

*Status: Point in time view as at 13/02/2007.*

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## SCHEDULES

### SCHEDULE 1

Section 1.

#### THE FINANCIAL SERVICES AUTHORITY

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

**C1** Sch. 1 extended (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, **Sch. 2 para. 2**

#### PART I

#### GENERAL

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

**C2** Sch. 1 Pt. 1 modified (15.12.2007) by **The Transfer of Funds (Information on the Payer) Regulations 2007 (S.I. 2007/3298)**, **reg. 4(4)**

**C3** Sch. 1 Pt. 1 applied (27.11.2008) by **Counter-Terrorism Act 2008 (c. 28)**, ss. 62, 100(2), **Sch. 7 para. 41(1)** (with s. 101(2), Sch. 7 para. 43)

#### *Interpretation*

1 (1) In this Schedule—

“the 1985 Act” means the <sup>M1</sup>Companies Act 1985;

“non-executive committee” means the committee maintained under paragraph 3;

“functions”, in relation to the Authority, means functions conferred on the Authority by or under any provision of this Act.

(2) For the purposes of this Schedule, the following are the Authority’s legislative functions—

- (a) making rules;
- (b) issuing codes under section 64 or 119;
- (c) issuing statements under section 64, 69, 124 or 210;
- (d) giving directions under section 316, 318 or 328;
- (e) issuing general guidance (as defined by section 158(5)) [<sup>F2</sup>or guidance under section 158A].

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#### **Textual Amendments**

- F2** Words in [Sch. 1 para. 1\(2\)\(e\)](#) inserted (6.12.2006) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(Modification of Powers\) Regulations 2006 \(S.I. 2006/2975\)](#) {reg. 12}

#### **Marginal Citations**

- M1** [1985 c. 6.](#)

### *Constitution*

- 2 (1) The constitution of the Authority must continue to provide for the Authority to have—
- (a) a chairman; and
  - (b) a governing body.
- (2) The governing body must include the chairman.
- (3) The chairman and other members of the governing body must be appointed, and be liable to removal from office, by the Treasury.
- (4) The validity of any act of the Authority is not affected—
- (a) by a vacancy in the office of chairman; or
  - (b) by a defect in the appointment of a person as a member of the governing body or as chairman.

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

- C4** [Sch. 1 Pt. I para. 2\(3\)](#) modified (18.6.2001) by [S.I. 2001/1821](#), [arts. 1\(1\), 2\(2\)](#)

### *Non-executive members of the governing body*

- 3 (1) The Authority must secure—
- (a) that the majority of the members of its governing body are non-executive members; and
  - (b) that a committee of its governing body, consisting solely of the non-executive members, is set up and maintained for the purposes of discharging the functions conferred on the committee by this Schedule.
- (2) The members of the non-executive committee are to be appointed by the Authority.
- (3) The non-executive committee is to have a chairman appointed by the Treasury from among its members.

### *Functions of the non-executive committee*

- 4 (1) In this paragraph “the committee” means the non-executive committee.
- (2) The non-executive functions are functions of the Authority but must be discharged by the committee.
- (3) The non-executive functions are—

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- (a) keeping under review the question whether the Authority is, in discharging its functions in accordance with decisions of its governing body, using its resources in the most efficient and economic way;
  - (b) keeping under review the question whether the Authority's internal financial controls secure the proper conduct of its financial affairs; and
  - (c) determining the remuneration of—
    - (i) the chairman of the Authority's governing body; and
    - (ii) the executive members of that body.
- (4) The function mentioned in sub-paragraph (3)(b) and those mentioned in sub-paragraph (3)(c) may be discharged on behalf of the committee by a sub-committee.
- (5) Any sub-committee of the committee—
- (a) must have as its chairman the chairman of the committee; but
  - (b) may include persons other than members of the committee.
- (6) The committee must prepare a report on the discharge of its functions for inclusion in the Authority's annual report to the Treasury under paragraph 10.
- (7) The committee's report must relate to the same period as that covered by the Authority's report.

#### *Arrangements for discharging functions*

- 5
- (1) The Authority may make arrangements for any of its functions to be discharged by a committee, sub-committee, officer or member of staff of the Authority.
  - (2) But in exercising its legislative functions, the Authority must act through its governing body.
  - (3) Sub-paragraph (1) does not apply to the non-executive functions.

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

- C5** Sch. 1 para. 5 extended (18.6.2001) by S.I. 2001/1821, arts. 1(1), 2(1)(b)(c)
- C6** Sch. 1 para. 5(2) excluded (29.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(a), 4(4)

#### *Monitoring and enforcement*

- 6
- (1) The Authority must maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under this Act are complying with them.
  - (2) Those arrangements may provide for functions to be performed on behalf of the Authority by any body or person who, in its opinion, is competent to perform them.
  - (3) The Authority must also maintain arrangements for enforcing the provisions of, or made under, this Act.
  - (4) Sub-paragraph (2) does not affect the Authority's duty under sub-paragraph (1).

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

- C7** Sch. 1 para. 6 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, **12(2)**
- C8** Sch. 1 Pt. I para. 6(2) applied (with modifications) (17.8.2001) by [S.I. 2001/2617](#), arts. 2(a), 4(3), 8, [Sch. 2 para. 3](#)

*Arrangements for the investigation of complaints*

- 7 (1) The Authority must—
- (a) make arrangements (“the complaints scheme”) for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of its functions (other than its legislative functions); and
  - (b) appoint an independent person (“the investigator”) to be responsible for the conduct of investigations in accordance with the complaints scheme.
- (2) The complaints scheme must be designed so that, as far as reasonably practicable, complaints are investigated quickly.
- (3) The Treasury’s approval is required for the appointment or dismissal of the investigator.
- (4) The terms and conditions on which the investigator is appointed must be such as, in the opinion of the Authority, are reasonably designed to secure—
- (a) that he will be free at all times to act independently of the Authority; and
  - (b) that complaints will be investigated under the complaints scheme without favouring the Authority.
- (5) Before making the complaints scheme, the Authority must publish a draft of the proposed scheme in the way appearing to the Authority best calculated to bring it to the attention of the public.
- (6) The draft must be accompanied by notice that representations about it may be made to the Authority within a specified time.
- (7) Before making the proposed complaints scheme, the Authority must have regard to any representations made to it in accordance with sub-paragraph (6).
- (8) If the Authority makes the proposed complaints scheme, it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with sub-paragraph (6); and
  - (b) its response to them.
- (9) If the complaints scheme differs from the draft published under sub-paragraph (5) in a way which is, in the opinion of the Authority, significant the Authority must (in addition to complying with sub-paragraph (8)) publish details of the difference.
- (10) The Authority must publish up-to-date details of the complaints scheme including, in particular, details of—
- (a) the provision made under paragraph 8(5); and
  - (b) the powers which the investigator has to investigate a complaint.
- (11) Those details must be published in the way appearing to the Authority to be best calculated to bring them to the attention of the public.

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- (12) The Authority must, without delay, give the Treasury a copy of any details published by it under this paragraph.
- (13) The Authority may charge a reasonable fee for providing a person with a copy of—
  - (a) a draft published under sub-paragraph (5);
  - (b) details published under sub-paragraph (10).
- (14) Sub-paragraphs (5) to (9) and (13)(a) also apply to a proposal to alter or replace the complaints scheme.

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

- C9** Sch. 1 Pt. I para. 7(1)(a) restricted (19.7.2001) by S.I. 2001/2326, arts. 1(1)(a), 18(3)  
**C10** Sch. 1 Pt. I para. 7(2)-(14) applied (19.7.2001) by S.I. 2001/2326, arts. 1(1)(a), 18(2)(a)

**Commencement Information**

- II** Sch. 1 Pt. I para. 7 wholly in force at 3.9.2001; Sch. 1 Pt. I para. 7 not in force at Royal Assent see s. 431(2); Sch. 1 Pt. I para. 7 in force for specified purposes at 19.7.2001 by S.I. 2001/2364, art. 2(2) (with art. 3); Sch. 1 Pt. I para. 7 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2

*Investigation of complaints*

- 8
- (1) The Authority is not obliged to investigate a complaint in accordance with the complaints scheme which it reasonably considers would be more appropriately dealt with in another way (for example by referring the matter to the Tribunal or by the institution of other legal proceedings).
  - (2) The complaints scheme must provide—
    - (a) for reference to the investigator of any complaint which the Authority is investigating; and
    - (b) for him—
      - (i) to have the means to conduct a full investigation of the complaint;
      - (ii) to report on the result of his investigation to the Authority and the complainant; and
      - (iii) to be able to publish his report (or any part of it) if he considers that it (or the part) ought to be brought to the attention of the public.
  - (3) If the Authority has decided not to investigate a complaint, it must notify the investigator.
  - (4) If the investigator considers that a complaint of which he has been notified under sub-paragraph (3) ought to be investigated, he may proceed as if the complaint had been referred to him under the complaints scheme.
  - (5) The complaints scheme must confer on the investigator the power to recommend, if he thinks it appropriate, that the Authority—
    - (a) makes a compensatory payment to the complainant,
    - (b) remedies the matter complained of,or takes both of those steps.
  - (6) The complaints scheme must require the Authority, in a case where the investigator—

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- (a) has reported that a complaint is well-founded, or
  - (b) has criticised the Authority in his report,
- to inform the investigator and the complainant of the steps which it proposes to take in response to the report.
- (7) The investigator may require the Authority to publish the whole or a specified part of the response.
  - (8) The investigator may appoint a person to conduct the investigation on his behalf but subject to his direction.
  - (9) Neither an officer nor an employee of the Authority may be appointed under sub-paragraph (8).
  - (10) Sub-paragraph (2) is not to be taken as preventing the Authority from making arrangements for the initial investigation of a complaint to be conducted by the Authority.

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

**C11** Sch. 1 Pt. I para. 8 power to apply conferred (19.7.2001) by S.I. 2001/2326, arts. 1(1)(a), 18(2)(b)

**Commencement Information**

**I2** Sch. 1 Pt. I para. 8 wholly in force at 3.9.2001; Sch. 1 Pt. I para. 8 not in force at Royal Assent see s. 431(2); Sch. 1 Pt. I para. 8 in force for specified purposes at 19.7.2001 by S.I. 2001/2364, art. 2(2) (with art. 3); Sch. 1 Pt. I para. 8 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2

*Records*

- 9 The Authority must maintain satisfactory arrangements for—
  - (a) recording decisions made in the exercise of its functions; and
  - (b) the safe-keeping of those records which it considers ought to be preserved.

*Annual report*

- 10 (1) At least once a year the Authority must make a report to the Treasury on—
  - (a) the discharge of its functions;
  - (b) the extent to which, in its opinion, the regulatory objectives have been met;
  - (c) its consideration of the matters mentioned in section 2(3); and
  - (d) such other matters as the Treasury may from time to time direct.
- (2) The report must be accompanied by—
  - (a) the report prepared by the non-executive committee under paragraph 4(6); and
  - (b) such other reports or information, prepared by such persons, as the Treasury may from time to time direct.
- (3) The Treasury must lay before Parliament a copy of each report received by them under this paragraph.

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- (4) The Treasury may—
- (a) require the Authority to comply with any provisions of the 1985 Act about accounts and their audit which would not otherwise apply to it; or
  - (b) direct that any such provision of that Act is to apply to the Authority with such modifications as are specified in the direction.
- (5) Compliance with any requirement imposed under sub-paragraph (4)(a) or (b) is enforceable by injunction or, in Scotland, an order under section 45(b) of the <sup>M2</sup>Court of Session Act 1988.
- (6) Proceedings under sub-paragraph (5) may be brought only by the Treasury.

