)

**C54** Sch. 11 paras. 22B–22D: certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in S.I. 1990/354, art. 5(2)

**C55** Sch. 11 paras. 22B, 22D: functions transferred by S.I. 1990/354, art. 5(1)

### *Intervention, information and investigations*

- 23 (1) The powers conferred by Chapter VI of Part I of this Act shall not be exercisable in relation to a regulated friendly society or the appointed representative of such a society by the Secretary of State but instead shall be exercisable by the Registrar; and accordingly references in that Chapter to the Secretary of State shall as respects the exercise of powers in relation to a regulated friendly society or such a representative be taken as references to the Registrar.
- (2) Section 64 of this Act shall not apply to the exercise of those powers by virtue of sub-paragraph (1) above but those powers shall only be exercisable by the Registrar if it appears to him—
- (a) that the exercise of the powers is desirable in the interests of members or potential members of the regulated friendly society; or
  - (b) that the society is not a fit person to carry on regulated business of a particular kind or to the extent to which it is carrying it on or proposing to carry it on; or
  - (c) that the society has contravened any provision of this Act or of any rules or regulations made under it or in purported compliance with any such provision has furnished him with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.

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- (3) For the purposes of sub-paragraph (2)(b) above the Registrar may take into account any matters that could be taken into account in deciding whether to withdraw or suspend an authorisation under Chapter III of Part I of this Act.
- (4) The powers conferred by this paragraph shall not be exercisable in relation—
- (a) to a member society which is subject to the rules of a recognised self-regulating organisation for friendly societies in carrying on all the investment business carried on by it; or
  - (b) to an appointed representative of a member society if that member society, and each other member society which is his principal, is subject to the rules of such an organisation in carrying on the investment business in respect of which it has accepted responsibility for his activities;
- except that the powers conferred by virtue of section 67(1)(b) of this Act may on any of the grounds mentioned in sub-paragraph (2) above be exercised in relation to a member society or appointed representative at the request of the organisation in relation to which the society or, as the case may be, the society which is the representative's principal is a member society.
- 24 (1) The Registrar may by notice in writing require any regulated friendly society (other than a member society) or any self-regulating organisation for friendly societies to furnish him with such information as he may reasonably require for the exercise of his functions under this Act.
- (2) The Registrar may require any information which he requires under this paragraph to be furnished within such reasonable time and verified in such manner as he may specify.
- 25 (1) Where a notice or copy of a notice is served on any person under section 60 or section 70 of this Act as they apply by virtue of paragraph 21(2) or 23 above, Chapter IX of Part I of this Act (other than section 96) shall, subject to sub-paragraph (2) below, have effect—
- (a) with the substitution for the references to the Secretary of State of references to the Registrar; and
  - (b) as if for the references in section 98(4) to sections 28, 33 and 60 of this Act there were substituted references to paragraphs 21, 23, 24, 26 and 27 of this Schedule.
- (2) Where the friendly society in question is an authorised person by virtue of section 25 of this Act the provisions mentioned in sub-paragraph (1) above shall have effect as if the references substituted by that sub-paragraph had effect in addition to rather than in substitution for the references for which they are there substituted.
- (3) Where the Tribunal reports that the appropriate decision is to take action under paragraph 26 or 27 of this Schedule the Registrar shall take the report into account but shall not be bound to act on it.

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*Exercise of powers under enactments relating to friendly societies*

- 26 (1) If it appears to the Chief Registrar of friendly societies that a regulated friendly society which is an authorised person by virtue of section 23(1) of this Act—
- (a) has contravened any provision of—
    - (i) this Act or any rules or regulations made under it;
    - (ii) any requirement imposed under paragraph 24 above;
    - (iii) the rules of a recognised self-regulating organisation for friendly societies in relation to which it is a member society; or
  - (b) in purported compliance with any such provision has furnished false, inaccurate or misleading information,
- he may exercise any of the powers mentioned in sub-paragraph (2) below in relation to that society.
- (2) The powers mentioned in sub-paragraph (1) above are those under subsection (1) of section 87 (inspection and winding up of registered friendly societies), subsection (1) of section 88 (suspension of business of registered friendly societies), subsections (1) and (2) of section 89 (production of documents) and subsections (1) and (2) of section 91 (cancellation and suspension of registration) of the <sup>M19</sup>Friendly Societies Act 1974; and subject to sub-paragraph (3) below the remaining provisions of those sections shall apply in relation to the exercise of those powers by virtue of this paragraph as they do in relation to their exercise in the circumstances mentioned in those sections.
- (3) In its application by virtue of this paragraph—
- (a) section 88 of the said Act of 1974 shall have effect with the omission of subsections (3), (5) and (9); and
  - (b) section 89 of that Act shall have effect with the omission of subsection (7).

**Marginal Citations**

M19 1974 c. 46.

- 27 (1) If it appears to the Registrar of Friendly Societies for Northern Ireland that a regulated friendly society which is an authorised person by virtue of section 23(2) of this Act—
- (a) has contravened any provision of—
    - (i) this Act or any rules or regulations made under it;
    - (ii) any requirement imposed under paragraph 24 above;
    - (iii) the rules of a recognised self-regulating organisation for friendly societies in relation to which it is a member society; or
  - (b) in purported compliance with any such provision has furnished false, inaccurate or misleading information,
- he may exercise any of the powers mentioned in sub-paragraph (2) below in relation to that society.
- (2) The powers mentioned in sub-paragraph (1) above are those under subsection (1) of section 77 (inspection and winding up of registered friendly societies), subsection (1) of section 78 (suspension of business of registered friendly societies), subsections



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(1) and (2) of section 79 (production of documents) and subsections (1) and (2) of section 80 (cancellation and suspension of registration) of the <sup>M20</sup>Friendly Societies Act (Northern Ireland) 1970; and subject to sub-paragraph (3) below the remaining provisions of those sections shall apply in relation to the exercise of those powers by virtue of this paragraph as they do in relation to their exercise in the circumstances mentioned in those sections.

(3) In its application by virtue of this paragraph section 78 of the said Act of 1970 shall have effect with the omission in subsection (2) of the words from “and such notice” onwards and of subsection (4).

#### Marginal Citations

M20 1970 c. 31 (N.I.).

## PART IV

### TRANSFER OF REGISTRAR’S FUNCTIONS

- 28 (1) If it appears to the Registrar—
- (a) that a body corporate has been established which is able and willing to discharge all or any of the functions to which this paragraph applies; and
  - (b) that the requirements of Schedule 7 to this Act (as it has effect by virtue of sub-paragraph (3) below) are satisfied in the case of that body,
- he may, with the consent of the Secretary of State and subject to the following provisions of this paragraph and paragraphs 29 and 30 below, make an order transferring all or any of those functions to that body.
- (2) The body to which functions are transferred by the first order made under sub-paragraph (1) above shall be the body known as The Securities and Investments Board Limited if the Secretary of State consents to the making of the order and it appears to the Registrar that that body is able and willing to discharge those functions, that the requirements mentioned in paragraph (b) of that sub-paragraph are satisfied in the case of that body and that he is not precluded from making the order by the following provisions of this paragraph or paragraph 29 or 30 below.
- (3) For the purposes of sub-paragraph (1) above Schedule 7 shall have effect as if—
- (a) for references to a designated agency there were substituted references to a transferee body; and
  - (b) for the reference to complaints in paragraph 4 there were substituted a reference to complaints arising out of the conduct by regulated friendly societies of regulated business.
- (4) An order under sub-paragraph (1) above is in this Act referred to as a transfer order and a body to which functions are transferred by a transfer order is in this Act referred to as a transferee body.
- (5) Subject to sub-paragraphs (6) and (8) below, this paragraph applies to the functions of the Registrar under section 113(3) of this Act and paragraph 38 below and any functions conferred on him by virtue of paragraphs 2 to 25 <sup>F103</sup>(except paragraph

*Status: Point in time view as at 01/08/1991.*

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22A)] above other than the powers under sections 66 and 68 of this Act and, so far as applicable to assets belonging to a regulated friendly society, the power under section 67 of this Act.

- (6) If the Registrar transfers his functions under Chapter VI of Part I of this Act they shall not be exercisable by the transferee body if the only reasons by virtue of which it appears to the body as mentioned in paragraph 23(2) above relate to the sufficiency of the funds of the society to meet existing claims or of the rates of contribution to cover benefits assured.
- (7) Any function may be transferred by an order under this paragraph either wholly or in part and a function may be transferred in respect of all societies or only in respect of such societies as are specified in the order.
- (8) A transfer order—
- (a) may reserve to the Registrar the function of revoking a recognition order in respect of a self-regulating organisation for friendly societies on the ground that the requirement mentioned in paragraph 4(2) above is not satisfied; and
  - (b) shall not transfer to a transferee body the function of revoking any such recognition order on the ground that the organisation has contravened the provisions of paragraph 9 above.
- (9) No transfer order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

#### Textual Amendments

**F103** Words in [Sch. 11 para. 28](#) inserted (1.4.1991) by [Companies Act 1989 \(c. 40, SIF 27\)](#), [s. 193\(4\)](#); [S.I. 1991/488](#), [art. 2\(4\)](#)(with art. 4)

#### Modifications etc. (not altering text)

**C56** [Sch. 11 para. 28](#): power to transfer functions exercised, and certain functions transferred, by [S.R. 1987/228](#), [arts. 2, 3](#)

- [<sup>F104</sup>29(1) The Registrar shall not make a transfer order transferring any legislative functions to a transferee body unless—
- (a) the body has furnished him and the Secretary of State with a copy of the instruments it proposes to issue or make in the exercise of those functions, and
  - (b) they are both satisfied that those instruments will—
    - (i) afford investors an adequate level of protection,
    - (ii) in the case of provisions corresponding to those mentioned in Schedule 8 to this Act, comply with the principles set out in that Schedule, and
    - (iii) take proper account of the supervision of friendly societies by the Registrar under the enactments relating to friendly societies.
- (2) In this paragraph “legislative functions” means the functions of issuing or making statements of principle, rules, regulations or codes of practice.]

*Status: Point in time view as at 01/08/1991.*

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#### Textual Amendments

**F104** Sch. 11 para. 29 substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 37

- 30 (1) The Registrar shall also before making a transfer order transferring any functions to a transferee body require it to furnish him and the Secretary of State with a copy of any guidance intended to have continuing effect which it proposes to issue in writing or other legible form and they may take such guidance into account in determining whether they are satisfied as mentioned in paragraph 29(b) above.
- (2) In this Act references to guidance issued by a transferee body are references to guidance issued or any recommendation made by it which is issued or made to regulated friendly societies or self-regulating organisations for friendly societies generally or to any class of regulated friendly societies or self-regulating organisations for friendly societies, being societies which are or may be subject to <sup>F105</sup>statements of principle, rules, regulations or codes of practice issued or made] by it or organisations which are or may be recognised by it in the exercise of its functions under a transfer order.

#### Textual Amendments

**F105** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 38

- 31 (1) Subject to the provisions of this paragraph, sections 115, 116, 117(3) to (5) and 118 of this Act shall apply in relation to the transfer of functions under paragraph 28 above as they apply in relation to the transfer of functions under section 114 of this Act.
- (2) Subject to sub-paragraphs (5) and (6)(b) below, for references in those provisions to the Secretary of State, a designated agency and a delegation order there shall be substituted respectively references to the Registrar, a transferee body and a transfer order.
- (3) The Registrar may not exercise the powers conferred by subsections (1) and (2) of section 115 except with the consent of the Secretary of State.
- (4) In subsection (3) of section 115 for the reference to Schedule 7 to this Act there shall be substituted a reference to that Schedule as it has effect by virtue of paragraph 28(3) above and in subsection (5) of that section for the reference to section 114(9)(b) of this Act there shall be substituted a reference to paragraph 29(b) above.
- (5) Section 118(3)(b) shall have effect as if the reference to any provision applying to the Secretary of State were a reference to any provision applying to the Secretary of State or the Registrar.
- (6) In Schedule 9 to this Act—
- (a) paragraph 1(2) and (3) shall be omitted;
  - (b) paragraph 4 shall have effect as if the references to the Secretary of State were references to the Secretary of State and the Registrar;
  - (c) paragraph 5 shall have effect <sup>F106</sup>as if the reference to section 205A were a reference to paragraph 45(1) and (3) below];

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- (d) paragraph 12(3) shall have effect as if the reference to section 114(9) were a reference to paragraph 29 above.
- (7) The power mentioned in paragraph 2(3) of Schedule 9 to this Act shall not be exercisable on the ground that the company has ceased to be a designated agency or, as the case may be, a transferee body if the company remains a transferee body or, as the case may be, a designated agency.

#### Textual Amendments

**F106** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 39

VALID FROM 01/02/1993

[<sup>F107</sup>31(A)] Where any functions under this Act are for the time being exercisable by a transferee body the Commission shall, before issuing an authorisation under section 32 of the Friendly Societies Act 1992 to a friendly society which is carrying on or proposes to carry on in the United Kingdom insurance business or non-insurance business which is investment business—

- (a) seek the advice of the transferee body with respect to any matters which are relevant to those functions of the body and relate to the society, its proposed business or persons who are or will be, within the meaning of the Friendly Societies Act 1992, members of the committee of management or other officers of the society; and
- (b) take into account any advice on those matters given to the Commission by the transferee body before the application is decided.
- (2) In sub-paragraph (1) above—
- (a) “insurance business” has the meaning given by section 117(1) of the Friendly Societies Act 1992; and
- (b) “non-insurance business” has the meaning given by section 119(1) of that Act.
- (3) The Commission may for the purpose of obtaining the advice of a transferee body under sub-paragraph (1) above furnish it with any information obtained by the Commission in connection with the application.]