**Marginal Citations**

**M2** 1988 c. 36.

*Annual public meeting*

- 11 (1) Not later than three months after making a report under paragraph 10, the Authority must hold a public meeting (“the annual meeting”) for the purposes of enabling that report to be considered.
- (2) The Authority must organise the annual meeting so as to allow—
- (a) a general discussion of the contents of the report which is being considered; and
  - (b) a reasonable opportunity for those attending the meeting to put questions to the Authority about the way in which it discharged, or failed to discharge, its functions during the period to which the report relates.
- (3) But otherwise the annual meeting is to be organised and conducted in such a way as the Authority considers appropriate.
- (4) The Authority must give reasonable notice of its annual meeting.
- (5) That notice must—
- (a) give details of the time and place at which the meeting is to be held;
  - (b) set out the proposed agenda for the meeting;
  - (c) indicate the proposed duration of the meeting;
  - (d) give details of the Authority’s arrangements for enabling persons to attend; and
  - (e) be published by the Authority in the way appearing to it to be most suitable for bringing the notice to the attention of the public.
- (6) If the Authority proposes to alter any of the arrangements which have been included in the notice given under sub-paragraph (4) it must—
- (a) give reasonable notice of the alteration; and
  - (b) publish that notice in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

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### *Report of annual meeting*

- 12 Not later than one month after its annual meeting, the Authority must publish a report of the proceedings of the meeting.

## PART II

### STATUS

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

- C12** Sch. 1 Pt. 2 modified (15.12.2007) by [The Transfer of Funds \(Information on the Payer\) Regulations 2007 \(S.I. 2007/3298\)](#), **reg. 4(4)**
- C13** Sch. 1 Pt. 2 applied (27.11.2008) by [Counter-Terrorism Act 2008 \(c. 28\)](#), ss. 62, 100(2), **Sch. 7 para. 41(1)** (with s. 101(2), Sch. 7 para. 43)

- 13 In relation to any of its functions—
- (a) the Authority is not to be regarded as acting on behalf of the Crown; and
  - (b) its members, officers and staff are not to be regarded as Crown servants.

#### *Exemption from requirement of “limited” in Authority’s name*

- 14 The Authority is to continue to be exempt from the requirements of the 1985 Act relating to the use of “limited” as part of its name.
- 15 If the Secretary of State is satisfied that any action taken by the Authority makes it inappropriate for the exemption given by paragraph 14 to continue he may, after consulting the Treasury, give a direction removing it.

## PART III

### PENALTIES AND FEES

#### *Penalties*

- 16 (1) In determining its policy with respect to the amounts of penalties to be imposed by it under this Act, the Authority must take no account of the expenses which it incurs, or expects to incur, in discharging its functions.
- (2) The Authority must prepare and operate a scheme for ensuring that the amounts paid to the Authority by way of penalties imposed under this Act are applied for the benefit of authorised persons.
- (3) The scheme may, in particular, make different provision with respect to different classes of authorised person.
- (4) Up to date details of the scheme must be set out in a document (“the scheme details”).
- (5) The scheme details must be published by the Authority in the way appearing to it to be best calculated to bring them to the attention of the public.



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- (6) Before making the scheme, the Authority must publish a draft of the proposed scheme in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (7) The draft must be accompanied by notice that representations about the proposals may be made to the Authority within a specified time.
- (8) Before making the scheme, the Authority must have regard to any representations made to it in accordance with sub-paragraph (7).
- (9) If the Authority makes the proposed scheme, it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with sub-paragraph (7); and
  - (b) its response to them.
- (10) If the scheme differs from the draft published under sub-paragraph (6) in a way which is, in the opinion of the Authority, significant the Authority must (in addition to complying with sub-paragraph (9)) publish details of the difference.
- (11) The Authority must, without delay, give the Treasury a copy of any scheme details published by it.
- (12) The Authority may charge a reasonable fee for providing a person with a copy of—
  - (a) a draft published under sub-paragraph (6);
  - (b) scheme details.
- (13) Sub-paragraphs (6) to (10) and (12)(a) also apply to a proposal to alter or replace the complaints scheme.

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

**C14** Sch. 1 para. 16 applied (with modifications) (6.3.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), **reg. 37**

*Fees*

- 17 (1) The Authority may make rules providing for the payment to it of such fees, in connection with the discharge of any of its functions under or as a result of this Act, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act) enable it—
  - (a) to meet expenses incurred in carrying out its functions or for any incidental purpose;
  - (b) to repay the principal of, and pay any interest on, any money which it has borrowed and which has been used for the purpose of meeting expenses incurred in relation to its assumption of functions under this Act or the <sup>M3</sup>Bank of England Act 1998; and
  - (c) to maintain adequate reserves.
- (2) In fixing the amount of any fee which is to be payable to the Authority, no account is to be taken of any sums which the Authority receives, or expects to receive, by way of penalties imposed by it under this Act.

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- (3) Sub-paragraph (1)(b) applies whether expenses were incurred before or after the coming into force of this Act or the <sup>M4</sup>Bank of England Act 1998.
- (4) Any fee which is owed to the Authority under any provision made by or under this Act may be recovered as a debt due to the Authority.

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

- C15** Sch. 1 para. 17 modified (1.12.2001) by S.I. 2001/3650, arts. 1(a), 25(1)(2)
- C16** Sch. 1 para. 17 applied (with modifications) (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, Sch. para. 5
- C17** Sch. 1 para. 17 modified (16.1.2009) by Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c. 26), ss. 3(15), 6(2); S.I. 2009/36, art. 2
- C18** Sch. 1 para. 17 modified (2.3.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(a), 92(1) (with reg. 3)
- C19** Sch. 1 para. 17 extended (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 13
- C20** Sch. 1 para. 17 extended (with modifications) (9.2.2011 for certain purposes, otherwise 30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xiii)(b), 59 (with art. 3)
- C21** Sch. 1 para. 17(1) modified (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, Sch. 2 paras. 9, 10

**Marginal Citations**

- M3** 1998 c. 11.
- M4** 1998 c. 11.

*Services for which fees may not be charged*

- 18 The power conferred by paragraph 17 may not be used to require—
- (a) a fee to be paid in respect of the discharge of any of the Authority's functions under paragraphs 13, 14, 19 or 20 of Schedule 3; or
- (b) a fee to be paid by any person whose application for approval under section 59 has been granted.

**PART IV**

MISCELLANEOUS

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

- C22** Sch. 1 Pt. 4 modified (15.12.2007) by The Transfer of Funds (Information on the Payer) Regulations 2007 (S.I. 2007/3298), reg. 4(4)
- C23** Sch. 1 Pt. 4 applied (27.11.2008) by Counter-Terrorism Act 2008 (c. 28), ss. 62, 100(2), Sch. 7 para. 41(1) (with s. 101(2), Sch. 7 para. 43)

*Exemption from liability in damages*

- 19 (1) Neither the Authority nor any person who is, or is acting as, a member, officer or member of staff of the Authority is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the Authority's functions.

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- (2) Neither the investigator appointed under paragraph 7 nor a person appointed to conduct an investigation on his behalf under paragraph 8(8) is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of his functions in relation to the investigation of a complaint.
- (3) Neither sub-paragraph (1) nor sub-paragraph (2) applies—
- (a) if the act or omission is shown to have been in bad faith; or
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the <sup>M5</sup>Human Rights Act 1998.

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

- C24** Sch. 1 para. 19 extended (1.12.2001) by S.I. 2001/3650, **arts. 1(a), 24(6)**
- C25** Sch. 1 para. 19 modified (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 45**
- C26** Sch. 1 para. 19 modified (2.3.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(a), **94** (with reg. 3)
- C27** Sch. 1 para. 19 applied (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), **reg. 15**
- C28** Sch. 1 para. 19 extended (9.2.2011 for certain purposes, otherwise 30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xiii)(b), **61** (with art. 3)
- C29** Sch. 1 para. 19(1) applied (1.12.2001) by S.I. 1995/1537, **reg. 23(1)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1, 509(b)(i)**)

#### Marginal Citations

- M5** 1998 c. 42.

- [<sup>F3</sup>]  
<sup>F3</sup>19A For the purposes of this Act anything done by an accredited financial investigator within the meaning of the Proceeds of Crime Act 2002 who is—
- (a) a member of the staff of the Authority, or
  - (b) a person appointed by the Authority under section 97, 167 or 168 to conduct an investigation,
- must be treated as done in the exercise or discharge of a function of the Authority.]]

#### Textual Amendments

- F3** Sch. 1 para. 19A inserted (24.2.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456, 458(1), **Sch. 11 para. 38**; S.I. 2003/120, **art. 2**, Sch. (subject to arts. 3-7) (as amended by S.I. 2003/333, art. 14)

VALID FROM 08/04/2010

*[<sup>F4</sup>Amounts required by rules to be paid to the Authority*

#### Textual Amendments

- F4** Sch. 1 para. 19B and preceding cross-heading inserted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(1)(g)(l), **Sch. 2 para. 34(3)**

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19B Any amount (other than a fee) which is required by rules to be paid to the Authority may be recovered as a debt due to the Authority.]

*Disqualification for membership of House of Commons*

20 In Part III of Schedule 1 to the <sup>M6</sup>House of Commons Disqualification Act 1975 (disqualifying offices), insert at the appropriate place—

“Member of the governing body of the Financial Services Authority

.”

**Marginal Citations**

**M6** 1975 c. 24.

*Disqualification for membership of Northern Ireland Assembly*

21 In Part III of Schedule 1 to the <sup>M7</sup>Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices), insert at the appropriate place—

“Member of the governing body of the Financial Services Authority”.

**Marginal Citations**

**M7** 1975 c. 25.

VALID FROM 08/04/2010

[<sup>F5</sup>SCHEDULE 1A

Section 6A

FURTHER PROVISION ABOUT THE CONSUMER FINANCIAL EDUCATION BODY

**Textual Amendments**

**F5** Sch. 1A inserted (8.4.2010 for certain purposes and 1.4.2011 otherwise) by [Financial Services Act 2010 \(c. 28\)](#), ss. 2(6), 26(1)(b)(k), [Sch. 1 para. 1](#) (with [Sch. 1 para. 2](#)); S.I. 2010/2480, [art. 3](#)

*Status: Point in time view as at 13/02/2007.*

*Changes to legislation: Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 19 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)*

## SCHEDULE 2

Section 22(2).

### REGULATED ACTIVITIES

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

**C30** Sch. 2 applied by 1974 c. 39, s. 16(6E)(c) (as inserted (1.9.2002) by S.I. 2001/544, arts. 2(1)(2)(b), 90(2); S.I. 2001/3538, art. 2(1))

### PART I

#### REGULATED ACTIVITIES

##### *General*

- 1 The matters with respect to which provision may be made under section 22(1) in respect of activities include, in particular, those described in general terms in this Part of this Schedule.

##### *Dealing in investments*

- 2 (1) Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as a principal or as an agent.
- (2) In the case of an investment which is a contract of insurance, that includes carrying out the contract.

##### *Arranging deals in investments*

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

##### *Deposit taking*

- 4 Accepting deposits.

##### *Safekeeping and administration of assets*

- 5 (1) Safeguarding and administering assets belonging to another which consist of or include investments or offering or agreeing to do so.
- (2) Arranging for the safeguarding and administration of assets belonging to another, or offering or agreeing to do so.

##### *Managing investments*

- 6 Managing, or offering or agreeing to manage, assets belonging to another person where—

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- (a) the assets consist of or include investments; or
- (b) the arrangements for their management are such that the assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them.

*Investment advice*

- 7 Giving or offering or agreeing to give advice to persons on—
- (a) buying, selling, subscribing for or underwriting an investment; or
  - (b) exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

*Establishing collective investment schemes*

- 8 Establishing, operating or winding up a collective investment scheme, including acting as—
- (a) trustee of a unit trust scheme;
  - (b) depositary of a collective investment scheme other than a unit trust scheme; or
  - (c) sole director of a body incorporated by virtue of regulations under section 262.

*Using computer-based systems for giving investment instructions*

- 9
- (1) Sending on behalf of another person instructions relating to an investment by means of a computer-based system which enables investments to be transferred without a written instrument.
  - (2) Offering or agreeing to send such instructions by such means on behalf of another person.
  - (3) Causing such instructions to be sent by such means on behalf of another person.
  - (4) Offering or agreeing to cause such instructions to be sent by such means on behalf of another person.