#### Textual Amendments

**F107** Sch. 11 para. 31A inserted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, Sch. 18 Pt. II para.19 (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, Sch.4; S.I. 1993/2213, art. 2(1), Sch.5.

- 32 A transferee body shall at least once in each year for which the transfer order is in force make a report to the Registrar on the discharge of the functions transferred to it by the order and on such other matters as the order may require and the Registrar shall send a copy of each report received by him under this paragraph to the Secretary of State who shall lay copies of the report before Parliament.

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- 33 (1) This paragraph applies where the function of making or revoking a recognition order in respect of a self-regulating organisation for friendly societies is exercisable by a transferee body.
- (2) Paragraph 3(2) above shall have effect as if the first reference to the Secretary of State included a reference to the Registrar.
- (3) The transferee body shall not regard the requirement mentioned in paragraph 4(2) as satisfied unless the Registrar has certified that he also regards it as satisfied.
- (4) A transferee body shall send the Registrar and the Secretary of State a copy of any notice received by it under paragraph 8(6) above.
- (5) Where the Secretary of State exercises any of the powers conferred by paragraph 10(2) above in relation to an organisation the Registrar shall direct the transferee body to take the appropriate action in relation to that organisation and such a direction shall, on the application of the Registrar, be enforceable by mandamus or, in Scotland, by an order for specific performance under section 91 of the <sup>M21</sup>Court of Session Act 1868.

#### Marginal Citations

**M21** 1868 c. 100.

- [<sup>F108</sup>34(1) A transferee body to which the Registrar has transferred any legislative functions may exercise those functions without the consent of the Secretary of State.
- (2) In this paragraph “legislative functions” means the functions of issuing or making statements of principle, rules, regulations or codes of practice.]

#### Textual Amendments

**F108** Sch. 11 para. 34 substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 40

- 35 (1) A transferee body shall not impose any prohibition or requirement under section 65 or 67 of this Act on a regulated friendly society or vary any such prohibition or requirement unless it has given reasonable notice of its intention to do so to the Registrar and informed him—
- (a) of the manner in which and the date on or after which it intends to exercise the power; and
- (b) in the case of a proposal to impose a prohibition or requirement, on which of the grounds specified in paragraph 23(2) above it proposes to act and its reasons for considering that the ground in question exists and that it is necessary to impose the prohibition or requirement.
- (2) A transferee body shall not exercise any power to which sub-paragraph (1) above applies if before the date given in the notice in pursuance of sub-paragraph (1)(a) above the Registrar has served on it a notice in writing directing it not to do so; and the Registrar may serve such a notice if he considers it is desirable for protecting members or potential members of the regulated friendly society against the risk that

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it may be unable to meet its liabilities or to fulfil the reasonable expectations of its members or potential members.

- 36 (1) The Secretary of State shall not consent to the making of an order by the Registrar under paragraph 28 above transferring any functions to a transferee body unless he is satisfied that any [<sup>F109</sup>statements of principle, rules, regulations, codes of practice], guidance and recommendations of which copies are furnished to him under paragraphs 29(a) and 30(1) above do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.
- (2) Section 121(2) and (4) and sections 122 to 128 above shall have effect in relation to transferee bodies and transfer orders as they have effect in relation to designated agencies and designation orders but subject to the following modifications.
- (3) Those provisions shall have effect as if the powers exercisable under section 121(3) were—
- (a) to make an order transferring back to the Registrar all or any of the functions transferred to the transferee body by a transfer order; or
  - (b) to direct the Registrar to direct the transferee body to take specified steps for the purpose of securing that the [<sup>F110</sup>statements of principle, rules, regulations, codes of practice], guidance or practices in question do not have the effect mentioned in sub-paragraph (1) above.
- (4) No order shall be made by virtue of sub-paragraph (3) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (5) For the decisions referred to in section 122(1) there shall be substituted a reference to the Secretary of State's decision whether he is precluded by sub-paragraph (1) above from giving his consent to the making of a transfer order.
- (6) Section 128 shall apply as if—
- (a) the powers referred to in subsection (1) of that section included the power conferred by sub-paragraph (3)(b) above; and
  - (b) the references to Chapter XIV of Part I included references to this paragraph.

#### Textual Amendments

**F109** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\), s. 206\(1\), Sch. 23 para. 41](#)

**F110** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\), s. 206\(1\), Sch. 23 para. 41](#)

- 37 (1) If a transferee body has reasonable grounds for believing that any regulated friendly society has failed to comply with an obligation to which it is subject by virtue of this Act it shall forthwith give notice of that fact to the Registrar so that he can take it into consideration in deciding whether to exercise in relation to the society any of the powers conferred on him by sections 87 to 89 and 91 of the <sup>M22</sup>Friendly Societies Act 1974 or, as the case may be, sections 77 to 80 of the <sup>M23</sup>Friendly Societies Act (Northern Ireland) 1970 (inspection, winding up, suspension of business and cancellation and suspension of registration).

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- (2) A notice under sub-paragraph (1) above shall contain particulars of the obligation in question and of the transferee body's reasons for considering that the society has failed to satisfy that obligation.
- (3) A transferee body need not give a notice under sub-paragraph (1) above in respect of any matter unless it considers that that matter (either alone or in conjunction with other matters) would justify the withdrawal of authorisation under section 28 of this Act in the case of a person to whom that provision applies.

#### Marginal Citations

**M22** 1974 c. 46.

**M23** 1970 c. 31 (N.I.).

## PART V

### MISCELLANEOUS AND SUPPLEMENTAL

- 38 (1) The Registrar may publish information or give advice, or arrange for the publication of information or the giving of advice, in such form and manner as he considers appropriate with respect to—
- (a) the operation of this Schedule and the [F111 statements of principle, rules, regulations and codes of practice issued or made] under it in relation to registered friendly societies, including in particular the rights of their members, the duties of such societies and the steps to be taken for enforcing those rights or complying with those duties;
  - (b) any matters relating to the functions of the Registrar under this Schedule or any such [F112 statements of principle, rules, regulations or codes of practice];
  - (c) any other matters about which it appears to him to be desirable to publish information or give advice for the protection of those members or any class of them.
- (2) The Registrar may offer for sale copies of information published under this paragraph and may, if he thinks fit, make reasonable charges for advice given under this paragraph at any person's request.
- (3) This paragraph shall not be construed as authorising the disclosure of restricted information within the meaning of section 179 of this Act in any case in which it could not be disclosed apart from the provisions of this paragraph.

#### Textual Amendments

**F111** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 Pt. II para. 42\(a\)](#)

**F112** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 Pt. II para. 42\(b\)](#)

#### Modifications etc. (not altering text)

**C57** [Sch. 11 para. 38](#): certain functions conferred by provisions contained in paras. 2–25 and 38 of Schedule 11 transferred as mentioned in [S.I. 1990/354](#), [art. 5\(2\)](#)

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- 39 In the case of an application for authorisation under section 26 of this Act made by a society which is registered under the <sup>M24</sup>Friendly Societies Act 1974 within the meaning of that Act or is registered or deemed to be registered under the <sup>M25</sup>Friendly Societies Act (Northern Ireland) 1970 (“a registered society”), section 27(3)(c) of this Act shall have effect as if it referred only to any person who is a trustee manager or member of the committee of the society.

#### Marginal Citations

**M24** 1974 c. 46.

**M25** 1970 c. 31 (N.I.).

- 40 Where the other person mentioned in paragraph (c) of the definition of “connected person” in section 105(9) of this Act is a registered society that paragraph shall have effect with the substitution for the words from “member” onwards of the words “trustee, manager or member of the committee of the society”.

VALID FROM 01/02/1993

- [<sup>F113</sup>40A] In the case of an application for authorisation under section 26 of this Act made by an incorporated friendly society section 27(3) shall have effect as if the following paragraph were substituted for paragraph (a)—
- “(a) to any member of the committee of management or any director or controller of a subsidiary of the society or of a body jointly controlled by the society.”
- (2) Where the other person mentioned in paragraph (b) of the definition of “connected person” in section 105(9) of this Act is an incorporated friendly society that paragraph shall have effect with the substitution for the words from “director” onwards of the words “member of the committee of management of the society or any director, secretary or controller of a subsidiary of the society or a body jointly controlled by the society.”]

#### Textual Amendments

**F113** Sch. 11 para. 40A inserted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, Sch. 18 Pt. II para.21 (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, Sch.4; S.I. 1993/2213, art. 2(1), Sch.5.

- 41 In relation to any such document as is mentioned in subsection (1) of section 204 of this Act which is required or authorised to be given to or served on a registered society—
- (a) subsection (3)(c) of that section shall have effect with the substitution for the words from “member” onwards of the words “trustee, manager or member of the committee of the society”; and



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- (b) subsection (4)(c) of that section shall have effect as if for the words from “member” onwards there were substituted the words “trustee, manager or member of the committee of the society, the office which is its registered office in accordance with its rules”.

42 Rules under paragraphs 14, 15, 17 and 18 above and regulations under paragraphs 16, 19 and 20 above shall apply notwithstanding any provision to the contrary in the rules of any regulated friendly society to which they apply.

43 (1) Where it appears to the Registrar, the assistant registrar for Scotland, the Industrial Assurance Commissioner or the Industrial Assurance Commissioner for Northern Ireland that any such rules as are mentioned in section 48(2)(j) of this Act which are made by virtue of paragraph 14 above (or any corresponding rules made by a self-regulating organisation for friendly societies) make arrangements for the settlement of a dispute referred to him under section 77 of the Friendly Societies Act 1974, section 65 of the <sup>M26</sup>Friendly Societies Act (Northern Ireland) <sup>M27</sup>1970, section 32 of the Industrial Assurance Act 1923 or Article 36 of the <sup>M28</sup>Industrial Assurance (Northern Ireland) Order <sup>M29</sup>1979 or that such rules relate to some of the matters in dispute he may, if he thinks fit, delegate his functions in respect of the dispute so as to enable it to be settled in accordance with the rules.

(2) If such rules provide that any dispute may be referred to such a person, that person may deal with any dispute referred to him in pursuance of those rules as if it were a dispute referred to him as aforesaid and may delegate his functions in respect of any such dispute to any other person.

**Marginal Citations**

**M26** 1970 c. 31 (N.I.).

**M27** 1923 c. 8.

**M28** S.I. 1979/1574 (N.I.13).

**M29** S.I. 1979/1574 (N.I.13).

44 (1) In Part III of Schedule 1 to the <sup>M30</sup>House of Commons Disqualification Act 1975 (disqualifying offices) there shall be inserted at the appropriate place—

“Chairman of a transferee body within the meaning of Schedule 11 to the Financial Services Act 1986 if he is in receipt of remuneration.”

(2) A corresponding amendment shall be made in Part III of Schedule 1 to the <sup>M31</sup>Northern Ireland Assembly Disqualification Act 1975.

**Marginal Citations**

**M30** 1975 c. 24.

**M31** 1975 c. 25.

*Status: Point in time view as at 01/08/1991.*

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- 45 (1) Any power of the Chief Registrar of friendly societies to [<sup>F114</sup>issue or make statements of principle, rules, regulations, orders or codes of practice] which is exercisable by virtue of this Act shall be exercisable by statutory instrument and the <sup>M32</sup>Statutory Instruments Act 1946 shall apply to any such power as if the Chief Registrar of friendly societies were a Minister of the Crown.
- (2) Any such power of the Registrar of Friendly Societies for Northern Ireland shall be exercisable by statutory rule for the purposes of the <sup>M33</sup>Statutory Rules (Northern Ireland) Order 1979.
- (3) Any [<sup>F115</sup>statements of principle, rules, regulations, orders or codes of practice] made under this Schedule by the Registrar may make different provision for different cases.

**Textual Amendments**

**F114** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\), s. 206\(1\), Sch. 23 para. 43\(a\)](#)

**F115** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\), s. 206\(1\), Sch. 23 para. 43\(b\)](#)

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**Marginal Citations**

**M32** 1946 c. 36.

**M33** S.I. 1979/1573 (N.I.12).

VALID FROM 19/06/1995

<sup>F116</sup>SCHEDULE 11A

OFFERS OF SECURITIES TO THE PUBLIC IN THE UNITED KINGDOM]

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**Textual Amendments**

**F116** [Sch. 11A](#) inserted (19.6.1995) by [S.I. 1995/1537, reg. 17, Sch. 2 Pt. 1 para. 3\(2\), Sch. 3](#)

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## SCHEDULE 12

Section 172.

### TAKEOVER OFFERS: PROVISIONS SUBSTITUTED FOR SECTIONS 428, 429 AND 430 OF COMPANIES ACT 1985

#### “PART XIII A

#### TAKEOVER OFFERS

##### “Takeover offers.”

- 428 (1) In this Part of this Act “a takeover offer” means an offer to acquire all the shares, or all the shares of any class or classes, in a company (other than shares which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the shares to which the offer relates or, where those shares include shares of different classes, in relation to all the shares of each class.
- (2) In subsection (1) “shares” means shares which have been allotted on the date of the offer but a takeover offer may include among the shares to which it relates all or any shares that are subsequently allotted before a date specified in or determined in accordance with the terms of the offer.
- (3) The terms offered in relation to any shares shall for the purposes of this section be treated as being the same in relation to all the shares or, as the case may be, all the shares of a class to which the offer relates notwithstanding any variation permitted by subsection (4).
- (4) A variation is permitted by this subsection where—
- (a) the law of a country or territory outside the United Kingdom precludes an offer of consideration in the form or any of the forms specified in the terms in question or precludes it except after compliance by the offeror with conditions with which he is unable to comply or which he regards as unduly onerous; and
  - (b) the variation is such that the persons to whom an offer of consideration in that form is precluded are able to receive consideration otherwise than in that form but of substantially equivalent value.
- (5) The reference in subsection (1) to shares already held by the offeror includes a reference to shares which he has contracted to acquire but that shall not be construed as including shares which are the subject of a contract binding the holder to accept the offer when it is made, being a contract entered into by the holder either for no consideration and under seal or for no consideration other than a promise by the offeror to make the offer.
- (6) In the application of subsection (5) to Scotland, the words “and under seal” shall be omitted.
- (7) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, the revision shall not be regarded for the purposes of this Part of this Act as the making of a fresh offer and references in this Part of this Act to the date of the offer shall accordingly be construed as references to the date on which the original offer was made.
- (8) In this Part of this Act “the offeror” means, subject to section 430D, the person making a takeover offer and “the company” means the company whose shares are the subject of the offer.

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### **Right of offeror to buy out minority shareholders.**

- 429 (1) If, in a case in which a takeover offer does not relate to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire not less than nine-tenths in value of the shares to which the offer relates he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or contracted to acquire that he desires to acquire those shares.
- (2) If, in a case in which a takeover offer relates to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire not less than nine-tenths in value of the shares of any class to which the offer relates, he may give notice to the holder of any shares of that class which the offeror has not acquired or contracted to acquire that he desires to acquire those shares.
- (3) No notice shall be given under subsection (1) or (2) unless the offeror has acquired or contracted to acquire the shares necessary to satisfy the minimum specified in that subsection before the end of the period of four months beginning with the date of the offer; and no such notice shall be given after the end of the period of two months beginning with the date on which he has acquired or contracted to acquire shares which satisfy that minimum.
- (4) Any notice under this section shall be given in the prescribed manner; and when the offeror gives the first notice in relation to an offer he shall send a copy of it to the company together with a statutory declaration by him in the prescribed form stating that the conditions for the giving of the notice are satisfied.
- (5) Where the offeror is a company (whether or not a company within the meaning of this Act) the statutory declaration shall be signed by a director.
- (6) Any person who fails to send a copy of a notice or a statutory declaration as required by subsection (4) or makes such a declaration for the purposes of that subsection knowing it to be false or without having reasonable grounds for believing it to be true shall be liable to imprisonment or a fine, or both, and for continued failure to send the copy or declaration, to a daily default fine.
- (7) If any person is charged with an offence for failing to send a copy of a notice as required by subsection (4) it is a defence for him to prove that he took reasonable steps for securing compliance with that subsection.
- (8) Where during the period within which a takeover offer can be accepted the offeror acquires or contracts to acquire any of the shares to which the offer relates but otherwise than by virtue of acceptances of the offer, then, if—
- (a) the value of the consideration for which they are acquired or contracted to be acquired ("the acquisition consideration") does not at that time exceed the value of the consideration specified in the terms of the offer; or
  - (b) those terms are subsequently revised so that when the revision is announced the value of the acquisition consideration, at the time mentioned in paragraph (a) above, no longer exceeds the value of the consideration specified in those terms,
- the offeror shall be treated for the purposes of this section as having acquired or contracted to acquire those shares by virtue of acceptances of the offer; but in any other case those shares shall be treated as excluded from those to which the offer relates.

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*Status: Point in time view as at 01/08/1991.*

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### **Effect of notice under s. 429.**

- 430 (1) The following provisions shall, subject to section 430C, have effect where a notice is given in respect of any shares under section 429.
- (2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer.
  - (3) Where the terms of an offer are such as to give the holder of any shares a choice of consideration the notice shall give particulars of the choice and state—
    - (a) that the holder of the shares may within six weeks from the date of the notice indicate his choice by a written communication sent to the offeror at an address specified in the notice; and
    - (b) which consideration specified in the offer is to be taken as applying in default of his indicating a choice as aforesaid;and the terms of the offer mentioned in subsection (2) shall be determined accordingly.
  - (4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with; and if the consideration chosen by the holder of the shares—
    - (a) is not cash and the offeror is no longer able to provide it; or
    - (b) was to have been provided by a third party who is no longer bound or able to provide it,the consideration shall be taken to consist of an amount of cash payable by the offeror which at the date of the notice is equivalent to the chosen consideration.
  - (5) At the end of six weeks from the date of the notice the offeror shall forthwith—
    - (a) send a copy of the notice to the company; and
    - (b) pay or transfer to the company the consideration for the shares to which the notice relates.
  - (6) If the shares to which the notice relates are registered the copy of the notice sent to the company under subsection (5)(a) shall be accompanied by an instrument of transfer executed on behalf of the shareholder by a person appointed by the offeror; and on receipt of that instrument the company shall register the offeror as the holder of those shares.
  - (7) If the shares to which the notice relates are transferable by the delivery of warrants or other instruments the copy of the notice sent to the company under subsection (5)(a) shall be accompanied by a statement to that effect; and the company shall on receipt of the statement issue the offeror with warrants or other instruments in respect of the shares and those already in issue in respect of the shares shall become void.
  - (8) Where the consideration referred to in paragraph (b) of subsection (5) consists of shares or securities to be allotted by the offeror the reference in that paragraph to the transfer of the consideration shall be construed as a reference to the allotment of the shares or securities to the company.
  - (9) Any sum received by a company under paragraph (b) of subsection (5) and any other consideration received under that paragraph shall be held by the company on trust for the person entitled to the shares in respect of which the sum or other consideration was received.
  - (10) Any sum received by a company under paragraph (b) of subsection (5), and any dividend or other sum accruing from any other consideration received by a company under that paragraph, shall be paid into a separate bank account, being an account the

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balance on which bears interest at an appropriate rate and can be withdrawn by such notice (if any) as is appropriate.

- (11) Where after reasonable enquiry made at such intervals as are reasonable the person entitled to any consideration held on trust by virtue of subsection (9) cannot be found and twelve years have elapsed since the consideration was received or the company is wound up the consideration (together with any interest, dividend or other benefit that has accrued from it) shall be paid into court.
- (12) In relation to a company registered in Scotland, subsections (13) and (14) shall apply in place of subsection (11).
- (13) Where after reasonable enquiry made at such intervals as are reasonable the person entitled to any consideration held on trust by virtue of subsection (9) cannot be found and twelve years have elapsed since the consideration was received or the company is wound up—
- (a) the trust shall terminate;
  - (b) the company or, as the case may be, the liquidator shall sell any consideration other than cash and any benefit other than cash that has accrued from the consideration; and
  - (c) a sum representing—
    - (i) the consideration so far as it is cash;
    - (ii) the proceeds of any sale under paragraph (b) above; and
    - (iii) any interest, dividend or other benefit that has accrued from the consideration,
 shall be deposited in the name of the Accountant of Court in a bank account such as is referred to in subsection (10) and the receipt for the deposit shall be transmitted to the Accountant of Court.
- (14) Section 58 of the <sup>M34</sup>Bankruptcy (Scotland) Act 1985 (so far as consistent with this Act) shall apply with any necessary modifications to sums deposited under subsection (13) as that section applies to sums deposited under section 57(1)(a) of that Act.
- (15) The expenses of any such enquiry as is mentioned in subsection (11) or (13) may be defrayed out of the money or other property held on trust for the person or persons to whom the enquiry relates.

**Right of minority shareholder to be bought out by offeror.**

- 430A) If a takeover offer relates to all the shares in a company and at any time before the end of the period within which the offer can be accepted—
- (a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the shares to which the offer relates; and
  - (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire, amount to not less than nine-tenths in value of all the shares in the company,
- the holder of any shares to which the offer relates who has not accepted the offer may by a written communication addressed to the offeror require him to acquire those shares.
- (2) If a takeover offer relates to shares of any class or classes and at any time before the end of the period within which the offer can be accepted—

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- (a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the shares of any class to which the offer relates; and
  - (b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire, amount to not less than nine-tenths in value of all the shares of that class,
- the holder of any shares of that class who has not accepted the offer may by a written communication addressed to the offeror require him to acquire those shares.
- (3) Within one month of the time specified in subsection (1) or, as the case may be, subsection (2) the offeror shall give any shareholder who has not accepted the offer notice in the prescribed manner of the rights that are exercisable by him under that subsection; and if the notice is given before the end of the period mentioned in that subsection it shall state that the offer is still open for acceptance.
  - (4) A notice under subsection (3) may specify a period for the exercise of the rights conferred by this section and in that event the rights shall not be exercisable after the end of that period; but no such period shall end less than three months after the end of the period within which the offer can be accepted.
  - (5) Subsection (3) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under section 429.
  - (6) If the offeror fails to comply with subsection (3) he and, if the offeror is a company, every officer of the company who is in default or to whose neglect the failure is attributable, shall be liable to a fine and, for continued contravention, to a daily default fine.
  - (7) If an offeror other than a company is charged with an offence for failing to comply with subsection (3) it is a defence for him to prove that he took all reasonable steps for securing compliance with that subsection.

#### **Effect of requirement under s. 430A.**

- 430B) The following provisions shall, subject to section 430C, have effect where a shareholder exercises his rights in respect of any shares under section 430A.
- (2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.
  - (3) Where the terms of an offer are such as to give the holder of shares a choice of consideration the holder of the shares may indicate his choice when requiring the offeror to acquire them and the notice given to the holder under section 430A(3)—
    - (a) shall give particulars of the choice and of the rights conferred by this subsection; and
    - (b) may state which consideration specified in the offer is to be taken as applying in default of his indicating a choice;and the terms of the offer mentioned in subsection (2) shall be determined accordingly.
  - (4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with; and if the consideration chosen by the holder of the shares—
    - (a) is not cash and the offerer is no longer able to provide it; or

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(b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration shall be taken to consist of an amount of cash payable by the offeror which at the date when the holder of the shares requires the offeror to acquire them is equivalent to the chosen consideration.

### **Applications to the court.**

430(1) Where a notice is given under section 429 to the holder of any shares the court may, on an application made by him within six weeks from the date on which the notice was given—

- (a) order that the offeror shall not be entitled and bound to acquire the shares; or
- (b) specify terms of acquisition different from those of the offer.

(2) If an application to the court under subsection (1) is pending at the end of the period mentioned in subsection (5) of section 430 that subsection shall not have effect until the application has been disposed of.

(3) Where the holder of any shares exercises his rights under section 430A the court may, on an application made by him or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.

(4) No order for costs or expenses shall be made against a shareholder making an application under subsection (1) or (3) unless the court considers—

- (a) that the application was unnecessary, improper or vexatious; or
- (b) that there has been unreasonable delay in making the application or unreasonable conduct on his part in conducting the proceedings on the application.

(5) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under subsection (1) or (2) of section 429 the court may, on the application of the offeror, make an order authorising him to give notices under that subsection if satisfied—

- (a) that the offeror has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates;
- (b) that the shares which the offeror has acquired or contracted to acquire by virtue of acceptances of the offer, together with the shares held by the person or persons mentioned in paragraph (a), amount to not less than the minimum specified in that subsection; and
- (c) that the consideration offered is fair and reasonable;

but the court shall not make an order under this subsection unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

### **Joint offers.**

430(1) A takeover offer may be made by two or more persons jointly and in that event this Part of this Act has effect with the following modifications.

(2) The conditions for the exercise of the rights conferred by sections 429 and 430A shall be satisfied by the joint offerors acquiring or contracting to acquire the necessary shares jointly (as respects acquisitions by virtue of acceptances of the offer) and either jointly or separately (in other cases); and, subject to the following provisions, the rights and



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obligations of the offeror under those sections and sections 430 and 430B shall be respectively joint rights and joint and several obligations of the joint offerors.

- (3) It shall be a sufficient compliance with any provision of those sections requiring or authorising a notice or other document to be given or sent by or to the joint offerors that it is given or sent by or to any of them; but the statutory declaration required by section 429(4) shall be made by all of them and, in the case of a joint offeror being a company, signed by a director of that company.
- (4) In sections 428, 430(8) and 430E references to the offeror shall be construed as references to the joint offerors or any of them.
- (5) In section 430(6) and (7) references to the offeror shall be construed as references to the joint offerors or such of them as they may determine.
- (6) In sections 430(4)(a) and 430B(4)(a) references to the offeror being no longer able to provide the relevant consideration shall be construed as references to none of the joint offerors being able to do so.
- (7) In section 430C references to the offeror shall be construed as references to the joint offerors except that any application under subsection (3) or (5) may be made by any of them and the reference in subsection (5)(a) to the offeror having been unable to trace one or more of the persons holding shares shall be construed as a reference to none of the offerors having been able to do so.