VALID FROM 12/03/2009

**[<sup>F6</sup>PART 1A**

REGULATED ACTIVITIES: RECLAIM FUNDS

**Textual Amendments**

- F6** Sch. 2 Pt. 1A inserted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008 \(c. 31\)](#), ss. 15, 31(1), [Sch. 2 para. 1\(3\)](#); S.I. 2009/490, [art. 2](#) (with art. 3)

*Status: Point in time view as at 13/02/2007.*

*Changes to legislation: Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 19 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)*

*Activities of reclaim funds*

- 9A (1) The matters with respect to which provision may be made under section 22(1) in respect of activities include, in particular, any of the activities of a reclaim fund.
- (2) “Reclaim fund” has the meaning given by section 5(1) of the Dormant Bank and Building Society Accounts Act 2008.]

**PART II**

INVESTMENTS

*General*

- 10 The matters with respect to which provision may be made under section 22(1) in respect of investments include, in particular, those described in general terms in this Part of this Schedule.

*Securities*

- 11 (1) Shares or stock in the share capital of a company.
- (2) “Company” includes—
- (a) any body corporate (wherever incorporated), and
  - (b) any unincorporated body constituted under the law of a country or territory outside the United Kingdom,
- other than an open-ended investment company.

*Instruments creating or acknowledging indebtedness*

- 12 Any of the following—
- (a) debentures;
  - (b) debenture stock;
  - (c) loan stock;
  - (d) bonds;
  - (e) certificates of deposit;
  - (f) any other instruments creating or acknowledging a present or future indebtedness.

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

**C31** Sch. 2 para. 12(f) extended (24.6.2003) by [The Uncertificated Securities \(Amendment\) \(Eligible Debt Securities\) Regulations 2003 \(S.I. 2003/1633\)](#), regs. 1(1), 15, **Sch. 2 para. 8(2)(h)**

*Government and public securities*

- 13 (1) Loan stock, bonds and other instruments—
- (a) creating or acknowledging indebtedness; and
  - (b) issued by or on behalf of a government, local authority or public authority.

*Status: Point in time view as at 13/02/2007.*

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- (2) “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.

*Instruments giving entitlement to investments*

- 14 (1) Warrants or other instruments entitling the holder to subscribe for any investment.  
(2) It is immaterial whether the investment is in existence or identifiable.

*Certificates representing securities*

- 15 Certificates or other instruments which confer contractual or property rights—
- (a) in respect of any investment held by someone other than the person on whom the rights are conferred by the certificate or other instrument; and
  - (b) the transfer of which may be effected without requiring the consent of that person.

*Units in collective investment schemes*

- 16 (1) Shares in or securities of an open-ended investment company.  
(2) Any right to participate in a collective investment scheme.

*Options*

- 17 Options to acquire or dispose of property.

*Futures*

- 18 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.

*Contracts for differences*

- 19 Rights under—
- (a) a contract for differences; or
  - (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in—
    - (i) the value or price of property of any description; or
    - (ii) an index or other factor designated for that purpose in the contract.

*Contracts of insurance*

- 20 Rights under a contract of insurance, including rights under contracts falling within head C of Schedule 2 to the <sup>M8</sup>Friendly Societies Act 1992.



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#### Marginal Citations

M8 1992 c. 40.

#### *Participation in Lloyd's syndicates*

- 21 (1) The underwriting capacity of a Lloyd's syndicate.  
(2) A person's membership (or prospective membership) of a Lloyd's syndicate.

#### *Deposits*

- 22 Rights under any contract under which a sum of money (whether or not denominated in a currency) is paid on terms under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it.

#### *Loans secured on land*

- 23 (1) Rights under any contract under which—  
(a) one person provides another with credit; and  
(b) the obligation of the borrower to repay is secured on land.  
(2) "Credit" includes any cash loan or other financial accommodation.  
(3) "Cash" includes money in any form.

#### *<sup>F7</sup>Other finance arrangements involving land*

#### Textual Amendments

F7 Sch. 2 para. 23A inserted (19.2.2006) by [Regulation of Financial Services \(Land Transactions\) Act 2005 \(c. 24\), ss. 1, 2\(2\)](#)

- 23A (1) Rights under any arrangement for the provision of finance under which the person providing the finance either—  
(a) acquires a major interest in land from the person to whom the finance is provided, or  
(b) disposes of a major interest in land to that person,  
as part of the arrangement.  
(2) References in sub-paragraph (1) to a "major interest" in land are to—  
(a) in relation to land in England or Wales—  
(i) an estate in fee simple absolute, or  
(ii) a term of years absolute,  
whether subsisting at law or in equity;  
(b) in relation to land in Scotland—  
(i) the interest of an owner of land, or  
(ii) the tenant's right over or interest in a property subject to a lease;  
(c) in relation to land in Northern Ireland—

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- (i) any freehold estate, or
  - (ii) any leasehold estate,
- whether subsisting at law or in equity.

- (3) It is immaterial for the purposes of sub-paragraph (1) whether either party acquires or (as the case may be) disposes of the interest in land—
- (a) directly, or
  - (b) indirectly.]

*Rights in investments*

- 24 Any right or interest in anything which is an investment as a result of any other provision made under section 22(1).

**PART III**

SUPPLEMENTAL PROVISIONS

*The order-making power*

- 25 (1) An order under section 22(1) may—
- (a) provide for exemptions;
  - (b) confer powers on the Treasury or the Authority;
  - (c) authorise the making of regulations or other instruments by the Treasury for purposes of, or connected with, any relevant provision;
  - (d) authorise the making of rules or other instruments by the Authority for purposes of, or connected with, any relevant provision;
  - (e) make provision in respect of any information or document which, in the opinion of the Treasury or the Authority, is relevant for purposes of, or connected with, any relevant provision;
  - (f) make such consequential, transitional or supplemental provision as the Treasury consider appropriate for purposes of, or connected with, any relevant provision.
- (2) Provision made as a result of sub-paragraph (1)(f) may amend any primary or subordinate legislation, including any provision of, or made under, this Act.
- (3) “Relevant provision” means any provision—
- (a) of section 22 or this Schedule; or
  - (b) made under that section or this Schedule.

*Parliamentary control*

- 26 (1) This paragraph applies to the first order made under section 22(1).
- (2) This paragraph also applies to any subsequent order made under section 22(1) which contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be that an activity which is not a regulated activity would become a regulated activity.
- (3) An order to which this paragraph applies—

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- (a) must be laid before Parliament after being made; and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).
- (4) “Relevant period” means a period of twenty-eight days beginning with the day on which the order is made.
- (5) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

#### *Interpretation*

- 27 (1) In this Schedule—
- “buying” includes acquiring for valuable consideration;
  - “offering” includes inviting to treat;
  - “property” includes currency of the United Kingdom or any other country or territory; and
  - “selling” includes disposing for valuable consideration.
- (2) In sub-paragraph (1) “disposing” includes—
- (a) in the case of an investment consisting of rights under a contract—
    - (i) surrendering, assigning or converting those rights; or
    - (ii) assuming the corresponding liabilities under the contract;
  - (b) in the case of an investment consisting of rights under other arrangements, assuming the corresponding liabilities under the contract or arrangements;
  - (c) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists.
- (3) In this Schedule references to an instrument include references to any record (whether or not in the form of a document).

### SCHEDULE 3

Sections 31(1)(b) and 37.

#### EEA PASSPORT RIGHTS

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

**C32** Sch. 3 extended (with modifications) (1.12.2001) by S.I. 2001/2636, arts. 1(2)(b), 25-27; S.I. 2001/3538, art. 2(1)

Sch. 3 extended (with modifications) (Gibraltar) (5.10.2001 for specified purposes, 1.12.2001 in so far as not already in force) by S.I. 2001/3084, arts. 1(1), 2-4 (as amended (16.6.2014) by The Alternative Investment Fund Managers Order 2014 (S.I. 2014/1292), arts. 1(2), 3 (which amending S.I. is itself amended by S.I. 2014/1313, arts. 1, 2(a)); and as amended (31.12.2020) by S.I. 2019/589, regs. 1(3), 5-9 (with reg. 12) (as amended by S.I. 2020/1274, regs. 1, 2)); S.I. 2001/3538, art. 2(1)

Sch. 3 modified (1.12.2001) by S.I. 2001/3592, arts. 1(2), 114(3)(b), 128(3)(b) (with art. 23(2))

*Status: Point in time view as at 13/02/2007.*

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## PART I

### DEFINED TERMS<sup>F8F9F10</sup>

#### Textual Amendments

- F8** Sch. 3 para. 4A and cross-heading inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 2(b)**
- F9** Sch. 3 para. 4B and cross-heading inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg. 2(2)(b)**
- F10** Sch. 3 para. 4C and preceding cross-heading inserted (6.12.2006) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(Modification of Powers\) Regulations 2006 \(S.I. 2006/2975\)](#), **reg. 13**

#### *The single market directives*

- 1 “The single market directives” means—
- [<sup>F11</sup>(a) the banking consolidation directive;]
- (c) the insurance directives; <sup>F12</sup> . . .
- (d) the investment services directive[<sup>F13</sup>, <sup>F14</sup> . . .
- (e) the insurance mediation directive][<sup>F15</sup>; and
- (f) the UCITS directive.]

#### Textual Amendments

- F11** Sch. 3 para. 1(a) substituted (22.11.2000) for Sch. 3 para. 1(a)(b) by [S.I. 2000/2952](#), **reg. 8(5)(a)**
- F12** Word in Sch. 3 para. 1(c) omitted (14.1.2005) by virtue of [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2004/1473\)](#), **reg. 2(2)(a)(i)**
- F13** Sch. 3 para. 1(e) and preceding word inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2004/1473\)](#), **reg. 2(2)(a)(ii)**
- F14** Word in Sch. 3 para. 1(d) omitted (13.2.2004) by virtue of [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg. 2(2)(a)(i)**
- F15** Sch. 3 para. 1(f) and preceding word inserted (13.2.2004) after Sch. 3 para. 1(e) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg. 2(2)(a)(i)**

#### Commencement Information

- I3** Sch. 3 Pt. I para. 1 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 1 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 1 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), **art. 2(b)(c)**, [Sch. Pts. 2, 3](#); Sch. 3 Pt. I para. 1 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), **art. 2**, [Sch.](#); Sch. 3 Pt. I para. 1 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

#### *The banking co-ordination directives*

- [<sup>F162</sup> “The banking consolidation directive” means Directive [2006/48/EC](#) of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.]

*Status: Point in time view as at 13/02/2007.*

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#### Textual Amendments

- F16** Sch. 3 para. 2 substituted (1.1.2007) by [The Capital Requirements Regulations 2006 \(S.I. 2006/3221\)](#), reg. 29(1), [Sch. 3 para. 2\(2\)](#)

#### Commencement Information

- I4** Sch. 3 Pt. I para. 2 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 2 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 2 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), art. 2(b)(c), [Sch. Pts. 2, 3](#); Sch. 3 Pt. I para. 2 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), art. 2, [Sch.](#); Sch. 3 Pt. I para. 2 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### *The insurance directives*

- 3 (1) “The insurance directives” means the first, second and third non-life insurance directives and the <sup>F17</sup>life assurance consolidation directive].
- (2) “First non-life insurance directive” means the Council Directive of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance (No. [73/239/EEC](#)).
- (3) “Second non-life insurance directive” means the Council Directive of 22 June 1988 on the co-ordination of laws, etc, and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive [73/239/EEC](#) (No. [88/357/EEC](#)).
- (4) “Third non-life insurance directive” means the Council Directive of 18 June 1992 on the co-ordination of laws, etc, and amending Directives [73/239/EEC](#) and [88/357/EEC](#) (No. [92/49/EEC](#)).
- <sup>F18</sup>(8) “Life assurance consolidation directive” means Directive [2002/83/EC](#) of the European Parliament and of the Council of 5th November 2002 concerning life assurance.]