#### **Associates.**

- 430E) The requirement in section 428(1) that a takeover offer must extend to all the shares, or all the shares of any class or classes, in a company shall be regarded as satisfied notwithstanding that the offer does not extend to shares which associates of the offeror hold or have contracted to acquire; but, subject to subsection (2), shares which any such associate holds or has contracted to acquire, whether at the time when the offer is made or subsequently, shall be disregarded for the purposes of any reference in this Part of this Act to the shares to which a takeover offer relates.
- (2) Where during the period within which a takeover offer can be accepted any associate of the offeror acquires or contracts to acquire any of the shares to which the offer relates, then, if the condition specified in subsection (8)(a) or (b) of section 429 is satisfied as respects those shares they shall be treated for the purposes of that section as shares to which the offer relates.
- (3) In section 430A(1)(b) and (2)(b) the reference to shares which the offeror has acquired or contracted to acquire shall include a reference to shares which any associate of his has acquired or contracted to acquire.
- (4) In this section “associate”, in relation to an offeror means—
  - (a) a nominee of the offeror;
  - (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary;
  - (c) a body corporate in which the offeror is substantially interested; or
  - (d) any person who is, or is a nominee of, a party to an agreement with the offeror for the acquisition of, or of an interest in, the shares which are the subject of the take-over offer, being an agreement which includes provisions imposing obligations or restrictions such as are mentioned in section 204(2)(a).

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- (5) For the purposes of subsection (4)(b) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.
- (6) For the purposes of subsection (4)(c) an offeror has a substantial interest in a body corporate if—
- (a) that body or its directors are accustomed to act in accordance with his directions or instructions; or
  - (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body.
- (7) Subsections (5) and (6) of section 204 shall apply to subsection (4)(d) above as they apply to that section and subsections (3) and (4) of section 203 shall apply for the purposes of subsection (6) above as they apply for the purposes of subsection (2)(b) of that section.
- (8) Where the offeror is an individual his associates shall also include his spouse and any minor child or step-child of his.

#### **Convertible securities.**

- 430(F) For the purposes of this Part of this Act securities of a company shall be treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares; and references to the holder of shares or a shareholder shall be construed accordingly.
- (2) Subsection (1) shall not be construed as requiring any securities to be treated—
- (a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe; or
  - (b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.”

#### **Marginal Citations**

M34 1985 c. 66.

### SCHEDULE 13

Section 182.

#### DISCLOSURE OF INFORMATION

- 1 In section 133(2)(a) of the <sup>M35</sup>Fair Trading Act 1973 after the words “the Telecommunications Act 1984” there shall be inserted the words “or Chapter XIV of Part I of the Financial Services Act 1986”.

#### **Marginal Citations**

M35 1973 c. 41.

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- 2 In section 41(1)(a) of the <sup>M36</sup>Restrictive Trade Practices Act 1976 after the words “the Telecommunications Act 1984” there shall be inserted the words “or Chapter XIV of Part I of the Financial Services Act 1986”.

**Marginal Citations**

**M36** 1976 c. 34.

*F123* .....

- 3, 4.

**Textual Amendments**

**F123** Sch. 13 paras. 3, 4 repealed by [Banking Act 1987 \(c. 22, SIF 10\)](#), s. 108(2), [Sch. 7 Pt. I](#)

- 5 At the end of section 19(3) of the <sup>M37</sup>Competition Act 1980 there shall be inserted—  
“(h) Chapter XIV of Part I of the Financial Services Act 1986”.

**Marginal Citations**

**M37** 1980 c. 21.

- 6 For subsections (1) and (2) of section 47A of the <sup>M38</sup>Insurance Companies Act 1982 there shall be substituted—

“(1) Subject to the following provisions of this section, no information relating to the business or other affairs of any person which has been obtained under section 44(2) to (4) above shall be disclosed without the consent of the person from whom the information was obtained and, if different, the person to whom it relates.

(2) Subsection (1) above shall not preclude the disclosure of information to any person who is a competent authority for the purposes of section 449 of the Companies Act 1985.

(2A) Subsection (1) above shall not preclude the disclosure of information as mentioned in any of the paragraphs except (m) of subsection (1) of section 180 of the Financial Services Act 1986 or in subsection (3) or (4) of that section or as mentioned in section 449(1) of the Companies Act 1985.

(2B) Subsection (1) above shall not preclude the disclosure of any such information as is mentioned in section 180(5) of the Financial Services Act 1986 by any person who by virtue of that section is not precluded by section 179 of that Act from disclosing it.”

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#### Marginal Citations

M38 1982 c. 50.

- 7 After subsection (1) of section 437 of the Companies Act 1985 there shall be inserted—
- “(1A) Any persons who have been appointed under section 431 or 432 may at any time and, if the Secretary of State directs them to do so, shall inform him of any matters coming to their knowledge as a result of their investigations.”;
- and subsection (2) of section 433 of that Act shall be omitted.
- 8 In section 446 of that Act—
- (a) in subsection (3) for the words “to 436” there shall be substituted the words “to 437”; and
- (b) subsection (5) shall be omitted.
- 9 (1) In subsection (1) of section 449 of that Act—
- (a) for paragraphs (a) and (b) there shall be substituted—
- “(a) with a view to the institution of or otherwise for the purposes of criminal proceedings;”.
- (b) for paragraph (d) there shall be substituted—
- “(d) for the purpose of enabling or assisting the Secretary of State to exercise any of his functions under this Act, the Insider Dealing Act, the Prevention of Fraud (Investments) Act 1958, the Insurance Companies Act 1982, the Insolvency Act 1986, the Company Directors Disqualification Act 1986 or the Financial Services Act 1986.
- (dd) for the purpose of enabling or assisting the Department of Economic Development for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies or insolvency or for the purpose of enabling or assisting any inspector appointed by it under the enactments relating to companies to discharge his functions”;
- (c) after paragraph (e) there shall be inserted—
- “(f) for the purpose of enabling or assisting the Bank of England to discharge its functions under the Banking Act 1979 or any other functions,
- (g) for the purpose of enabling or assisting the Deposit Protection Board to discharge its functions under that Act,
- (h) for any purpose mentioned in section 180(1)(b), (e), (h), (n) or (p) of the Financial Services Act 1986,
- (i) for the purpose of enabling or assisting the Industrial Assurance Commissioner or the Industrial Assurance Commissioner for Northern Ireland to discharge his

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functions under the enactments relating to industrial assurance,

- (j) for the purpose of enabling or assisting the Insurance Brokers Registration Council to discharge its functions under the Insurance Brokers (Registration) Act 1977,
- (k) for the purpose of enabling or assisting an official receiver to discharge his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a body which is for the time being a recognised professional body for the purposes of section 391 of the Insolvency Act 1986 to discharge its functions as such,
- (l) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties,
- (m) for the purpose of enabling or assisting an authority in a country or territory outside the United Kingdom to exercise corresponding supervisory functions.”.

(2) After subsection (1) of that section there shall be inserted—

“(1A) In subsection (1) above “corresponding supervisory functions” means functions corresponding to those of the Secretary of State or the competent authority under the Financial Services Act 1986 or to those of the Secretary of State under the Insurance Companies Act 1982 or to those of the Bank of England under the Banking Act 1979 or any other functions in connection with rules of law corresponding to the provisions of the Insider Dealing Act or Part VII of the Financial Services Act 1986.

(1B) Subject to subsection (1C), subsection (1) shall not preclude publication or disclosure for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this section by the Secretary of State by an order in a statutory instrument to discharge any functions which are specified in the order.

(1C) An order under subsection (1B) designating an authority for the purpose of that subsection may—

- (a) impose conditions subject to which the publication or disclosure of any information or document is permitted by that subsection; and
- (b) otherwise restrict the circumstances in which that subsection permits publication or disclosure.

(1D) Subsection (1) shall not preclude the publication or disclosure of any such information as is mentioned in section 180(5) of the Financial Services Act 1986 by any person who by virtue of that section is not precluded by section 179 of that Act from disclosing it.”

(3) For subsection (3) of that section (competent authorities) there shall be substituted—

“(3) For the purposes of this section each of the following is a competent authority—

- (a) the Secretary of State,
- (b) the Department of Economic Development for Northern Ireland and any officer of that Department,

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- (c) an inspector appointed under this Part by the Secretary of State,
- (d) the Treasury and any officer of the Treasury,
- (e) the Bank of England and any officer or servant of the Bank,
- (f) the Lord Advocate,
- (g) the Director of Public Prosecutions, and the Director of Public Prosecutions for Northern Ireland,
- (h) any designated agency or transferee body within the meaning of the Financial Services Act 1986 and any officer or servant of such an agency or body,
- (i) any person appointed or authorised to exercise any powers under section 94, 106 or 177 of the Financial Services Act 1986 and any officer or servant of such a person,
- (j) the body administering a scheme under section 54 of or paragraph 18 of Schedule 11 to that Act and any officer or servant of such a body,
- (k) the Chief Registrar of friendly societies and the Registrar of Friendly Societies for Northern Ireland and any officer or servant of either of them,
- (l) the Industrial Assurance Commissioner and the Industrial Assurance Commissioner for Northern Ireland and any officer of either of them,
- (m) any constable,
- (n) any procurator fiscal.

(4) A statutory instrument containing an order under subsection (1B) is subject to annulment in pursuance of a resolution of either House of Parliament.”.

10 After section 451 of that Act there shall be inserted—

**“451A Disclosure of information by Secretary of State.**

The Secretary of State may, if he thinks fit, disclose any information obtained under this Part of this Act—

- (a) to any person who is a competent authority for the purposes of section 449, or
- (b) in any circumstances in which or for any purpose for which that section does not preclude the disclosure of the information to which it applies.”

11 After Article 430(1) of the <sup>M39</sup>Companies (Northern Ireland) Order 1986 there shall be inserted—

“(1A) Any persons who have been appointed under Article 424 or 425 may at any time and, if the Department directs them to do so shall, inform it of any matters coming to their knowledge as a result of their investigation.”;

and Article 426(2) of that Order shall be omitted.

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#### Marginal Citations

M39 S.I. 1986/1032. (N.I.6).

- 12 In Article 439 of that Order—
- (a) in paragraph (3) for the words “to 429” there shall be substituted the words “to 430”; and
  - (b) paragraph (5) shall be omitted.
- 13 (1) In paragraph (1) of Article 442 of that Order—
- (a) for sub-paragraphs (a) and (b) there shall be substituted—
    - “(a) with a view to the institution of or otherwise for the purposes of criminal proceedings;”;
  - (b) for sub-paragraph (d) there shall be substituted—
    - “(d) for the purpose of enabling or assisting the Department to exercise any of its functions under this Order, the Insider Dealing Order or the Prevention of Fraud (Investments) Act (Northern Ireland) 1940;
    - (dd) for the purpose of enabling or assisting the Secretary of State to exercise any functions conferred on him by the enactments relating to companies or insolvency, the Prevention of Fraud (Investments) Act 1958, the Insurance Companies Act 1982, or the Financial Services Act 1986, or for the purpose of enabling or assisting any inspector appointed by him under the enactments relating to companies to discharge his functions”;
  - (c) after sub-paragraph (e) there shall be inserted—
    - “(f) for the purposes of enabling or assisting the Bank of England to discharge its functions under the Banking Act 1979 or any other functions;
    - (g) for the purposes of enabling or assisting the Deposit Protection Board to discharge its functions under that Act;
    - (h) for any purpose mentioned in section 180(1)(b), (e), (h), (n) or (p) of the Financial Services Act 1986;
    - (i) for the purpose of enabling or assisting the Industrial Assurance Commissioner for Northern Ireland or the Industrial Assurance Commissioner in Great Britain to discharge his functions under the enactments relating to industrial assurance;
    - (j) for the purpose of enabling or assisting the Insurance Brokers Registration Council to discharge its functions under the Insurance Brokers (Registration) Act 1977;
    - (k) for the purpose of enabling or assisting the official assignee to discharge his functions under the enactments relating to companies or bankruptcy;
    - (l) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the

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exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties;

- (m) for the purpose of enabling or assisting an authority in a country or territory outside the United Kingdom to exercise corresponding supervisory functions.”.

(2) After paragraph (1) of that Article there shall be inserted—

“(1A) In paragraph (1) “corresponding supervisory functions” means functions corresponding to those of the Secretary of State or the competent authority under the Financial Services Act 1986 or to those of the Secretary of State under the Insurance Companies Act 1982 or to those of the Bank of England under the Banking Act 1979 or any other functions in connection with rules of law corresponding to the provisions of the Insider Dealing Order or Part VII of the Financial Services Act 1986.

(1B) Subject to paragraph (1C), paragraph (1) shall not preclude publication or disclosure for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this Article by an order made by the Department to discharge any functions which are specified in the order.

(1C) An order under paragraph (1B) designating an authority for the purpose of that paragraph may—

- (a) impose conditions subject to which the publication or disclosure of any information or document is permitted by that paragraph; and
- (b) otherwise restrict the circumstances in which that paragraph permits publication or disclosure.

(1D) Paragraph (1) shall not preclude the publication or disclosure of any such information as is mentioned in section 180(5) of the Financial Services Act 1986 by any person who by virtue of that section is not precluded by section 179 of that Act from disclosing it.”