#### Textual Amendments

- F17** Words in Sch. 3 para. 3(1) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), [reg. 6\(6\)\(a\)\(i\)](#)
- F18** Sch. 3 para. 3(8) substituted (11.1.2005) for Sch. 3 para. 3(5)(6)(7) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), [reg. 6\(6\)\(a\)\(ii\)](#)

#### Commencement Information

- I5** Sch. 3 Pt. I para. 3 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 3 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 3 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), art. 2(b)(c), [Sch. Pts. 2, 3](#); Sch. 3 Pt. I para. 3 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), art. 2, [Sch.](#); Sch. 3 Pt. I para. 3 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

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VALID FROM 10/12/2007

*[<sup>F19</sup>The reinsurance directive*

**Textual Amendments**

**F19** Sch. 3 para. 3A and cross-heading inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 6(b)**

- 3A “The reinsurance directive” means Directive [2005/68/EC](#) of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives [73/239/EEC](#), [92/49/EEC](#) as well as Directives [98/78/EC](#) and [2002/83/EC](#).]

*The investment services directive*

- 4 “The investment services directive” means the Council Directive of 10 May 1993 on investment services in the securities field (No. [93/22/EEC](#)).

**Commencement Information**

**I6** Sch. 3 Pt. I para. 4 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 4 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 4 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. I para. 4 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), art. 2, **Sch.**; Sch. 3 Pt. I para. 4 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

*[<sup>F8</sup>The insurance mediation directive*

- 4A “The insurance mediation directive” means the European Parliament and Council Directive of 9th December 2002 on insurance mediation (No. [2002/92/EC](#)).]

*[<sup>F9</sup>The UCITS directive]*

- 4B “The UCITS directive” means the Council Directive of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No. [85/611/EEC](#)).

*[<sup>F10</sup>The markets in financial instruments directive*

- 4C ”The markets in financial instruments directive” means Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. ]

*Status: Point in time view as at 13/02/2007.*

*Changes to legislation: Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 19 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)*

### EEA firm

- 5 “EEA firm” means any of the following if it does not have its <sup>[F20]</sup>relevant office] in the United Kingdom—
- (a) an investment firm (as defined in Article 1.2 of the investment services directive) which is authorised (within the meaning of Article 3) by its home state regulator;
  - <sup>[F21]</sup>(b) a credit institution (as defined in Article 4.1 of the banking consolidation directive) which is authorised (within the meaning of Article 4.2) by its home state regulator,
  - (c) a financial institution (as defined in Article 4.5 of the banking consolidation directive) which is a subsidiary of the kind mentioned in Article 24 and which fulfils the conditions in that Article;]
  - (d) an undertaking pursuing the activity of direct insurance (within the meaning of <sup>[F22]</sup>Article 2 of the life assurance consolidation directive or Article 1 of the first non-life insurance directive) which has received authorisation under <sup>[F23]</sup>Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive] from its home state regulator.<sup>[F24, F25]</sup> . . .
  - (e) an insurance intermediary (as defined in Article 2.5 of the insurance mediation directive), or a reinsurance intermediary (as defined in Article 2.6) which is registered with its home state regulator under Article 3.]<sup>[F26]</sup>; or
  - (f) a management company (as defined in Article 1a.2 of the UCITS directive) which is authorised (within the meaning of Article 5) by its home state regulator.]

#### Textual Amendments

- F20** Words in Sch. 3 para. 5 substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#). {reg. 2(c)(i)}
- F21** Sch. 3 para. 5(b)(c) substituted (1.1.2007) by [The Capital Requirements Regulations 2006 \(S.I. 2006/3221\)](#), reg. 29(1), **Sch. 3 para. 2(3)**
- F22** Words in Sch. 3 para. 5(d) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), **reg. 6(6)(b)(i)**
- F23** Words in Sch. 3 para. 5(d) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), **reg. 6(6)(b)(ii)**
- F24** Sch. 3 para. 5(e) and preceding word inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 2(c)(iii)**
- F25** Word in Sch. 3 para. 5(d) omitted (13.2.2004) by virtue of [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg. 2(2)(c)(i)**
- F26** Sch. 3 para. 5(f) and preceding word inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg. 2(2)(c)(ii)**

#### Commencement Information

- I7** Sch. 3 Pt. I para. 5 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 5 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 5 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), art. 2(b)(c), **Sch. Pts. 2, 3**; Sch. 3 Pt. I para. 5 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), **art. 2 Sch.**; Sch. 3 Pt. I para. 5 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**



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- [<sup>F27</sup>5A In paragraph 5, “relevant office” means—
- (a) in relation to a firm falling within sub-paragraph (e) of that paragraph which has a registered office, its registered office;
  - (b) in relation to any other firm, its head office.]

#### Textual Amendments

- F27** Sch. 3 para. 5A inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 2\(2\)\(d\)](#)

#### *EEA authorisation*

- [<sup>F28</sup>6 “EEA authorisation” means—
- (a) in relation to an EEA firm falling within paragraph 5(e), registration with its home state regulator under Article 3 of the insurance mediation directive;
  - (b) in relation to any other EEA firm, authorisation granted to an EEA firm by its home state regulator for the purpose of the relevant single market directive.]

#### Textual Amendments

- F28** Sch. 3 para. 6 substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 2\(2\)\(e\)](#)

#### Commencement Information

- I8** Sch. 3 Pt. I para. 6 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 6 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 6 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); Sch. 3 Pt. I para. 6 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); Sch. 3 Pt. I para. 6 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### *EEA right*

- 7 “EEA right” means the entitlement of a person to establish a branch, or provide services, in an EEA State other than that in which he has his [<sup>F29</sup>relevant office]—
- (a) in accordance with the Treaty as applied in the EEA; and
  - (b) subject to the conditions of the relevant single market directive.

#### Textual Amendments

- F29** Words in Sch. 3 para. 7 substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 2\(2\)\(f\)](#)

#### Commencement Information

- I9** Sch. 3 Pt. I para. 7 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 7 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 7 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); Sch. 3 Pt. I para. 7 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); Sch. 3 Pt. I para. 7 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

- [<sup>F30</sup>7A In paragraph 7, “relevant office” means—



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- (a) in relation to a person who has a registered office and whose entitlement is subject to the conditions of the insurance mediation directive, his registered office;
- (b) in relation to any other person, his head office.]

#### Textual Amendments

**F30** Sch. 3 para. 7A inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 2\(2\)\(g\)](#)

#### *EEA State*

[<sup>F31</sup>8 “EEA State” has the meaning given by Schedule 1 to the Interpretation Act 1978.]

#### Textual Amendments

**F31** Sch. 3 para. 8 substituted (13.2.2007) by [The Financial Services \(EEA State\) Regulations 2007 \(S.I. 2007/108\)](#), [reg. 2](#)

#### Commencement Information

**I10** Sch. 3 Pt. I para. 8 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 8 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 8 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); Sch. 3 Pt. I para. 8 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); Sch. 3 Pt. I para. 8 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### *Home state regulator*

9 “Home state regulator” means the competent authority (within the meaning of the relevant single market directive) of an EEA State (other than the United Kingdom) in relation to the EEA firm concerned.

#### Commencement Information

**I11** Sch. 3 Pt. I para. 9 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 9 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 9 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); Sch. 3 Pt. I para. 9 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); Sch. 3 Pt. I para. 9 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### *UK firm*

10 “UK firm” means a person whose [<sup>F32</sup>relevant office] is in the UK and who has an EEA right to carry on activity in an EEA State other than the United Kingdom.

#### Textual Amendments

**F32** Words in Sch. 3 para. 10 substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 2\(2\)\(h\)](#)

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### Commencement Information

- I12** Sch. 3 Pt. I para. 10 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 10 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 10 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#) Sch. 3 Pt. I para. 10 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2 Sch.](#); Sch. 3 para. 10 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

- [<sup>F33</sup>]  
<sup>F33</sup>10A In paragraph 10, “relevant office” means—
- (a) in relation to a firm whose EEA right derives from the insurance mediation directive and which has a registered office, its registered office;
  - (b) in relation to any other firm, its head office.]]

### Textual Amendments

- F33** Sch. 3 para. 10A inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 2\(2\)\(i\)](#)

VALID FROM 01/04/2007

*[<sup>F34</sup>UK investment firm*

### Textual Amendments

- F34** Sch. 3 para. 10B inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), [regs. 1\(2\), 3\(4\)](#), [Sch. 4 para. 5](#)

- 10B “UK investment firm” means a UK firm—
- (a) which is an investment firm, and
  - (b) whose EEA right derives from the markets in financial instruments directive.]

*Host state regulator*

- 11 “Host state regulator” means the competent authority (within the meaning of the relevant single market directive) of an EEA State (other than the United Kingdom) in relation to a UK firm’s exercise of EEA rights there.

### Commencement Information

- I13** Sch. 3 Pt. I para. 11 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 11 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 11 in force for certain purposes (25.2.2001) by [S.I. 2001/516](#), [art. 2 Sch. Pts. 2, 3](#); Sch. 3 Pt. I para. 11 in force for specified purposes (18.6.2001) by [S.I. 2001/1820](#), [art. 2 Sch.](#); Sch. 3 Pt. I para. 11 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

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VALID FROM 01/04/2007

*Tied agent*

[<sup>F35</sup>11A “Tied agent” has the meaning given in Article 4.1.25 of the markets in financial instruments directive.

**Textual Amendments**

**F35** Sch. 3 para. 11A inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(4), **Sch. 4 para. 6**

VALID FROM 01/07/2011

*Management company*

[<sup>F36</sup>11B “Management company” has the meaning given in Article 2.1(b) of the UCITS directive.]

**Textual Amendments**

**F35** Sch. 3 para. 11A inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(4), **Sch. 4 para. 6**

**F36** Sch. 3 paras. 11B, 11C inserted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), **reg. 2(33)(c)**

VALID FROM 01/07/2011

*UCITS*

11C “UCITS” has the meaning given in Article 1.2 of the UCITS directive.]]

**Textual Amendments**

**F35** Sch. 3 para. 11A inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(4), **Sch. 4 para. 6**

**F36** Sch. 3 paras. 11B, 11C inserted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), **reg. 2(33)(c)**

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## PART II

### EXERCISE OF PASSPORT RIGHTS BY EEA FIRMS

#### *Firms qualifying for authorisation*

- 12 (1) Once an EEA firm which is seeking to establish a branch in the United Kingdom in exercise of an EEA right satisfies the establishment conditions, it qualifies for authorisation.
- (2) Once an EEA firm which is seeking to provide services in the United Kingdom in exercise of an EEA right satisfies the service conditions, it qualifies for authorisation.

#### **Commencement Information**

**I14** Sch. 3 Pt. II para. 12 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 12 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 12 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), art. 2(b)(c), [Sch. Pts. 2, 3](#); Sch. 3 Pt. II para. 12 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), art. 2, [Sch.](#); Sch. 3 Pt. II para. 12 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), art. 2(1)

#### *Establishment*

- 13 (1) [<sup>F37</sup>If the firm falls within paragraph 5(a), (b), [<sup>F38</sup>(c), (d) or (f)],] the establishment conditions are that—
- (a) the Authority has received notice (“a consent notice”) from the firm’s home state regulator that it has given the firm consent to establish a branch in the United Kingdom;
  - (b) the consent notice—
    - (i) is given in accordance with the relevant single market directive;
    - (ii) identifies the activities to which consent relates; and
    - (iii) includes such other information as may be prescribed; and
  - (c) the firm has been informed of the applicable provisions or two months have elapsed beginning with the date when the Authority received the consent notice.
- [<sup>F39</sup>(1A) If the firm falls within paragraph 5(e), the establishment conditions are that—
- (a) the firm has given its home state regulator notice of its intention to establish a branch in the United Kingdom;
  - (b) the Authority has received notice (“a regulator’s notice”) from the firm’s home state regulator that the firm intends to establish a branch in the United Kingdom;
  - (c) the firm’s home state regulator has informed the firm that the regulator’s notice has been sent to the Authority; and
  - (d) one month has elapsed beginning with the date on which the firm’s home state regulator informed the firm that the regulator’s notice has been sent to the Authority.]
- (2) If the Authority has received a consent notice, it must—

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- (a) prepare for the firm’s supervision;
  - (b) notify the firm of the applicable provisions (if any); and
  - (c) if the firm falls within paragraph 5(d), notify its home state regulator of the applicable provisions (if any).
- (3) A notice under sub-paragraph (2)(b) or (c) must be given before the end of the period of two months beginning with the day on which the Authority received the consent notice.
- (4) For the purposes of this paragraph—
- “applicable provisions” means the host state rules with which the firm is required to comply when carrying on a permitted activity through a branch in the United Kingdom;
  - “host state rules” means rules—
    - (a) made in accordance with the relevant single market directive; and
    - (b) which are the responsibility of the United Kingdom (both as to implementation and as to supervision of compliance) in accordance with that directive; and
  - “permitted activity” means an activity identified in the consent notice [<sup>F40</sup>or regulator’s notice, as the case may be].