(3) For paragraph (3) of that Article (competent authorities) there shall be substituted—

“(3) For the purposes of this Article each of the following is a competent authority—

- (a) the Department and any officer of the Department,
- (b) the Secretary of State,
- (c) an inspector appointed under this Part by the Department,
- (d) the Department of Finance and Personnel and any officer of that Department;
- (e) the Treasury and any officer of the Treasury,
- (f) the Bank of England and any officer or servant of the Bank,
- (g) the Lord Advocate,
- (h) the Director of Public Prosecutions for Northern Ireland and the Director of Public Prosecutions in England and Wales,
- (i) any designated agency or transferee body within the meaning of the Financial Services Act 1986 and any officer or servant of such an agency or body,



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- (j) any person appointed or authorised to exercise any powers under section 94, 106 or 177 of the Financial Services Act 1986 and any officer or servant of such a person,
  - (k) the body administering a scheme under section 54 of or paragraph 18 of Schedule 11 to that Act and any officer or servant of such a body.
  - (l) the Registrar of Friendly Societies and the Chief Registrar of friendly societies in Great Britain and any officer or servant of either of them,
  - (m) the Industrial Assurance Commissioner for Northern Ireland and the Industrial Assurance Commissioner in Great Britain and any officer of either of them,
  - (n) any constable,
  - (o) any procurator fiscal.
- (4) An order under paragraph (1B) is subject to negative resolution.”

14 After Article 444 of that order there shall be inserted—

#### **Disclosure of information by Department**

- “444A The Department may, if it thinks fit, disclose any information obtained under this Part—
- (a) to any person who is a competent authority for the purposes of Article 442, or
  - (b) in any circumstances in which or for any purpose for which that Article does not preclude the disclosure of the information to which it applies.”

F124 SCHEDULE 14

Section 189.

### RESTRICTION OF REHABILITATION OF OFFENDERS ACT 1974

#### **Textual Amendments**

F124 Sch. 14 amended (12.2.1992) by S.I. 1992/225, reg.115.

#### **Modifications etc. (not altering text)**

C58 Sch. 14 continued (with modifications) (S.) (temp. from 1.12.2001) by S.I. 2001/3640, art. 4(1)

C59 Sch. 14 amended (temp. from 3.9.2001 until 1.12.2001) by S.I. 2001/2659, art. 6(2)

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## PART I

### EXEMPTED PROCEEDINGS

**Modifications etc. (not altering text)**

**C60** Sch. 14 Pt. I continued (1.12 2001) by S.I. 2001/3650, arts. 1(a), 16(1)(a)

- 1 Any proceedings with respect to a decision or proposed decision of the Secretary of State or a designated agency—
  - (a) refusing, withdrawing or suspending an authorisation;
  - (b) refusing an application under section 28(5) of this Act;
  - (c) giving a direction under section 59 of this Act or refusing an application for consent or for the variation of a consent under that section;
  - (d) exercising a power under Chapter VI of Part I of this Act or refusing an application for the rescission or variation of a prohibition or requirement imposed under that Chapter;
  - (e) refusing to make or revoking an order declaring a collective investment scheme to be an authorised unit trust scheme or a recognised scheme.
  
- 2 Any proceedings with respect to a decision or proposed decision of a recognised self-regulating organisation—
  - (a) refusing or suspending a person’s membership of the organisation;
  - (b) expelling a member of the organisation;
  - (c) exercising a power of the organisation for purposes corresponding to those of Chapter VI of Part I of this Act.
  
- 3 (1) Any proceedings with respect to a decision or proposed decision of a recognised professional body—
  - (a) refusing or suspending a person’s membership of the body;
  - (b) expelling a member of the body.
 (2) Any proceedings with respect to a decision or proposed decision of a recognised professional body or of any other body or person having functions in respect of the enforcement of the recognised professional body’s rules relating to the carrying on of investment business—
  - (a) exercising a power for purposes corresponding to those of Chapter VI of Part I of this Act;
  - (b) refusing, suspending or withdrawing a certificate issued for the purposes of Part I of this Act.
  
- 4 Any proceedings with respect to a decision or proposed decision of the competent authority under Part IV of this Act refusing an application for listing or to discontinue or suspend the listing of any securities.

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- 5 Any proceedings with respect to a decision or proposed decision of the Chief Registrar of friendly societies, the Registrar of Friendly Societies for Northern Ireland or a transferee body, exercising a power exercisable by virtue of paragraph 23 of Schedule 11 to this Act or refusing an application for the rescission or variation of a prohibition or requirement imposed in the exercise of such a power.
- 6 Any proceedings with respect to a decision or proposed decision of a recognised self-regulating organisation for friendly societies—
- (a) refusing or suspending a society’s membership of the organisation;
  - (b) expelling a member of the organisation;
  - (c) exercising a power of the organisation for purposes corresponding to those for which powers are exercisable by the Registrar by virtue of paragraph 23 of Schedule 11 to this Act.

## PART II

### EXEMPTED QUESTIONS

<i>Person putting question</i>	<i>Individual to whom question relates</i>
1. The Secretary of State or a designated agency.	(a) An authorised person.  (b) An applicant for authorisation under section 26 of this Act.  (c) A person whose authorisation is suspended.  (d) The operator or trustee of a recognised scheme or a collective investment scheme in respect of which a notice has been given by the operator under section 87(3) or an application made under section 88 of this Act.  (e) An individual who is an associate of a person (whether or not an individual) described in paragraph (a), (b), (c) or (d) above.
2. A recognised self-regulating organisation or recognised professional body.	(a) A member of the organisation or body.  (b) An applicant for membership of the organisation or body.  (c) A person whose membership of the organisation or body is suspended.  (d) An individual who is an associate of a person (whether or not an individual) described in paragraph (a), (b) or (c) above.

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3. A recognised professional body.	<p>(a) A person certified by the body.</p> <p>(b) An applicant for certification by the body.</p> <p>(c) A person whose certification by the body is suspended.</p> <p>(d) An individual who is an associate of a person (whether or not an individual) described in paragraph (a), (b) or (c) above.</p>
4. A person (whether or not an individual) described in paragraph 1(a), (b), (c) or (d), paragraph 2(a), (b) or (c) or paragraph 3(a), (b) or (c) above.	An individual who is or is seeking to become an associate of the person in column 1.
5. The competent authority or any other person.	An individual from or in respect of whom information is sought in connection with an application for listing under Part IV of this Act.
<i>Person putting question</i>	
6. The competent authority.	<p><i>Individual to whom question relates</i></p> <p>An individual who is or is seeking to become an associate of the issuer of securities listed under Part IV of this Act and from or in respect of whom information is sought which the issuer of the securities is required to furnish under listing rules.</p>
7. The Chief Registrar of friendly societies, the Registrar of Friendly Societies for Northern Ireland or a transferee body.	An individual who is an associate of a society which is authorised under section 23 of this Act.
8. A recognised self-regulating organisation for friendly societies.	An individual who is an associate of a member or an applicant for membership of the organisation or of a society whose membership of the organisation is suspended.

### PART III

#### EXEMPTED ACTIONS

<i>Person taking action</i>	<i>Exempted action</i>
1. The Secretary of State, a designated agency, a recognised self-regulating organisation, a recognised professional body, any other body or person mentioned in paragraph 3(2) of Part I of this Schedule or the competent authority.	Any such decision or proposed decision as is mentioned in Part I of this Schedule.
2. A person (whether or not an individual) described in paragraph 1(a), (b), (c) or (d), paragraph 2(a), (b) or (c) or paragraph 3(a), (b) or (c) of Part II of this Schedule.	Dismissing or excluding an individual from being or becoming an associate of the person in column 1.

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| 3. The issuer of securities listed or subject to an application for listing under Part IV of this Act.   | Dismissing or excluding an individual from being or becoming an associate of the issuer. |
| 4. The Chief Registrar of friendly societies, the Registrar of Friendly Societies for Northern Ireland, a transferee body or a recognised self-regulating organisation for friendly societies. | Any such decision or proposed decision as is mentioned in Part I of this Schedule.       |

## PART IV

### SUPPLEMENTAL

- 1 In Part I of this Schedule “proceedings” includes any proceedings within the meaning of section 4 of the <sup>M40</sup>Rehabilitation of Offenders Act 1974.

#### Marginal Citations

M40 1974 c. 53.

- 2 In Parts II and III of this Schedule—
- (a) references to an applicant for authorisation, membership or certification are references to an applicant who has not yet been informed of the decision on his application;
  - (b) references to an application for listing under Part IV of this Act are references to an application the decision on which has not yet been communicated to the applicant and which is not taken by virtue of section 144(5) of this Act to have been refused.
- 3 Paragraph 1(d) of Part II of this Schedule and so much of paragraph 1(e) as relates to it—
- (a) apply only if the question is put to elicit information for the purpose of determining whether the operator or trustee is a fit and proper person to act as operator or trustee of the scheme in question;
  - (b) apply in the case of a scheme in respect of which a notice has been given under subsection (3) of section 87 only until the end of the period within which the operator may receive a notification from the Secretary of State under that subsection or, if earlier, the receipt by him of such a notification;
  - (c) apply in the case of a scheme in respect of which an application has been made under section 88 only until the applicant has been informed of the decision on the application.

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## SCHEDULE 15

Section 211(3).

### TRANSITIONAL PROVISIONS

#### *Interim authorisation*

- 1 (1) If before such day as is appointed for the purposes of this paragraph by an order made by the Secretary of State a person has applied—
- (a) for membership of any body which on that day is a recognised self-regulating organisation; or
  - (b) for authorisation by the Secretary of State,
- and the application has not been determined before the day on which section 3 of this Act comes into force, that person shall, subject to sub-paragraphs (2), (3) and (4) below, be treated until the determination of the application as if he had been granted an authorisation by the Secretary of State.
- (2) Sub-paragraph (1) above does not apply to a person who immediately before the day on which section 3 of this Act comes into force is prohibited by the <sup>M41</sup>Prevention of Fraud (Investments) Act 1958 (in this Schedule referred to as “the previous Act”) from carrying on the business of dealing in securities—
- (a) by reason of the refusal or revocation at any time before that day of a licence under that Act; or
  - (b) by reason of the revocation at any time before that day of an order declaring him to be an exempted dealer.
- (3) If a person who has made any such application as is mentioned in sub-paragraph (1) above has before the day on which section 3 of this Act comes into force been served with a notice under section 6 or 16(3) of the previous Act (proposed refusal or revocation of licence or proposed revocation of exemption order) but the refusal or revocation to which the notice relates has not taken place before that day—
- (a) the provisions of that Act with respect to the refusal or revocation of a licence or the revocation of an order under section 16 of that Act shall continue to apply to him until the application mentioned in sub-paragraph (1) above is determined; and
  - (b) that sub-paragraph shall cease to apply to him if before the determination of the application mentioned in that sub-paragraph his application for a licence under that Act is refused, his licence under that Act is revoked or the order declaring him to be an exempted dealer under that Act is revoked.
- (4) Notwithstanding sub-paragraph (1) above section 102(1)(a) of this Act shall not apply to a person entitled to carry on investment business by virtue of that sub-paragraph but the Secretary of State may make available for public inspection the information with respect to the holders of principal’s licences mentioned in section 9 of the previous Act, any information in his possession by virtue of section 15(3) or (4) of that Act and the information mentioned in section 16(4) of that Act.
- (5) Notwithstanding subsection (2) of section 3 of the previous Act a licence granted under that section before the day on which section 3 of this Act comes into force shall, unless revoked under section 6 of that Act, continue in force until that day.

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**Modifications etc. (not altering text)**

**C61** Sch. 15 para. 1(1): 27.2.1988 appointed for the purposes of paragraph 1(1) by S.I. 1987/2157, art. 2

**Marginal Citations**

**M41** 1958 c. 45.

*Return of fees on pending applications*

- 2 Any fee paid in respect of an application under section 3 of the previous Act which is pending on the day on which that Act is repealed shall be repaid to the applicant.

*Deposits and undertakings*

- 3 The repeal of section 4 of the previous Act shall not affect the operation of that section in a case where—
- (a) a sum deposited in accordance with that section has become payable as provided in subsection (2) of that section before the date on which the repeal takes effect; or
  - (b) a sum has become payable before that date in pursuance of an undertaking given under subsection (4) of that section,
- but, subject as aforesaid, any sum deposited under that section may be withdrawn by the depositor on application to the Accountant General of the Supreme Court and any undertaking given under that section shall be discharged.

*Interim recognition of professional bodies*

- 4 (1) If on an application made under section 17 of this Act it appears to the Secretary of State that any of the requirements of section 18(3) of this Act or paragraphs 2 to 6 of Schedule 3 to this Act are not satisfied he may in accordance with this paragraph make a recognition order under section 18 of this Act (“an interim recognition order”) notwithstanding that all or any of those requirements are not satisfied.
- (2) The Secretary of State may, subject to sub-paragraphs (3) and (4) below, make an interim recognition order if he is satisfied—
- (a) that the applicant proposes to adopt rules and practices and to make arrangements which will satisfy such of the requirements mentioned in sub-paragraph (1) above as are not satisfied;
  - (b) that it is not practicable for those rules, practices and arrangements to be brought into effect before the date on which section 3 of this Act comes into force but that they will be brought into effect within a reasonable time thereafter; and
  - (c) that in the meantime the applicant will enforce its existing rules in such a way, and issue such guidance, as will in respect of investment business of any kind carried on by persons certified by it (or by virtue of paragraph 5 below treated as certified by it) afford to investors protection as nearly as

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may be equivalent to that provided as respects investment business of that kind by the rules and regulations under Chapter V of Part I of this Act.