#### Textual Amendments

- F37** Words in Sch. 3 para. 13(1) inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 3(2)**
- F38** Words in Sch. 3 para. 13(1) substituted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg. 3(1)(a)**
- F39** Sch. 3 para. 13(1A) inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 3(3)**
- F40** Sch. 3 para. 13(4): words in definition of "permitted activity" inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 3(4)**

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

- C33** Sch. 3 para. 13 extended (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2)**, 96 (with art. 23(2))

#### Commencement Information

- I15** Sch. 3 Pt. II para. 13 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 13 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 13 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), art. 2(b)(c), [Sch. Pts. 2, 3](#); Sch. 3 Pt. II para. 13 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), art. 2, [Sch.](#); Sch. 3 Pt. II para. 13 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

### Services

- 14 (1) The service conditions are that—
- (a) the firm has given its home state regulator notice of its intention to provide services in the United Kingdom (“a notice of intention”);
  - (b) if the firm falls within [<sup>F41</sup>paragraph 5(a), [<sup>F42</sup>(d), (e) or (f)]], the Authority has received notice (“a regulator’s notice”) from the firm’s home state regulator containing such information as may be prescribed; <sup>F43</sup> . . .

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- (c) if the firm falls within [<sup>F44</sup>paragraph 5(d) or (e)], its home state regulator has informed it that the regulator’s notice has been sent to the Authority.<sup>[F45]</sup>; and
- (d) if the firm falls within paragraph 5(e), one month has elapsed beginning with the date on which the firm’s home state regulator informed the firm that the regulator’s notice has been sent to the Authority.]
- (2) If the Authority has received a regulator’s notice or, where none is required by sub-paragraph (1), has been informed of the firm’s intention to provide services in the United Kingdom, it must [<sup>F46</sup>, unless the firm falls within paragraph 5(e),]—
- (a) prepare for the firm’s supervision; and
- (b) notify the firm of the applicable provisions (if any).
- (3) A notice under sub-paragraph (2)(b) must be given before the end of the period of two months beginning on the day on which the Authority received the regulator’s notice, or was informed of the firm’s intention.
- (4) For the purposes of this paragraph—
- “applicable provisions” means the host state rules with which the firm is required to comply when carrying on a permitted activity by providing services in the United Kingdom;
- “host state rules” means rules—
- (a) made in accordance with the relevant single market directive; and
- (b) which are the responsibility of the United Kingdom (both as to implementation and as to supervision of compliance) in accordance with that directive; and
- “permitted activity” means an activity identified in—
- (a) the regulator’s notice; or
- (b) where none is required by sub-paragraph (1), the notice of intention.

#### Textual Amendments

- F41** Words in Sch. 3 para. 14(1)(b) substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 4\(2\)\(a\)](#)
- F42** Words in Sch. 3 para. 14(1)(b) substituted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), [reg. 3\(1\)\(b\)](#)
- F43** Word in Sch. 3 para. 14(1)(b) omitted (14.1.2005) by virtue of [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 4\(2\)\(b\)](#)
- F44** Words in Sch. 3 para. 14(1)(c) substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 4\(2\)\(c\)](#)
- F45** Sch. 3 para. 14(1)(d) and preceding word inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 4\(2\)\(d\)](#)
- F46** Words in Sch. 3 para. 14(2) inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 4\(3\)](#)

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

- C34** Sch. 3 para. 14(1) extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 97 (with [art. 23\(2\)](#))

#### Commencement Information

- I16** Sch. 3 Pt. II para. 14 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 14 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 14 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch.](#)

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Pts. 2, 3; Sch. 3 Pt. II para. 14 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; Sch. 3 Pt. II para. 14 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

### *Grant of permission*

- 15 (1) On qualifying for authorisation as a result of paragraph 12, a firm has, in respect of each permitted activity which is a regulated activity, permission to carry it on through its United Kingdom branch (if it satisfies the establishment conditions) or by providing services in the United Kingdom (if it satisfies the service conditions).

[<sup>F47</sup>(1A) Sub-paragraph (1) is to be read subject to paragraph 15A(3).]

- (2) The permission is to be treated as being on terms equivalent to those appearing from the consent notice, regulator’s notice or notice of intention.
- (3) Sections 21, 39(1) and 147(1) of the <sup>M9</sup>Consumer Credit Act 1974 (business requiring a licence under that Act) do not apply in relation to the carrying on of a permitted activity which is Consumer Credit Act business by a firm which qualifies for authorisation as a result of paragraph 12, unless [<sup>F48</sup>the Office of Fair Trading] has exercised the power conferred on [<sup>F49</sup>it] by section 203 in relation to the firm.
- (4) “Consumer Credit Act business” has the same meaning as in section 203.

#### **Textual Amendments**

- F47** Sch. 3 para. 15(1A) inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), [reg 3\(1\)\(c\)](#)
- F48** Words in Sch. 3 para. 15(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278(1), 279, [Sch. 25 para. 40\(19\)\(a\)](#); S.I. 2003/766, [art. 2](#), Sch. (with art. 3)
- F49** Word in Sch. 3 para. 15(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278(1), 279, [Sch. 25 para. 40\(19\)\(a\)](#); S.I. 2003/766, [art. 2](#), Sch. (with art. 3)

#### **Commencement Information**

- I17** Sch. 3 Pt. II para. 15 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 15 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 15 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), [Sch. Pts. 2, 3](#); Sch. 3 Pt. II para. 15 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, [Sch.](#); Sch. 3 Pt. II para. 15 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, [art. 2\(1\)](#)

#### **Marginal Citations**

- M9** 1974 c. 39.

### *Power to restrict permission of management companies*

- 15A (1) Sub-paragraph (2) applies if—
- a firm falling within paragraph 5(f) qualifies for authorisation as a result of paragraph 12(1) (establishment conditions satisfied); but
  - the Authority determines that the way in which the firm intends to invite persons in the United Kingdom to become participants in any collective



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investment scheme which that firm manages does not comply with the law in force in the United Kingdom.

- (2) The Authority may give a notice to the firm and the firm's home state regulator of the Authority's determination under sub-paragraph (1)(b).
- (3) Paragraph 15(1) does not give a firm to which the Authority has given (and not withdrawn) a notice under sub-paragraph (2) permission to carry on through the firm's United Kingdom branch the regulated activity of dealing in units in the collective investment schemes which the firm manages.
- (4) Any notice given under sub-paragraph (2) must be given before the end of the period of two months beginning with the day on which the Authority received the consent notice.
- (5) Sections 264(4) and 265(1), (2) and (4) apply to a notice given under sub-paragraph (2) as they apply to a notice given by the Authority under section 264(2).
- (6) If a decision notice is given to the firm under section 265(4), by virtue of sub-paragraph (5), the firm may refer the matter to the Tribunal.
- (7) In sub-paragraph (3)—
  - (a) "units" has the meaning given by section 237(2); and
  - (b) the reference to "dealing in" units in a collective investment scheme must be read with—
    - (i) section 22;
    - (ii) any relevant order under that section; and
    - (iii) Schedule 2.

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*Representations and references to the Tribunal*

- [<sup>F50</sup> (1) Within a reasonable time after the end of the period for making representations, the Authority must decide, in the light of any representations made to it during that period by a person to whom notice has been given under paragraph 15A(4), whether to withdraw the notice.
- [<sup>F51</sup> 15B
- (2) If the Authority decides not to withdraw its notice, it must—
    - (a) give a decision notice to each person to whom the notice under paragraph 15A(4) was given, and
    - (b) inform the firm's home state regulator and the Commission that authorisation has been refused, and of the grounds for the refusal.
  - (3) The management company to whom the decision notice is given may refer the matter to the Tribunal.]

**Textual Amendments**

- F50** Sch. 3 para. 15A and cross-heading inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg. 3(1)(d)**



*Status: Point in time view as at 13/02/2007.*

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**F51** Sch. 3 paras. 15A-15C substituted for Sch. 3 para. 15A (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), **reg. 2(33)(d)**

VALID FROM 01/07/2011

#### *Information to home state regulator*

- 15C (1) Where an EEA firm falling within paragraph 5(f) has applied to manage a UCITS established in the United Kingdom, the Authority must without delay inform the home state regulator of that firm of any problem of which they are aware that may materially affect the ability of the firm—
- (a) to perform its duties properly, or
  - (b) to comply with the home state rules.
- (2) In sub-paragraph (1), “home state rules” means rules—
- (a) made by the EEA State concerned in accordance with the UCITS directive; and
  - (b) which are the responsibility of that EEA State (both as to implementation and as to supervision of compliance) in accordance with that directive.]]

#### **Textual Amendments**

- F50** Sch. 3 para. 15A and cross-heading inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg. 3(1)(d)**
- F51** Sch. 3 paras. 15A-15C substituted for Sch. 3 para. 15A (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), **reg. 2(33)(d)**

#### *Effect of carrying on regulated activity when not qualified for authorisation*

- 16 (1) This paragraph applies to an EEA firm which is not qualified for authorisation under paragraph 12.
- (2) Section 26 does not apply to an agreement entered into by the firm.
  - (3) Section 27 does not apply to an agreement in relation to which the firm is a third party for the purposes of that section.
  - (4) Section 29 does not apply to an agreement in relation to which the firm is the deposit-taker.

#### **Commencement Information**

- I18** Sch. 3 Pt. II para. 16 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 16 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 16 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), **art. 2(b)(c)**, [Sch. Pts. 2, 3](#); Sch. 3 Pt. II para. 16 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), **art. 2**, [Sch.](#); Sch. 3 Pt. II para. 16 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

#### *Continuing regulation of EEA firms*

- 17 Regulations may—

*Status: Point in time view as at 13/02/2007.*

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- (a) modify any provision of this Act which is an applicable provision (within the meaning of paragraph 13 or 14) in its application to an EEA firm qualifying for authorisation;
- (b) make provision as to any change (or proposed change) of a prescribed kind relating to an EEA firm or to an activity that it carries on in the United Kingdom and as to the procedure to be followed in relation to such cases;
- (c) provide that the Authority may treat an EEA firm's notification that it is to cease to carry on regulated activity in the United Kingdom as a request for cancellation of its qualification for authorisation under this Schedule.

#### Commencement Information

**I19** Sch. 3 Pt. II para. 17 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 17 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 17 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); Sch. 3 Pt. II para. 17 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); Sch. 3 Pt. II para. 17 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### *Giving up right to authorisation*

- 18 Regulations may provide that in prescribed circumstances an EEA firm falling within paragraph 5(c) may, on following the prescribed procedure—
- (a) have its qualification for authorisation under this Schedule cancelled; and
  - (b) seek to become an authorised person by applying for a Part IV permission.