(3) Where the requirements which are not satisfied consist of or include those mentioned in paragraph 2 of Schedule 3 to this Act an application for an interim recognition order shall be accompanied by—

- (a) a list of the persons to whom the applicant proposes to issue certificates for the purposes of Part I of this Act; and
- (b) particulars of the criteria adopted for determining the persons included in the list;

and the Secretary of State shall not make the order unless it appears to him that those criteria conform as nearly as may be to the conditions mentioned in that paragraph and that the applicant will, until the requirements of that paragraph are satisfied, have arrangements for securing that no person is certified by it (or by virtue of paragraph 5 below treated as certified by it) except in accordance with those criteria and for the effective monitoring of continued compliance by those persons with those criteria.

(4) Where the requirements which are not satisfied consist of or include that mentioned in paragraph 6 of Schedule 3 to this Act, the Secretary of State shall not make an interim recognition order unless it appears to him that the applicant will, until that requirement is satisfied, take such steps for complying with it as are reasonably practicable.

(5) An application for an interim recognition order shall be accompanied by a copy of the rules and by particulars of the practices and arrangements referred to in sub-paragraph (2)(a) above.

(6) An interim recognition order shall not be revocable but shall cease to be in force at the end of such period as is specified in it; and that period shall be such as will in the opinion of the Secretary of State allow a reasonable time for the rules, practices and arrangements mentioned in sub-paragraph (5) above to be brought into effect.

(7) The Secretary of State may on the application of the body to which an interim recognition order relates extend the period specified in it if that body satisfies him—

- (a) that there are sufficient reasons why the rules, practices and arrangements mentioned in sub-paragraph (5) above cannot be brought into effect by the end of that period; and
- (b) that those rules, practices and arrangements, or other rules, practices and arrangements which satisfy the requirements mentioned in sub-paragraph (2) (a) above and of which copies or particulars are furnished to the Secretary of State, will be brought into effect within a reasonable time thereafter;

but not more than one application shall be made by a body under this sub-paragraph.

(8) A recognition order under section 18 of this Act shall cease to be an interim recognition order if before it ceases to be in force—

- (a) the rules, practices and arrangements of which copies or particulars were furnished to the Secretary of State under sub-paragraph (5) or (7)(b) above are brought into effect; or
- (b) the Secretary of State certifies that other rules, practices and arrangements which have been brought into effect comply with the requirements mentioned in sub-paragraph (1) above.



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- (9) In this paragraph references to the adoption of rules or the making of arrangements include references to taking such other steps as may be necessary for bringing them into effect.

*Interim authorisation by recognised professional bodies*

- 5 (1) If at the time when an interim recognition order is made in respect of a professional body that body is unable to issue certificates for the purposes of this Act, any person who at that time is included in the list furnished by that body to the Secretary of State in accordance with paragraph 4(3)(a) above shall be treated for the purposes of this Act as a person certified by that body.
- (2) If at any time while an interim recognition order is in force in respect of a professional body and before the body is able to issue certificates as mentioned in sub-paragraph (1) above the body notifies the Secretary of State that a person not included in that list satisfies the criteria of which particulars were furnished by the body in accordance with paragraph 4(3)(b) above, that person shall, on receipt of the notification by the Secretary of State, be treated for the purposes of this Act as a person certified by that body.
- (3) If at any time while an interim recognition order is in force in respect of a professional body it appears to the body—
- (a) that a person treated by virtue of sub-paragraph (1) or (2) above as certified by it has ceased (after the expiration of such transitional period, if any, as appears to the body to be appropriate) to satisfy the criteria mentioned in sub-paragraph (2) above; or
- (b) that any such person should for any other reason cease to be treated as certified by it,
- it shall forthwith give notice of that fact to the Secretary of State and the person in question shall, on receipt of that notification by the Secretary of State, cease to be treated as certified by that body.
- (4) Where by virtue of this paragraph a partnership is treated as certified by a recognised professional body section 15(3) of this Act shall apply as it applies where a certificate has in fact been issued to a partnership.
- (5) Where by virtue of this paragraph any persons are treated as certified by a recognised professional body the requirements of paragraph 2 of Schedule 3 to this Act so far as relating to the retention by a person of a certificate issued by that body and the requirements of paragraph 4 of that Schedule shall apply to the body as if the references to persons certified by it included references to persons treated as certified.

*Power of recognised professional body to make rules required by this Act.*

- 6 (1) Where a recognised professional body regulates the practice of a profession in the exercise of statutory powers the matters in respect of which rules can be made in the exercise of those powers shall, if they would not otherwise do so, include any matter in respect of which rules are required to be made—
- (a) so that the recognition order in respect of that body can cease to be an interim recognition order; or

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- (b) where the recognition order was not, or has ceased to be, an interim recognition order, so that the body can continue to be a recognised professional body.
- (2) Rules made by virtue of this paragraph may in particular make provision for the issue, withdrawal and suspension of certificates for the purposes of this Act and the making of charges in respect of their issue and may accordingly apply to persons who are, or are to be, certified or treated as certified by the body in question whether or not they are persons in relation to whom rules could be made apart from this paragraph.
- (3) Rules made by virtue of this paragraph may make different provision for different cases.
- (4) The Secretary of State may at the request of a recognised professional body by order extend, modify or exclude any statutory provision relating to the regulation of the conduct, practice, or discipline of members of that body to such extent as he thinks necessary or expedient in consequence of the provisions of this paragraph; and any order made by virtue of this sub-paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Modifications etc. (not altering text)**

**C62** Sch. 15 para. 6(1)(3) continued (1.12.2001) by S.I. 2001/3083, art. 20(2), S.I. 2001/3538

**C63** Sch. 15 para. 6(1)(3) continued (1.12.2001) by S.I. 2001/2657, art. 20(2); S.I. 2001/3538, art. 2(1) (which S.I. was revoked (8.10.2001) by S.I. 2001/3083, art. 23)

*Notice of commencement of business*

- 7 In the case of a person who is carrying on investment business in the United Kingdom on the day on which section 31 of this Act comes into force, section 32 of this Act shall have effect as if it required him to give the notice referred to in that section forthwith.

*Advertisements*

- 8 (1) So long as Part III of the <sup>M42</sup>Companies Act 1985 remains in force section 57 of this Act shall not apply—
- (a) in relation to any distribution of a prospectus to which section 56 of that Act applies or would apply if not excluded by subsection (5)(b) of that section or to which section 72 of that Act applies or would apply if not excluded by subsection (6)(b) of that section or by section 76 of that Act, or in relation to any distribution of a document relating to securities of a corporation incorporated in Great Britain which is not a registered company, being a document which—
- (i) would, if the corporation were a registered company, be a prospectus to which section 56 of that Act applies or would apply if not excluded as aforesaid, and
- (ii) contains all the matters and is issued with the consents which, by virtue of sections 72 to 75 of that Act, it would have to contain and be

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- issued with if the corporation were a company incorporated outside Great Britain and the document were a prospectus issued by that company;
- (b) in relation to any issue of a form of application for shares in, or debentures of, a corporation, together with—
- (i) a prospectus which complies with the requirements of section 56 of that Act or is not required to comply with them because excluded by subsection (5)(b) of that section, or complies with the requirements of Chapter II of Part III of that Act relating to prospectuses and is not issued in contravention of sections 74 and 75 of that Act, or
  - (ii) in the case of a corporation incorporated in Great Britain which is not a registered company, a document containing all the matters and issued with the consents mentioned in sub-paragraph (a)(ii) of this paragraph, or in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.
- (2) The provisions of this paragraph shall apply to Northern Ireland with the substitution for the references to Part III and Chapter II of Part III of the Companies Act 1985 of references to Part IV and Chapter II of Part IV of the Companies (Northern Ireland) Order 1986, for the references to sections 56, 56(5)(b), 72, 72(6)(b), 74, 76 and 72 to 75 of the Companies Act 1985 of references to Articles 66, 66(5)(b), 82, 82(6)(b), 84, 86 and 82 to 85 of the Companies (Northern Ireland) Order 1986, for the references to a corporation incorporated in Great Britain of references to a corporation incorporated in Northern Ireland and for the reference to a company incorporated outside Great Britain of a reference to a company incorporated outside the United Kingdom.

**Marginal Citations**

M42 1985 c. 6.

*Authorised unit trust schemes*

- 9
- (1) Where an order under section 17 of the previous Act (authorisation of unit trust schemes) is in force in respect of a unit trust scheme immediately before the coming into force of Chapter VIII of Part I of this Act the scheme shall be treated as an authorised unit trust scheme under that Part and the order as an order under section 78 of this Act.
  - (2) In relation to any such authorised unit trust scheme the reference in section 79(1)(a) of this Act to the requirements for the making of the order shall be construed as a reference to the requirements for the making of an order under section 78, but the scheme shall not be regarded as failing to comply with those requirements by reason of the manager or trustee not being an authorised person if he is treated as such a person by virtue of paragraph 1 above.
  - (3) If before the day on which Chapter VIII of Part I comes into force a notice in respect of a scheme has been served under subsection (2) of section 17 of the previous Act (proposed revocation of authorisation of unit trust scheme) but the revocation has not taken place before that day, the provisions of that subsection shall continue to

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apply in relation to the scheme and sub-paragraph (1) above shall cease to apply to it if the authorisation is revoked under that subsection.

*Recognised collective investment schemes*

- 10 (1) If at any time before the coming into force of section 86 of this Act it appears to the Secretary of State that the law of a member State other than the United Kingdom confers rights on the managers and trustees of authorised unit trust schemes entitling them to carry on in that State on terms equivalent to those of that section—
- (a) investment business which consists in operating or acting as trustee in relation to such schemes; and
  - (b) any investment business which is carried on by them in connection with or for the purposes of such schemes,
- he may by order direct that schemes constituted in that State which satisfy such requirements as are specified in the order shall be recognised schemes for the purposes of this Act.
- (2) Subsections (2) to (9) of section 86 of this Act shall have effect in relation to any scheme recognised by virtue of this paragraph; and the references in section 24 and 207(1) of this Act to a scheme recognised under section 86, and in section 76(1) of this Act to a scheme recognised under Chapter VIII of Part I of this Act, shall include references to any scheme recognised by virtue of this paragraph.
- (3) In section 86(3)(a) as applied by sub-paragraph (2) above the reference to the rights conferred by any relevant Community instrument shall be construed as a reference to the rights conferred by virtue of an order made under this paragraph.
- 11 (1) Subsection (7) of section 88 of this Act shall not apply to a scheme which is in existence on the date on which this Act is passed if—
- (a) the units under the scheme are included in the Official List of The Stock Exchange and have been so included throughout the period of five years ending on the date on which this paragraph comes into force;
  - (b) the law of the country or territory in which the scheme is established precludes the participants being entitled or the operator being required as mentioned in that subsection; and
  - (c) throughout the period of five years ending on the date on which the application is made under that section, units under the scheme have in fact been regularly redeemed as mentioned in that subsection or the operator has in fact regularly ensured that participants were able to sell their units as there mentioned.
- (2) The grounds for revoking an order made under section 88 of this Act by virtue of this paragraph shall include the ground that it appears to the Secretary of State that since the making of the order units under the scheme have ceased to be regularly redeemed or the operator has ceased regularly to ensure their sale as mentioned in sub-paragraph (1)(c) above.

*Status: Point in time view as at 01/08/1991.*

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### *Delegation orders*

- 12 (1) A delegation order may transfer a function notwithstanding that the provision conferring it has not yet come into force but no such function shall be exercisable by virtue of the order until the coming into force of that provision.
- (2) Sub-paragraph (1) above applies also to a transfer order under paragraph 28(1) of Schedule 11 to this Act.

### *Disclosure of information*

- 13 In determining for the purposes of section 180(6) of this Act and the enactments amended by paragraphs 3(2), 9(2) and 13(2) of Schedule 13 to this Act whether the functions of an authority in a country or territory outside the United Kingdom correspond to functions conferred by any of the provisions of this Act regard shall be had to those provisions whether or not they have already come into force.

### *Temporary exemptions for friendly societies*

- 14 (1) A registered friendly society which transacts no investment business after the date on which section 3 of this Act comes into force except for the purpose of making or carrying out relevant existing members' contracts shall be treated for the purposes of that section as if it were an exempted person under Chapter IV of Part I of this Act.
- (2) Subject to sub-paragraph (3) below, for the purposes of this paragraph "relevant existing members' contracts", in relation to any society, means—
- (a) contracts made by the society before that date; and
  - (b) in the case of a small income society—
    - (i) during the period of three years beginning with that date, tax exempt investment agreements made by it with persons who were members of the society before that date; and
    - (ii) after the expiry of that period, tax exempt investment agreements made by it with such persons before the expiry of that period.
- (3) Paragraph (b) of sub-paragraph (2) above shall not apply to a registered friendly society after the expiry of the period of two years beginning with that date unless before the expiry of that period it has by special resolution (within the meaning of the <sup>M43</sup>Friendly Societies Act 1974 or, as the case may be, the <sup>M44</sup>Friendly Societies Act (Northern Ireland) 1970) determined—
- (a) to transact no further investment business except for the purpose of carrying out contracts entered into before the expiry of the said period of three years; or
  - (b) to take such action as is necessary to procure the transfer of its engagements to another such society or a company or the amalgamation of the society with another such society under section 82 of the said Act of 1974 or, as the case may be, section 70 of the said Act of 1970,
- and a copy of that resolution has been registered in accordance with section 86 of the said Act of 1974 or, as the case may be, section 75 of the said Act of 1970.