#### Commencement Information

**I20** Sch. 3 Pt. II para. 18 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 18 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 18 in force for specified purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); Sch. 3 Pt. I para. 18 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2 Sch.](#); Sch. 3 Pt. II para. 18 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

### PART III

#### EXERCISE OF PASSPORT RIGHTS BY UK FIRMS<sup>F52</sup>

#### Textual Amendments

**F52** Sch. 3 para. 25 and preceding cross-heading inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 7](#)

#### *Establishment*

- 19 (1) [<sup>F53</sup>Subject to sub-paragraph (5A),] a UK firm may not exercise an EEA right to establish a branch unless three conditions are satisfied.

*Status: Point in time view as at 13/02/2007.*

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- (2) The first is that the firm has given the Authority, in the specified way, notice of its intention to establish a branch (“a notice of intention”) which—
  - (a) identifies the activities which it seeks to carry on through the branch; and
  - (b) includes such other information as may be specified.
- (3) The activities identified in a notice of intention may include activities which are not regulated activities.
- (4) The second is that the Authority has given notice in specified terms (“a consent notice”) to the host state regulator.
- [<sup>F54</sup>(5) The third is—
  - (a) if the EEA right in question derives from the insurance mediation directive, that one month has elapsed beginning with the date on which the firm received notice, in accordance with sub-paragraph (11), that the Authority has given a consent notice;
  - (b) in any other case, that either—
    - (i) the host state regulator has notified the firm (or, where the EEA right in question derives from any of the insurance directives, the Authority) of the applicable provisions; or
    - (ii) two months have elapsed beginning with the date on which the Authority gave the consent notice.]

[<sup>F55</sup>(5A) If—

- (a) the EEA right in question derives from the insurance mediation directive, and
- (b) the EEA State in which the firm intends to establish a branch has not notified the Commission, in accordance with Article 6(2) of that directive, of its wish to be informed of the intention of any UK firm to establish a branch in its territory,

the second and third conditions do not apply (and so the firm may establish the branch to which its notice of intention relates as soon as the first condition is satisfied).]

- (6) If the firm’s EEA right derives from [<sup>F56</sup>the banking consolidation directive, the investment services directive or the UCITS directive] and the first condition is satisfied, the Authority must give a consent notice to the host state regulator unless it has reason to doubt the adequacy of the firm’s resources or its administrative structure.
- (7) If the firm’s EEA right derives from any of the insurance directives and the first condition is satisfied, the Authority must give a consent notice unless it has reason—
  - (a) to doubt the adequacy of the firm’s resources or its administrative structure, or
  - (b) to question the reputation, qualifications or experience of the directors or managers of the firm or the person proposed as the branch’s authorised agent for the purposes of those directives,in relation to the business to be conducted through the proposed branch.

[<sup>F57</sup>(7A) If—

- (a) the firm’s EEA right derives from the insurance mediation directive,
- (b) the first condition is satisfied, and
- (c) the second condition applies,

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- the Authority must give a consent notice, and must do so within one month beginning with the date on which it received the firm’s notice of intention.]
- (8) If the Authority proposes to refuse to give a consent notice it must give the firm concerned a warning notice.
- (9) If the firm’s EEA right derives from any of the insurance directives and the host state regulator has notified it of the applicable provisions, the Authority must inform the firm of those provisions.
- (10) Rules may specify the procedure to be followed by the Authority in exercising its functions under this paragraph.
- (11) If the Authority gives a consent notice it must give written notice that it has done so to the firm concerned.
- (12) If the Authority decides to refuse to give a consent notice—
- (a) it must, [<sup>F58</sup>within the relevant period], give the person who gave that notice a decision notice to that effect; and
  - (b) that person may refer the matter to the Tribunal.
- [<sup>F59</sup>(12A) In sub-paragraph (12), “the relevant period” means—
- (a) if the firm’s EEA right derives from the UCITS directive, two months beginning with the date on which the Authority received the notice of intention;
  - (b) in any other case, three months beginning with that date.]
- (13) In this paragraph, “applicable provisions” means the host state rules with which the firm will be required to comply when conducting business through the proposed branch in the EEA State concerned.
- (14) In sub-paragraph (13), “host state rules” means rules—
- (a) made in accordance with the relevant single market directive; and
  - (b) which are the responsibility of the EEA State concerned (both as to implementation and as to supervision of compliance) in accordance with that directive.
- (15) “Specified” means specified in rules.

#### Textual Amendments

- F53** Words in Sch. 3 para. 19(1) inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 5(2)**
- F54** Sch. 3 para. 19(5) substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 5(3)**
- F55** Sch. 3 para. 19(5A) inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 5(4)**
- F56** Words in Sch. 3 para. 19(6) substituted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg 4(1)(a)(i)**
- F57** Sch. 3 para. 19(7A) inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 5(5)**
- F58** Words in Sch. 3 para. 19(12)(a) substituted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg 4(1)(a)(ii)**

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**F59** Sch. 3 para. 19(12A) inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), [reg 4\(1\)\(a\)\(iii\)](#)

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

**C35** Sch. 3 Pt. III para. 19 applied (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 104(3)(a) (with [art. 23\(2\)](#))  
Sch. 3 Pt. III para. 19 modified (1.12.2001) by [S.I. 2001/2636](#), [arts. 1\(2\)\(b\)](#), 77(1)-(3)(7); [S.I. 2001/3538](#), [art. 2\(1\)](#)

**C36** Sch. 3 Pt. III para. 19(2)(4)(6)(7) extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 100 (with [art. 23\(2\)](#))

#### **Commencement Information**

**I21** Sch. 3 Pt. III para. 19 wholly in force at 1.12.2001; Sch. 3 Pt. III para. 19 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. III para. 19 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); Sch. 3 Pt. III para. 19 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); Sch. 3 Pt. III para. 19 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); Sch. 3 Pt. III para. 19 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

### *Services*

- 20 (1) A UK firm may not exercise an EEA right to provide services unless the firm has given the Authority, in the specified way, notice of its intention to provide services (“a notice of intention”) which—
- identifies the activities which it seeks to carry out by way of provision of services; and
  - includes such other information as may be specified.
- (2) The activities identified in a notice of intention may include activities which are not regulated activities.
- (3) If the firm’s EEA right derives from [<sup>F60</sup>the banking consolidation directive, the investment services directive or the UCITS directive], the Authority must, within one month of receiving a notice of intention, send a copy of it to the host state regulator [<sup>F61</sup>with such other information as may be specified].
- [<sup>F62</sup>3A) If the firm’s EEA right derives from any of the insurance directives, the Authority must, within one month of receiving the notice of intention—
- give notice in specified terms (“a consent notice”) to the host state regulator; or
  - give written notice to the firm of—
    - its refusal to give a consent notice; and
    - its reasons for that refusal.]
- [<sup>F63</sup>3B) If the firm’s EEA right derives from the insurance mediation directive and the EEA State in which the firm intends to provide services has notified the Commission, in accordance with Article 6(2) of that directive, of its wish to be informed of the intention of any UK firm to provide services in its territory—
- the Authority must, within one month of receiving the notice of intention, send a copy of it to the host state regulator;
  - the Authority, when it sends the copy in accordance with sub-paragraph (a), must give written notice to the firm concerned that it has done so; and

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- (c) the firm concerned must not provide the services to which its notice of intention relates until one month, beginning with the date on which it receives the notice under sub-paragraph (b), has elapsed.]
- (4) When the Authority sends the copy under sub-paragraph (3) [<sup>F64</sup>or gives a consent notice], it must give written notice to the firm concerned.
- [<sup>F65</sup>(4A) If the firm is given notice under sub-paragraph (3A)(b), it may refer the matter to the Tribunal.
- (4B) If the firm’s EEA right derives from any of the insurance directives, it must not provide the services to which its notice of intention relates until it has received written notice under sub-paragraph (4).
- (4C) Rules may specify the procedure to be followed by the Authority under this paragraph.]
- <sup>F66</sup>(5) .....
- (6) “Specified” means specified in rules.

#### Textual Amendments

- F60** Words in Sch. 3 para. 20(3) substituted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg 4(1)(b)(i)**
- F61** Words in Sch. 3 para. 20(3) inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg 4(1)(b)(ii)**
- F62** Sch. 3 Pt. III para. 20(3A) inserted (30.4.2001) by S.I. 2001/1376, **regs. 1, 2(2)**
- F63** Sch. 3 para. 20(3B) inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 6(1)**
- F64** Words in Sch. 3 Pt. III para. 20(4) inserted (30.4.2001) by S.I. 2001/1376, **regs. 1, 2(3)**
- F65** Sch. 3 Pt. III para. 20(4A)-(4C) inserted (30.4.2001) by S.I. 2001/1376, **regs. 1, 2(4)**
- F66** Sch. 3 Pt. III para. 20(5) omitted (30.4.2001) by virtue of S.I. 2001/1376, **regs. 1, 2(5)**

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

- C37** Sch. 3 Pt. III para. 20(1) modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b), 77(1)(4)-(7); S.I. 2001/3538, art. 2(1)**
- C38** Sch. 3 Pt. III para. 20(1)(3A)(a) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 101 (with art. 23(2))**

#### Commencement Information

- I22** Sch. 3 Pt. III para. 20 wholly in force at 1.12.2001; Sch. 3 Pt. III para. 20 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. III para. 20 in force for certain purposes at 25.2.2001 by S.I. 2001/516, **art. 2(b)(c), Sch. Pts. 2, 3**; Sch. 3 Pt. III para. 20 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, **art. 2, Sch.**; Sch. 3 Pt. III para. 20 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2), Sch. Pt. 2**; Sch. 3 Pt. III para. 20 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

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VALID FROM 01/07/2011

*Information for host state regulator*

[<sup>F67</sup>] (1) The Authority must keep a record of the confirmation and other information provided to the host state regulator under paragraph 19(4) or paragraph 20(3C) in relation to a UK firm which is a management company.

<sup>F67</sup>20ZA

(2) The Authority must inform the host state regulator whenever there is a change in the confirmation or other information referred to in sub-paragraph (1).]]

**Textual Amendments**

**F67** Sch. 3 para. 20ZA inserted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), **reg. 2(33)(l)**

VALID FROM 01/04/2007

*Tied agents*

[<sup>F68</sup>20A(1) If a UK investment firm is seeking to use a tied agent established in an EEA State (other than the United Kingdom) in connection with the exercise of an EEA right deriving from the markets in financial instruments directive, this Part of this Schedule applies as if the firm were seeking to establish a branch in that State.

(2) But if—

- (a) a UK investment firm has already established a branch in an EEA State other than the United Kingdom in accordance with paragraph 19; and
- (b) the EEA right which it is exercising derives from the markets in financial instruments directive,

paragraph 19 does not apply in respect of its use of the tied agent in question.

**Textual Amendments**

**F68** Sch. 3 para. 20A and preceding cross-heading inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(4), **Sch. 4 para. 12**

VALID FROM 01/07/2011

*Notice of intention to market*

[<sup>F69</sup>] (1) The operator of a UCITS established in the United Kingdom may not exercise an EEA right to market the units of that UCITS in the territory of another EEA State unless the operator has given the Authority, in the specified way, notice of its intention to market the units (“notice of intention”) which contains, and is

<sup>F69</sup>20B



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accompanied by, such information as may be specified in rules, or in regulations made by the European Commission under the UCITS directive.

- (2) The Authority must ensure that the information referred to in sub-paragraph (1) may be transmitted to it electronically.
- (3) The Authority must verify whether the information submitted with the notice of intention is complete and, within 10 days of the date on which the Authority received the complete information required, send to the host state regulator—
  - (a) a copy of the notice of intention;
  - (b) the accompanying information; and
  - (c) confirmation that the operator and the UCITS fulfil the conditions imposed by the UCITS directive.
- (4) The Authority must ensure that the host state regulator has electronic access to the information and documents referred to in sub-paragraph (3).
- (5) The Authority must notify the operator immediately that the information referred to in sub-paragraph (3) has been sent to the competent authorities of the host state regulator.
- (6) The operator may market the units of the UCITS in the territory of the host state regulator from the moment it receives the notification referred to in sub-paragraph (5).
- (7) In this paragraph—
 

“operator” has the same meaning as in section 237 of this Act;  
“specified” means specified in rules.]]]

#### Textual Amendments

- F68** Sch. 3 para. 20A and preceding cross-heading inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(4), [Sch. 4 para. 12](#)
- F69** Sch. 3 para. 20B inserted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(33\)\(m\)](#)

#### *Offence relating to exercise of passport rights*

- 21 (1) If a UK firm which is not an authorised person contravenes the prohibition imposed by—
- (a) sub-paragraph (1) of paragraph 19, or
  - (b) [<sup>F70</sup>sub-paragraph (1), (3B)(c) or (4B)] of paragraph 20,
- it is guilty of an offence.
- (2) A firm guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.
- (3) In proceedings for an offence under sub-paragraph (1), it is a defence for the firm to show that it took all reasonable precautions and exercised all due diligence to avoid committing the offence.



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### Textual Amendments

- F70** Words in Sch. 3 para. 21(1)(b) substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 6\(2\)](#)

### Commencement Information

- I23** Sch. 3 Pt. III para. 21 wholly in force at 1.12.2001; Sch. 3 Pt. III para. 21 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. III para. 21 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); Sch. 3 Pt. III para. 21 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2, Sch.](#); Sch. 3 Pt. III para. 21 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

### *Continuing regulation of UK firms*

- 22 (1) Regulations may make such provision as the Treasury consider appropriate in relation to a UK firm's exercise of EEA rights, and may in particular provide for the application (with or without modification) of any provision of, or made under, this Act in relation to an activity of a UK firm.
- (2) Regulations may—
- (a) make provision as to any change (or proposed change) of a prescribed kind relating to a UK firm or to an activity that it carries on and as to the procedure to be followed in relation to such cases;
  - (b) make provision with respect to the consequences of the firm's failure to comply with a provision of the regulations.
- (3) Where a provision of the kind mentioned in sub-paragraph (2) requires the Authority's consent to a change (or proposed change)—
- (a) consent may be refused only on prescribed grounds; and
  - (b) if the Authority decides to refuse consent, the firm concerned may refer the matter to the Tribunal.

### Commencement Information

- I24** Sch. 3 Pt. III para. 22 wholly in force at 1.12.2001; Sch. 3 Pt. III para. 22 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. III para. 22 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); Sch. 3 Pt. III para. 22 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2, Sch.](#); Sch. 3 Pt. III para. 22 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

- 23 (1) Sub-paragraph (2) applies if a UK firm—
- (a) has a Part IV permission; and
  - (b) is exercising an EEA right to carry on any Consumer Credit Act business in an EEA State other than the United Kingdom.
- (2) The Authority may exercise its power under section 45 in respect of the firm if [<sup>F71</sup>the Office of Fair Trading] has informed the Authority that—
- (a) the firm,
  - (b) any of the firm's employees, agents or associates (whether past or present), or

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- (c) if the firm is a body corporate, a controller of the firm or an associate of such a controller,  
has done any of the things specified in paragraphs (a) to (d) of section 25(2) of the <sup>M10</sup>Consumer Credit Act 1974.
- (3) “Associate”, “Consumer Credit Act business” and “controller” have the same meaning as in section 203.

#### Textual Amendments

**F71** Words in Sch. 3 para. 23(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278(1), 279, [Sch. 25 para. 40\(19\)\(b\)](#); S.I. 2003/766, [art. 2](#), Sch. (with [art. 3](#))

#### Commencement Information

**I25** Sch. 3 Pt. III para. 23 wholly in force at 1.12.2001; Sch. 3 Pt. III para. 23 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. III para. 23 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); Sch. 3 Pt. III para. 23 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); Sch. 3 Pt. III para. 23 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### Marginal Citations

**M10** 1974 c. 39.

- 24 (1) Sub-paragraph (2) applies if a UK firm—
- (a) is not required to have a Part IV permission in relation to the business which it is carrying on; and
  - (b) is exercising the right conferred by [<sup>F72</sup>[<sup>F73</sup>Article 24] of the banking consolidation directive] to carry on that business in an EEA State other than the United Kingdom.
- (2) If requested to do so by the host state regulator in the EEA State in which the UK firm’s business is being carried on, the Authority may impose any requirement in relation to the firm which it could impose if—
- (a) the firm had a Part IV permission in relation to the business which it is carrying on; and
  - (b) the Authority was entitled to exercise its power under that Part to vary that permission.

#### Textual Amendments

**F72** Words in Sch. 3 Pt. III para. 24(1)(b) substituted (22.11.2000) by [S.I. 2000/2952](#), [reg. 8\(5\)\(f\)](#)

**F73** Words in Sch. 3 para. 24(1)(b) substituted (1.1.2007) by [The Capital Requirements Regulations 2006 \(S.I. 2006/3221\)](#), [reg. 29\(1\)](#), [Sch. 3 para. 2\(4\)](#)

#### Commencement Information

**I26** Sch. 3 Pt. III para. 24 wholly in force at 1.12.2001; Sch. 3 Pt. III para. 24 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. III para. 24 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); Sch. 3 Pt. III para. 24 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); Sch. 3 Pt. III para. 24 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

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*Information to be included in the public record*

- [<sup>F52</sup>25 The Authority must include in the record that it maintains under section 347 in relation to any UK firm whose EEA right derives from the insurance mediation directive information as to each EEA State in which the UK firm, in accordance with such a right—
- (a) has established a branch; or
  - (b) is providing services.

VALID FROM 01/07/2011

*UK management companies: delegation of functions*

- [<sup>F74</sup>  
<sup>F74</sup>26 Where a UK firm which is a management company and is providing services in the exercise of an EEA right to an EEA UCITS informs the Authority that it has delegated one or more of its functions to a third party, the Authority must transmit that information to the home state regulator of the EEA UCITS without delay.]

**Textual Amendments**

- F74** Sch. 3 paras. 26-28 inserted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), **reg. 2(33)(n)**

VALID FROM 01/07/2011

*UK management companies: withdrawal of authorisation*

- 27 Where a UK firm which is a management company has exercised an EEA right deriving from the UCITS directive to establish a branch or to provide services in another EEA State, the Authority must consult the home state regulator of any UCITS managed by that management company before taking a decision to withdraw the authorisation of the management company under section 33.

**Textual Amendments**

- F74** Sch. 3 paras. 26-28 inserted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), **reg. 2(33)(n)**

VALID FROM 01/07/2011

*Management companies: request for information*

- 28 (1) Where a UK firm has applied to manage a UCITS which is established in another EEA State, the home state regulator of the UCITS may—
- (a) request further information from the Authority regarding the documents referred to in Article 20.1 of the UCITS directive, and

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(b) ask the Authority whether the type of UCITS for which the UK firm has applied to provide its services falls within the scope of the authorisation of the UK firm.

(2) The Authority must respond to a request under sub-paragraph (1)(a) or (b) within 10 working days of the date on which the request was received.]]

#### Textual Amendments

**F74** Sch. 3 paras. 26-28 inserted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(33\)\(n\)](#)

## SCHEDULE 4

Section 31(1)(c).

### TREATY RIGHTS

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

**C39** Sch. 4 extended (1.12.2001) by [S.I. 2001/2636](#), [arts. 1\(2\)\(b\)](#), 28-32; [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### Definitions

- 1 In this Schedule—
- “consumers” means persons who are consumers for the purposes of section 138;
- “Treaty firm” means a person—
- (a) whose head office is situated in an EEA State (its “home state”) other than the United Kingdom; and
  - (b) which is recognised under the law of that State as its national; and
- “home state regulator”, in relation to a Treaty firm, means the competent authority of the firm’s home state for the purpose of its home state authorisation (as to which see paragraph 3(1)(a)).

#### *Firms qualifying for authorisation*

- 2 Once a Treaty firm which is seeking to carry on a regulated activity satisfies the conditions set out in paragraph 3(1), it qualifies for authorisation.

#### *Exercise of Treaty rights*

- 3 (1) The conditions are that—
- (a) the firm has received authorisation (“home state authorisation”) under the law of its home state to carry on the regulated activity in question (“the permitted activity”);
  - (b) the relevant provisions of the law of the firm’s home state—

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- (i) afford equivalent protection; or
    - (ii) satisfy the conditions laid down by a Community instrument for the co-ordination or approximation of laws, regulations or administrative provisions of member States relating to the carrying on of that activity; and
  - (c) the firm has no EEA right to carry on that activity in the manner in which it is seeking to carry it on.
- (2) A firm is not to be regarded as having home state authorisation unless its home state regulator has so informed the Authority in writing.
  - (3) Provisions afford equivalent protection if, in relation to the firm's carrying on of the permitted activity, they afford consumers protection which is at least equivalent to that afforded by or under this Act in relation to that activity.
  - (4) A certificate issued by the Treasury that the provisions of the law of a particular EEA State afford equivalent protection in relation to the activities specified in the certificate is conclusive evidence of that fact.

#### **Commencement Information**

**I27** Sch. 4 para. 3 wholly in force at 1.12.2001; Sch. 4 para. 3 not in force at Royal Assent see s. 431(2); Sch. 4 para. 3 force for specified purposes at 3.9.2001 by [S.I. 2001/2632, art. 2\(2\)](#), [Sch. Pt. 2](#); Sch. 4 para. 3 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538, art. 2\(1\)](#)

#### *Permission*

- 4 (1) On qualifying for authorisation under this Schedule, a Treaty firm has permission to carry on each permitted activity through its United Kingdom branch or by providing services in the United Kingdom.
- (2) The permission is to be treated as being on terms equivalent to those to which the firm's home state authorisation is subject.
- (3) If, on qualifying for authorisation under this Schedule, a firm has a Part IV permission which includes permission to carry on a permitted activity, the Authority must give a direction cancelling the permission so far as it relates to that activity.
- (4) The Authority need not give a direction under sub-paragraph (3) if it considers that there are good reasons for not doing so.

#### *Notice to Authority*

- 5 (1) Sub-paragraph (2) applies to a Treaty firm which—
  - (a) qualifies for authorisation under this Schedule, but
  - (b) is not carrying on in the United Kingdom the regulated activity, or any of the regulated activities, which it has permission to carry on there.
- (2) At least seven days before it begins to carry on such a regulated activity, the firm must give the Authority written notice of its intention to do so.
- (3) If a Treaty firm to which sub-paragraph (2) applies has given notice under that sub-paragraph, it need not give such a notice if it again becomes a firm to which that sub-paragraph applies.

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- (4) Subsections (1), (3) and (6) of section 51 apply to a notice under sub-paragraph (2) as they apply to an application for a Part IV permission.

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

**C40** Sch. 4 para. 5(1) amended (*temp.* from 3.9.2001 to 1.12.2001) by [S.I. 2001/2659](#), [arts. 1\(2\), 3\(12\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

**Commencement Information**

**I28** Sch. 4 para. 5 wholly in force at 1.12.2001; Sch. 4 para. 5 not in force at Royal Assent see s. 431(2); Sch. 4 para. 5 force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); Sch. 4 para. 5 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

*Offences*

- 6 (1) A person who contravenes paragraph 5(2) is guilty of an offence.
- (2) In proceedings against a person for an offence under sub-paragraph (1) it is a defence for him to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (3) A person is guilty of an offence if in, or in connection with, a notice given by him under paragraph 5(2) he—
- (a) provides information which he knows to be false or misleading in a material particular; or
  - (b) recklessly provides information which is false or misleading in a material particular.
- (4) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

SCHEDULE 5

Section 36.

PERSONS CONCERNED IN COLLECTIVE INVESTMENT SCHEMES

*Authorisation*

- 1 (1) A person who for the time being is an operator, trustee or depositary of a recognised collective investment scheme is an authorised person.
- (2) “Recognised” means recognised by virtue of section 264.
- (3) An authorised open-ended investment company is an authorised person.
- <sup>F75</sup>(4) A body—
- (a) incorporated by virtue of regulations made under section 1 of the Open-Ended Investment Companies Act (Northern Ireland) 2002 in respect of which an authorisation order is in force, and
  - (b) to which the UCITS directive applies,

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is an authorised person.