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- (4) For the purpose of sub-paragraph (2) above a society is a small income society if its income in 1985 from members' contributions did not exceed £50,000.
- (5) For the purposes of sub-paragraph (2) above an investment agreement is a tax exempt investment agreement if the society by which it is made may obtain exemption from income and corporation tax on the profits from it under section [F125460(1) or 461(1)] of the Income and Corporation Taxes Act [F1251988].
- (6) A society to which sub-paragraph (1) or (2) above applies shall not be an authorised person for the purposes of this Act nor a regulated friendly society for the purposes of the provisions of Schedule 11 to this Act.

#### Textual Amendments

**F125** "460(1) or 461(1)" and "1988" substituted respectively by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, Sch. 29 para. 32, [Sch. 30 para. 6\(1\)](#)

#### Marginal Citations

**M43** 1974 c. 46.

**M44** 1970 c. 31 (N.I.).

#### *Dealings in course of non-investment business*

- 15 If before the day on which section 3 of this Act comes into force a person has applied for permission under paragraph 23 of Schedule 1 to this Act and the application has not been determined before that day, that person shall, until the determination of the application and subject to his complying with such requirements as the Secretary of State may impose, be treated as if he had been granted a permission under that paragraph.

#### *Northern Ireland*

- 16 The foregoing provisions shall apply to Northern Ireland with the substitution for references to the previous Act or any provision of that Act of references to the <sup>M45</sup>Prevention of Fraud (Investments) Act (Northern Ireland) 1940 and the corresponding provision of that Act.

#### Marginal Citations

**M45** 1940 c. 9 (N.I.).

*Status: Point in time view as at 01/08/1991.*

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## SCHEDULE 16

Section 212(2).

### CONSEQUENTIAL AMENDMENTS

- 1 In section 22 of the <sup>M46</sup>Charities Act 1960—
- (a) subsection (10) shall be omitted; and
  - (b) in subsection (11) for the words “Subsections (9) and (10)” there shall be substituted the words “Subsection (9)”.

#### Marginal Citations

**M46** 1960 c. 58.

- 2 In the <sup>M47</sup>Trustee Investments Act 1961—
- (a) in section 11(3) for the words “the Prevention of Fraud (Investments) Act 1958 or the Prevention of Fraud (Investments) Act (Northern Ireland) 1940” there shall be substituted the words “the Financial Services Act 1986”;
  - (b) for paragraph 3 of Part III of Schedule 1 there shall be substituted—
    - “3 In any units of an authorised unit trust scheme within the meaning of the Financial Services Act 1986”;
  - (c) in paragraph 2(a) of Part IV of Schedule 1 for the words from “a recognised stock exchange” onwards there shall be substituted the words “a recognised investment exchange within the meaning of the Financial Services Act 1986”;
  - (d) in the definition of “securities” in paragraph 4 of Part IV of that Schedule after the word “debentures” there shall be inserted the words “units within paragraph 3 of Part III of this Schedule”.

#### Marginal Citations

**M47** 1961 c. 62.

- 3 In section 32 of the Clergy Pensions Measure 1961 No. 3—
- (a) for paragraph (t) of subsection (1) there shall be substituted—
    - “(t) in any units in any authorised unit trust scheme or a recognised scheme within the meaning of the Financial Services Act 1986”; and
  - (b) in subsection (5)(a) for the words from “a recognised stock exchange” onwards there shall be substituted the words “a recognised investment exchange within the meaning of the Financial Services Act 1986”.

- 4 In the <sup>M48</sup>Stock Transfer Act 1963—

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- (a) for paragraph (e) of section 1(4) there shall be substituted—
  - “(e) units of an authorised unit trust scheme or a recognised scheme within the meaning of the Financial Services Act 1986”; and
- (b) in the definition of “securities” in section 4(1) for the words from “unit trust scheme” to “scheme” there shall be substituted the words “collective investment scheme within the meaning of the Financial Services Act 1986”.

**Marginal Citations**

**M48** 1963 c. 18.

- 5 In the <sup>M49</sup>Stock Transfer Act (Northern Ireland) 1963—
- (a) for paragraph (e) of section 1(4) there shall be substituted—
    - “(e) units of an authorised unit trust scheme or a recognised scheme within the meaning of the Financial Services Act 1986”; and
  - (b) in the definition of “securities” in section 4(1) for the words from “unit trust scheme” to “scheme” there shall be substituted the words “collective investment scheme within the meaning of the Financial Services Act 1986”.

**Marginal Citations**

**M49** 1963 c. 24 (N.I.).

- 6 In section 25 of the <sup>M50</sup>Charities Act (Northern Ireland) 1964—
- (a) subsection (16) shall be omitted; and
  - (b) in subsection (17) for the words “Subsections (15) and (16)” there shall be substituted the words “Subsection (15)”.

**Marginal Citations**

**M50** 1964 c. 33. (N.I.).

- 7 In the <sup>M51</sup>Local Authorities’ Mutual Investment Trust Act 1968—
- (a) in section 1(2) for the words “recognised stock exchange within the meaning of the Prevention of Fraud (Investments) Act 1958” there shall be substituted the words “recognised investment exchange within the meaning of the Financial Services Act 1986”; and
  - (b) in the definition of “unit trust scheme” in section 2 for the words “Prevention of Fraud (Investments) Act 1958” there shall be substituted the words “Financial Services Act 1986”.



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**Marginal Citations**

**M51** 1968 c. 25.

- 8 In the <sup>M52</sup>Local Government Act 1972—
- (a) in section 98(1) for the words from “and” onwards there shall be substituted the words “means—
- (a) investments falling within any of paragraphs 1 to 6 of Schedule 1 to the Financial Services Act 1986 or, so far as relevant to any of those paragraphs, paragraph 11 of that Schedule; or
- (b) rights (whether actual or contingent) in respect of money lent to, or deposited with, any society registered under the Industrial and Provident Societies Act 1965 or any building society within the meaning of the Building Societies Act 1986.”; and
- (b) for the definition of “securities” in section 146(2) there shall be substituted—
- ““securities” has the meaning given in section 98(1) above”.

**Marginal Citations**

**M52** 1972 c. 70.

- 9 For subsection (1) of section 42 of the <sup>M53</sup>Local Government (Scotland) Act 1973 there shall be substituted—
- “(1) In sections 39 and 41 of this Act “securities” means—
- (a) investments falling within any of paragraphs 1 to 6 of Schedule 1 to the Financial Services Act 1986 or, so far as relevant to any of those paragraphs, paragraph 11 of that Schedule; or
- (b) rights (whether actual or contingent) in respect of money lent to, or deposited with, any society registered under the Industrial and Provident Societies Act 1965 or any building society within the meaning of the Building Societies Act 1986.”

**Marginal Citations**

**M53** 1973 c. 65.

- 10 For paragraph 20 of Schedule 1 to the <sup>M54</sup>Industry Act 1975 there shall be substituted—
- “20 Section 57 of the Financial Services Act 1986 (restrictions on advertising) shall not apply to any investment advertisement within the

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meaning of that section which the Board issue or cause to be issued in the discharge of their functions.”

**Marginal Citations**

**M54** 1975 c. 68.

[<sup>F126</sup>11 For paragraph 20 of Schedule 1 to the <sup>M55</sup>Scottish Development Agency Act 1975 there shall be substituted—

“20 Section 57 of the Financial Services Act 1986 (restrictions on advertising) shall not apply to any investment advertisement within the meaning of that section which the Agency issue or cause to be issued in the discharge of their functions.”]

**Textual Amendments**

**F126** Sch. 16 para. 11 repealed (E.W.S.) by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(2), Sch. 5 Pt. I

**Marginal Citations**

**M55** 1975 c. 69.

12 For paragraph 21 of Schedule 1 to the <sup>M56</sup>Welsh Development Agency Act 1975 there shall be substituted—

“21 Section 57 of the Financial Services Act 1986 (restrictions on advertising) shall not apply to any investment advertisement within the meaning of that section which the Agency issue or cause to be issued in the discharge of their functions.”.

**Marginal Citations**

**M56** 1975 c. 70.

13 In section 3(5) of the <sup>M57</sup>Aircraft and Shipbuilding Industries Act 1977 the words “Sections 428 to 430 of the Companies Act 1985 and” shall be omitted and for the words “those sections” there shall be substituted the words “that section”.

**Marginal Citations**

**M57** 1977 c. 3.

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- 14 In paragraph 10(1)(c) of Part II of Schedule 10 to the <sup>M58</sup>Finance Act 1980 for the words “sections 428 to 430” there shall be substituted the words “sections 428 to 430F”.

**Marginal Citations**

**M58** 1980 c.48.

- 15 For the definition of “securities” in section 3(6) of the <sup>M59</sup>Licensing (Alcohol Education and Research) Act 1981 there shall be substituted—

““securities” means any investments falling within any of paragraphs 1 to 6 of Schedule 1 to the Financial Services Act 1986 or, so far as relevant to any of those paragraphs, paragraph 11 of that Schedule”.

**Marginal Citations**

**M59** 1981 c. 28.

- 16 In section 97 of the <sup>M60</sup>Companies Act 1985—

(a) in subsection (1) after the word “conditions” there shall be inserted the words “and any conditions which apply in respect of any such payment by virtue of rules made under section 169(2) of the Financial Services Act 1986”; and

(b) in subsection (2)(a) for the words from “10 per cent.” onwards there shall be substituted the words—

“(i) any limit imposed on it by those rules or, if none is so imposed, 10 per cent. of the price at which the shares are issued; or

(ii) the amount or rate authorised by the articles, whichever is the less”.

**Marginal Citations**

**M60** 1985 c. 6.

- 17 In section 163 of the Companies Act 1985—

(a) for the words “a recognised stock exchange” in each place where they occur there shall be substituted the words “a recognised investment exchange”;

(b) for the words “that stock exchange” in subsection (1) there shall be substituted the words “that investment exchange”;

(c) in subsection (2) in paragraph (a) for the words “on that stock exchange” there shall be substituted the words “under Part IV of the Financial Services Act 1986” and in paragraph (b) for the words “that stock exchange” in both places where they occur there shall be substituted the words “that investment exchange”;

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(d) after subsection (3) of that section there shall be inserted—

“(4) In this section “recognised investment exchange” means a recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986.”

18 In section 209(1)(c) of the Companies Act 1985 for the words “the Prevention of Fraud (Investments) Act 1958” there shall be substituted the words “the Financial Services Act 1986”.

19 In section 265(4)(a) of the <sup>M61</sup>Companies Act 1985 for the words “recognised stock exchange” there shall be substituted the words “recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986”.

#### Marginal Citations

**M61** 1985 c. 6.

20 In section 329(1) of the Companies Act 1985 for the words “recognised stock exchange”, “that stock exchange” and “the stock exchange” there shall be substituted respectively the words “recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986”, “that investment exchange” and “the investment exchange”.

21 For paragraphs (a) to (c) of section 446(4) of the Companies Act 1985 there shall be substituted—

- “(a) to any individual who is an authorised person within the meaning of the Financial Services Act 1986;
- (b) to any individual who holds a permission granted under paragraph 23 of Schedule 1 to that Act;
- (c) to any officer (whether past or present) of a body corporate which is such an authorised person or holds such a permission;
- (d) to any partner (whether past or present) in a partnership which is such an authorised person or holds such a permission;
- (e) to any member of the governing body or officer (in either case whether past or present) of an unincorporated association which is such an authorised person or holds such a permission”.

F127 .....

22

#### Textual Amendments

**F127** Sch. 16 para. 22 repealed by Companies Act 1989 (c. 40, SIF 27), s. 212, Sch. 24

*Status: Point in time view as at 01/08/1991.*

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- 23 In Schedule 4 to the Companies Act 1985—
- (a) in paragraph 45 for the words “recognised stock exchange” there shall be substituted the words “recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986”; and
  - (b) in paragraph 84 for the words from “on a recognised stock exchange” onwards there shall be substituted the words “on a recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986 or on any stock exchange of repute outside Great Britain”.
- 24 In Schedule 9 to the Companies Act 1985 in paragraphs 10(3) and 33 for the words “recognised stock exchange” there shall be substituted the words “recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986”.
- 25 In paragraph 11 of Schedule 13 to the <sup>M62</sup>Companies Act 1985 for paragraph (a) there shall be substituted—
- “(a) any unit trust scheme which is an authorised unit trust scheme within the meaning of the Financial Services Act 1986”.

**Marginal Citations**

M62 1985 c. 6.

- 26 In Schedule 22 to the Companies Act 1985, in the second column of the entry relating to section 185(4) for the words “stock exchange” there shall be substituted the words “clearing house or”.
- 27 In Schedule 24 to the Companies Act 1985—
- (a) in the second column of the entry relating to section 329(3) for the words “stock exchange” there shall be substituted the words “investment exchange”; and
  - (b) after the entry relating to section 427(5) there shall be inserted—

“429(6)	Offeror failing to send copy of notice or making statutory declaration knowing it to be false, etc.	1. On indictment.	2 years or a fine; or both.
		2. Summary.	6 months or the statutory maximum.

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			maximum; or both.	
430A(6)	Offeror failing to give notice of rights to minority shareholder.	1. On indictment.	A fine.	One fiftieth of the statutory maximum.
		2. Summary.	The statutory maximum.”	

- 28 In section 16 of the <sup>M63</sup>Company Securities (Insider Dealing) Act 1985—
- (a) in subsection (1) for the definition of “recognised stock exchange” there shall be substituted—
- ““recognised stock exchange” means The Stock Exchange and any other investment exchange which is declared by an order of the Secretary of State for the time being in force to be a recognised stock exchange for the purposes of this Act;”;
- (b) after that subsection there shall be inserted—
- “(1A) The power to make an order under subsection (1) above shall be exercisable by statutory instrument.”;
- (c) in subsection (2) for the word “15” there shall be substituted the word “14”.

**Marginal Citations**

**M63** 1985 c. 8.

- 29 For paragraph (c) of section 10(1) of the <sup>M64</sup>Bankruptcy (Scotland) Act 1985 there shall be substituted—
- “(c) a petition is before a court for the winding up of the debtor under Part IV or V of the Insolvency Act 1986 or section 72 of the Financial Services Act 1986;”.

**Marginal Citations**

**M64** 1985 c. 66.

- 30 In section 101 of the <sup>M65</sup>Building Societies Act 1986—
- (a) for paragraph (1)(a) there shall be substituted—
- “(a) offer for sale or invite subscription for any shares in or debentures of the company or allot or agree to allot any such shares or debentures with a view to their being offered for sale;”;
- (b) in subsection (1) after the words “the effect of the offer” there shall be inserted the words “the invitation”; and

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- (c) in subsection (2) for the words “the public” there shall be substituted the words “, invite subscription for,”.

**Marginal Citations**

**M65** 1986 c. 53.

- 31 In Article 107 of the <sup>M66</sup>Companies (Northern Ireland) Order 1986—
- (a) in paragraph (1) after the word “conditions” there shall be inserted the words “and any conditions which apply in respect of any such payment by virtue of rules made under section 169(2) of the Financial Services Act 1986”
- (b) in sub-paragraph (2)(a) for the words from “10 per cent.” onwards there shall be substituted the words—
- “(i) any limit imposed on it by those rules or, if none is so imposed, 10 per cent. of the price at which the shares are issued; or
- (ii) the amount or rate authorised by the articles, whichever is the less”.

**Marginal Citations**

**M66** S.I. 1986/1032 (N.I.6)

- 32 In Article 173 of the Companies (Northern Ireland) Order 1986—
- (a) for the words “a recognised stock exchange”, in each place where they occur, there shall be substituted the words “a recognised investment exchange”;
- (b) for the words “that stock exchange” in paragraph (1) there shall be substituted the words “that investment exchange”;
- (c) in paragraph (2), in sub-paragraph (a) for the words “on that stock exchange” there shall be substituted the words “under Part IV of the Financial Services Act 1986” and in sub-paragraph (b) for the words “that stock exchange” in both places where they occur there shall be substituted the words “that investment exchange”;
- (d) after paragraph (3) there shall be inserted—
- “(4) In this Article “recognised investment exchange” means a recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986.”

- 33 In Article 217(1)(b) of the Companies (Northern Ireland) Order 1986 for the words “the Prevention of Fraud (Investments) Act (Northern Ireland) 1940 or of the Prevention of Fraud (Investments) Act 1958” there shall be substituted the words “the Financial Services Act 1986”.

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- 34 In Article 273(4)(a) of the Companies (Northern Ireland) Order 1986 for the words “recognised stock exchange” there shall be substituted the words “recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986”.
- 35 In Article 337(1) of the Companies (Northern Ireland) Order 1986 for the words “recognised stock exchange”, “that stock exchange” and “the stock exchange” there shall be substituted respectively the words “recognised investment exchange”, “that investment exchange” and “the investment exchange”.
- 36 For sub-paragraphs (a) to (c) of Article 439(4) of the <sup>M67</sup>Companies (Northern Ireland) Order 1986 there shall be substituted—
- “(a) to any individual who is an authorised person within the meaning of the Financial Services Act 1986;
  - (b) to any individual who holds a permission granted under paragraph 23 of Schedule 1 to that Act;
  - (c) to an officer (whether past or present) in a body corporate which is such an authorised person or holds such a permission;
  - (d) to any partner (whether past or present) in a partnership which is such an authorised person or holds such a permission;
  - (e) to any member of the governing body or officer (in either case whether past or present) of an unincorporated association which is such an authorised person or holds such a permission”.

#### Marginal Citations

**M67** [S.I. 1986/1032 \(N.I.6\)](#).

F128<sup>37</sup>

#### Textual Amendments

**F128** [Sch. 16 para. 37](#) repealed (11.3.1991) by [S.I. 1990/1504 \(N.I. 10\)](#), [art. 113 Sch. 6](#); [S.R. 1991/26](#), [art. 10\(1\)\(b\)](#).

- 38 In Schedule 4 to the Companies (Northern Ireland) Order 1986—
- (a) in paragraph 45 for the words “recognised stock exchange” there shall be substituted the words “recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986”
  - (b) in paragraph 83 for the words from “on a recognised stock exchange” onwards there shall be substituted the words “on a recognised investment exchange other than an overseas investment exchange within the meaning



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of the Financial Services Act 1986 or on any stock exchange of repute outside Northern Ireland".

- 39 In Schedule 9 to the Companies (Northern Ireland) Order 1986, in paragraph 10(3) and 33 for the words "recognised stock exchange" there shall be substituted the words "recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services Act 1986."
- 40 In paragraph 11 of Schedule 13 to the Companies (Northern Ireland) Order 1986 for paragraph (a) there shall be substituted—  
    “(a) any unit trust scheme which is an authorised unit trust scheme within the meaning of the Financial Services Act 1986”.
- 41 In Schedule 21 to the Companies (Northern Ireland) Order 1986 in the second column of the entry relating to Article 195(4) for the words "stock exchange" there shall be substituted the words "clearing house or".
- 42 In Schedule 23 to the Companies (Northern Ireland) Order 1986 in the second column of the entry relating to Article 337(3) for the words "stock exchange" there shall be substituted the words "investment exchange".
- 43 In Article 2(1) of the Company Securities (Insider Dealing) (Northern Ireland) Order 1986, for the definition of "recognised stock exchange" there shall be substituted—  
    ““recognised stock exchange” means The Stock Exchange and any other investment exchange which is declared by an order of the Department for the time being in force to be a recognised stock exchange for the purposes of this Order;”.

## SCHEDULE 17

Section 212(3)

### REPEALS AND REVOCATIONS

#### Commencement Information

- II** Sch. 17 partly in force; Sch. 17 not in force at Royal Assent see s. 211; Sch. 17 in force for certain purposes at 19.6.1995 by S.I. 1995/1538, art. 2; Sch. 17 in force for specified purposes at 10.5.1999 by S.I. 1999/727, art. 2

## PART I

### ENACTMENTS

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Chapter	Short title	Extent of repeal
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*Status: Point in time view as at 01/08/1991.*

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4 & 5 Geo. 6. c. 9 (N.I.).	The Prevention of Fraud (Investments) Act (Northern Ireland) 1940.	The whole Act.
6 & 7 Eliz. 2. c. 45.	The Prevention of Fraud (Investments) Act 1958.	The whole Act.
8 & 9 Eliz. 2 c. 58.	The Charities Act 1960.	Section 22(10).
10 & 11 Eliz. 2. c. 23.	The South Africa Act 1962.	In Schedule 4, the entry relating to the Prevention of Fraud (Investments) Act 1958.
1964 c. 33 (N.I.).	The Charities Act (Northern Ireland) 1964.	Section 25(16).
1965 c. 2.	The Administration of Justice Act 1965.	Section 14(1)(e) and (5)(e).
		In Schedule 1, the entry relating to the Prevention of Fraud (Investments) Act 1958.
1971 c. 62.	The Tribunals and Inquiries Act 1971.	In Part I of Schedule 1, the entry relating to the tribunal constituted under section 6 of the Prevention of Fraud (Investments) Act 1958.
1972 c. 71.	The Criminal Justice Act 1972.	In Schedule 5, the entry relating to the Prevention of Fraud (Investments) Act 1958.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Part II of Schedule 1 the words “The Tribunal established under the Prevention of Fraud (Investments) Act 1958”.
1975 c. 68.	The Industry Act 1975.	In Schedule 1, paragraph 19.
⋮ F129	⋮ F129	⋮ F129
1975 c. 70.	The Welsh Development Agency Act 1975.	In Schedule 1, paragraph 22.
1976 c. 47.	The Stock Exchange (Completion of Bargains) Act 1976.	Section 7(2).
1977 c. 3.	The Aircraft and Shipbuilding Industries Act 1977.	In section 3(5), the words “Sections 428 to 430 of the Companies Act 1985 and”.
1978 c. 23.	The Judicature (Northern Ireland) Act 1978.	Section 84(3)(c).

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1979 c. 37.	The Banking Act 1979.	Section 20(1) to (3). In Schedule 1, paragraph 9. In Schedule 6, paragraphs 4 and 5.
1982 c. 50.	The Insurance Companies Act 1982.	Section 73.  Section 79.
1982 c. 53.	The Administration of Justice Act 1982.	Section 42(8).
1984 c. 2.	The Restrictive Trade Practices (Stock Exchange) Act 1984.	The whole Act.
1985 c. 6.	The Companies Act 1985.	Part III. Sections 81 to 83. In section 84(1) the words from "This" onwards. In section 85(1) the words "83 or". Sections 86 and 87. In section 97, subsection (2) (b) together with the word "and" immediately preceding it and subsections (3) and (4). Section 433(2). Section 446(5) and (6). In section 449(1)(d), the words "the Prevention of Fraud (Investments) Act 1958". In section 693, paragraph (a) and in paragraph (d) the words "in every such prospectus as above-mentioned and". Section 709(2) and (3). In section 744, the definitions of "recognised stock exchange" and "prospectus issued generally". Schedule 3. In Schedule 22, the entries relating to Parts III and IV.

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		In Schedule 24, the entries relating to sections 56(4), 61, 64(5), 70(1), 78(1), 81(2), 82(5), 86(6), 87(4) and 97(4).
1985 c. 8.	The Company Securities (Insider Dealing) Act 1985.	In section 3(1), the word “or” immediately preceding paragraph (c).  In section 13, in subsection (1), the words from “and references” onwards and subsection (2).  Section 15.
1985 c. 9.	The Companies Consolidation (Consequential Provisions) Act 1985.	Section 7.  In Schedule 2, the entries relating to the Prevention of Fraud (Investments) Act 1958, paragraph 19 of Schedule 1 to the Scottish Development Agency Act 1975, paragraph 22 of Schedule 1 to the Welsh Development Agency Act 1975, the Stock Exchange (Completion of Bargains) Act 1976, section 3(5) of the Aircraft and Shipbuilding Industries Act 1977 and section 20 of the Banking Act 1979.
1986 c. 31.	The Airports Act 1986.	Section 10.
1986 c. 44.	The Gas Act 1986.	Section 58.
1986 c. 60.	The Financial Services Act 1986.	Section 195.

#### Textual Amendments

**F129** Entry repealed by [Enterprise and New Towns \(Scotland\) Act 1990](#) (c. 35, SIF 64), s. 38(2), **Sch. 5 Pt. I**

## PART II

### INSTRUMENTS

Number	Title	Extent of revocation
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S.I. 1977/1254 (6 N.I. 21).	The Stock Exchange (Completion of Bargains) (Northern Ireland) Order 1977.	Article 2(2).
S.I. 1986/1032 (N.I. 6).	The Companies (Northern Ireland) Order 1986.	<p>In Article 2(1), the definitions of “prospectus issued generally” and “recognised stock exchange”.</p> <p>Part IV.</p> <p>Articles 91 to 93.</p> <p>In Article 94(1) the words from “This” onwards.</p> <p>In Article 95(1) the words “93 or”.</p> <p>Articles 96 and 97.</p> <p>In Article 107, paragraph (2) (b) together with the word “and” immediately preceding it and paragraphs (3) and (4).</p> <p>Article 426(2).</p> <p>Article 439(5) and (6).</p> <p>In Article 442(1)(d), the words “the Prevention of Fraud (Investments) Act (Northern Ireland) 1940”.</p> <p>In Article 643(1), subparagraph (a) and in subparagraph (d) the words “in every such prospectus as is mentioned in subparagraph (a) and”.</p> <p>Article 658(2) and (3).</p> <p>Schedule 3.</p> <p>In Schedule 21, the entries relating to Parts IV and V.</p> <p>In Schedule 23, the entries relating to Articles 66(4), 71, 74(5), 80(1), 88(1), 91(2), 92(5), 96(6), 97(4) and 107(4).</p>
S.I. 1986/1035 (N.I. 9).	The Companies (Consequential Provisions) (Northern Ireland) Order 1986.	In Schedule 2, the entries relating to the Prevention of Fraud (Investments) Act (Northern Ireland) 1940 and

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section 20 of the Banking Act  
1979.

S.I. 1984/716.

The Stock Exchange (Listing) The whole Regulations.  
Regulations 1984.

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