- (5) “Authorisation order” means an order made under (or having effect as made under) any provision of those regulations which is made by virtue of section 1(2)(1) of that Act (provision corresponding to Chapter 3 of Part 17 of the Act).]

#### Textual Amendments

**F75** Sch. 5 para. 1(4)(5) inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg 10(a)**

#### Permission

- 2 (1) A person authorised as a result of paragraph 1(1) has permission to carry on, so far as it is a regulated activity—
- (a) any activity, appropriate to the capacity in which he acts in relation to the scheme, of the kind described in paragraph 8 of Schedule 2;
  - (b) any activity in connection with, or for the purposes of, the scheme.
- (2) A person authorised as a result of paragraph 1(3) [<sup>F76</sup>or (4)] has permission to carry on, so far as it is a regulated activity—
- (a) the operation of the scheme;
  - (b) any activity in connection with, or for the purposes of, the operation of the scheme.

#### Textual Amendments

**F76** Words in Sch. 5 para. 2(2) inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg 10(b)**

## SCHEDULE 6

Section 41.

### THRESHOLD CONDITIONS

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

**C41** Sch. 6 modified (3.9.2001) by [S.I. 2001/2507](#), **arts. 1(1), 3(1)**; [S.I. 2001/2632](#), art. 2(2), **Sch. Pt. 2**

## PART I

### PART IV PERMISSION

#### Legal status

- 1 (1) If the regulated activity concerned is the effecting or carrying out of contracts of insurance the authorised person must be a body corporate [<sup>F77</sup>(other than a limited liability partnership)], a registered friendly society or a member of Lloyd’s.



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- (2) If the person concerned appears to the Authority to be seeking to carry on, or to be carrying on, a regulated activity constituting accepting deposits [<sup>F78</sup>or issuing electronic money], it must be—
- (a) a body corporate; or
  - (b) a partnership.

#### Textual Amendments

- F77** Words in Sch. 6 para. 1(1) inserted (3.9.2001) by S.I. 2001/2507, arts. 1(1), 2; S.I. 2001/2632, art. 2(2), Sch. Pt. 2
- F78** Words in Sch. 6 para. 1(2) inserted (11.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), art. 8

#### Location of offices

- 2 (1) [<sup>F79</sup>Subject to sub-paragraph (3),] if the person concerned is a body corporate constituted under the law of any part of the United Kingdom—
- (a) its head office, and
  - (b) if it has a registered office, that office,
- must be in the United Kingdom.
- (2) If the person concerned has its head office in the United Kingdom but is not a body corporate, it must carry on business in the United Kingdom.
- [<sup>F80</sup>(3) If the regulated activity concerned is an insurance mediation activity, sub-paragraph (1) does not apply.
- (4) If the regulated activity concerned is an insurance mediation activity, the person concerned—
- (a) if he is a body corporate constituted under the law of any part of the United Kingdom, must have its registered office, or if it has no registered office, its head office, in the United Kingdom;
  - (b) if he is a natural person, is to be treated for the purposes of sub-paragraph (2), as having his head office in the United Kingdom if his residence is situated there.
- (5) “Insurance mediation activity” means any of the following activities—
- (a) dealing in rights under a contract of insurance as agent;
  - (b) arranging deals in rights under a contract of insurance;
  - (c) assisting in the administration and performance of a contract of insurance;
  - (d) advising on buying or selling rights under a contract of insurance;
  - (e) agreeing to do any of the activities specified in sub-paragraph (a) to (d).
- (6) Paragraph (5) must be read with—
- (a) section 22;
  - (b) any relevant order under that section; and
  - (c) Schedule 2.]

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#### Textual Amendments

- F79** Words in [Sch. 6 para. 2\(1\)](#) inserted (31.10.2004 for certain purposes, otherwise 14.1.2005) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(3), **19(a)**
- F80** [Sch. 6 para. 2\(3\)-\(6\)](#) inserted (31.10.2004 for certain purposes, otherwise 14.1.2005) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(3), **19(b)**

#### *Appointment of claims representatives*

- <sup>F81</sup> (1) If it appears to the Authority that—
- <sup>F81</sup>2A (a) the regulated activity that the person concerned is carrying on, or is seeking to carry on, is the effecting or carrying out of contracts of insurance, and
- (b) contracts of insurance against damage arising out of or in connection with the use of motor vehicles on land (other than carrier’s liability) are being, or will be, effected or carried out by the person concerned,
- that person must have a claims representative in each EEA State other than the United Kingdom.
- (2) For the purposes of sub-paragraph (1)(b), contracts of reinsurance are to be disregarded.
- (3) A claims representative is a person with responsibility for handling and settling claims arising from accidents of the kind mentioned in Article 1(2) of the fourth motor insurance directive.
- (4) In this paragraph “fourth motor insurance directive” means Directive [2000/26/EC](#) of the European Parliament and of the Council of 16th May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives [73/239/EEC](#) and [88/357/EEC](#).]]

#### Textual Amendments

- F81** [Sch. 6 para. 2A](#) inserted (19.1.2003) by [The Financial Services and Markets Act 2000 \(Variation of Threshold Conditions\) Order 2002 \(S.I. 2002/2707\)](#), **art. 2**

#### *Close links*

- 3 (1) If the person concerned (“A”) has close links with another person (“CL”) the Authority must be satisfied—
- (a) that those links are not likely to prevent the Authority’s effective supervision of A; and
- (b) if it appears to the Authority that CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State (“the foreign provisions”), that neither the foreign provisions, nor any deficiency in their enforcement, would prevent the Authority’s effective supervision of A.
- (2) A has close links with CL if—

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- (a) CL is a parent undertaking of A;
  - (b) CL is a subsidiary undertaking of A;
  - (c) CL is a parent undertaking of a subsidiary undertaking of A;
  - (d) CL is a subsidiary undertaking of a parent undertaking of A;
  - (e) CL owns or controls 20% or more of the voting rights or capital of A; or
  - (f) A owns or controls 20% or more of the voting rights or capital of CL.
- (3) “Subsidiary undertaking” includes all the instances mentioned in Article 1(1) and (2) of the Seventh Company Law Directive in which an entity may be a subsidiary of an undertaking.

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

**C42** Sch. 6 para. 3 restricted (3.9.2001) by S.I. 2001/2507, arts. 1(1), 3(3); S.I. 2001/2632, art. 2(2), Sch. Pt. 2

*Adequate resources*

- 4 (1) The resources of the person concerned must, in the opinion of the Authority, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.
- (2) In reaching that opinion, the Authority may—
- (a) take into account the person’s membership of a group and any effect which that membership may have; and
  - (b) have regard to—
    - (i) the provision he makes and, if he is a member of a group, which other members of the group make in respect of liabilities (including contingent and future liabilities); and
    - (ii) the means by which he manages and, if he is a member of a group, which other members of the group manage the incidence of risk in connection with his business.

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

**C43** Sch. 6 para. 4 restricted (3.9.2001) by S.I. 2001/2507, arts. 1(1), 3(3); S.I. 2001/2632, art. 2(2), Sch. Pt. 2

*Suitability*

- 5 The person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including—
- (a) his connection with any person;
  - (b) the nature of any regulated activity that he carries on or seeks to carry on; and
  - (c) the need to ensure that his affairs are conducted soundly and prudently.

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

**C44** Sch. 6 para. 5 restricted (3.9.2001) by S.I. 2001/2507, arts. 1(1), 3(3); S.I. 2001/2632, art. 2(2), Sch. Pt. 2

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## PART II

### AUTHORISATION

#### *Authorisation under Schedule 3*

- 6 In relation to an EEA firm qualifying for authorisation under Schedule 3, the conditions set out in paragraphs 1 and 3 to 5 apply, so far as relevant, to—
- (a) an application for permission under Part IV;
  - (b) exercise of the Authority’s own-initiative power under section 45 in relation to a Part IV permission.

#### *Authorisation under Schedule 4*

- 7 In relation to a person who qualifies for authorisation under Schedule 4, the conditions set out in paragraphs 1 and 3 to 5 apply, so far as relevant, to—
- (a) an application for an additional permission;
  - (b) the exercise of the Authority’s own-initiative power under section 45 in relation to additional permission.

## PART III

### ADDITIONAL CONDITIONS

- 8 (1) If this paragraph applies to the person concerned, he must, for the purposes of such provisions of this Act as may be specified, satisfy specified additional conditions.
- (2) This paragraph applies to a person who—
- (a) has his head office outside the EEA; and
  - (b) appears to the Authority to be seeking to carry on a regulated activity relating to insurance business.
- (3) “Specified” means specified in, or in accordance with, an order made by the Treasury.

#### **Commencement Information**

**I29** Sch. 6 Pt. III para. 8 wholly in force at 3.9.2001; Sch. 6 Pt. III para. 8 not in force at Royal Assent see s. 431(2); Sch. 6 Pt. III para. 8 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; Sch. 6 Pt. III para. 8 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2

- 9 The Treasury may by order—
- (a) vary or remove any of the conditions set out in Parts I and II;
  - (b) add to those conditions.

#### **Commencement Information**

**I30** Sch. 6 Pt. III para. 9 wholly in force at 3.9.2001; Sch. 6 Pt. III para. 9 not in force at Royal Assent see s. 431(2); Sch. 6 Pt. III para. 9 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b),

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Sch. Pt. 2; Sch. 6 Pt. III para. 9 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2

## SCHEDULE 7

Section 72(2).

### THE AUTHORITY AS COMPETENT AUTHORITY FOR PART VI

#### *General*

- 1 This Act applies in relation to the Authority when it is exercising functions under Part VI as the competent authority subject to the following modifications.

#### *The Authority's general functions*

- 2 In section 2—
- (a) subsection (4)(a) does not apply to [<sup>F82</sup>Part 6 rules];
  - (b) subsection (4)(c) does not apply to general guidance given in relation to Part VI; and
  - (c) subsection (4)(d) does not apply to functions under Part VI.

#### **Textual Amendments**

**F82** Words in Sch. 7 para. 2(a) substituted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, Sch. 1 para. 12

#### *Duty to consult*

- 3 Section 8 does not apply.

#### *Rules*

- 4 (1) Sections 149, 153, 154 and 156 do not apply.
- (2) Section 155 has effect as if—
- (a) the reference in subsection (2)(c) to the general duties of the Authority under section 2 were a reference to its duty under section 73; and
  - (b) section 99 were included in the provisions referred to in subsection (9).

#### *Statements of policy*

- 5 (1) Paragraph 5 of Schedule 1 has effect as if the requirement to act through the Authority's governing body applied also to the exercise of its functions of publishing statements under section 93.
- (2) Paragraph 1 of Schedule 1 has effect as if section 93 were included in the provisions referred to in sub-paragraph (2)(d).

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### *Penalties*

- 6 Paragraph 16 of Schedule 1 does not apply in relation to penalties under Part VI (for which separate provision is made by section 100).

### *Fees*

- 7 Paragraph 17 of Schedule 1 does not apply in relation to fees payable under Part VI (for which separate provision is made by section 99).

### *Exemption from liability in damages*

- 8 Schedule 1 has effect as if—
- (a) sub-paragraph (1) of paragraph 19 were omitted (similar provision being made in relation to the competent authority by section 102); and
  - (b) for the words from the beginning to “(a)” in sub-paragraph (3) of that paragraph, there were substituted “ Sub-paragraph (2) does not apply ”.

## SCHEDULE 8

Section 72(3).

### **TRANSFER OF FUNCTIONS UNDER PART VI**

#### *The power to transfer*

- 1 (1) The Treasury may by order provide for any function conferred on the competent authority which is exercisable for the time being by a particular person to be transferred so as to be exercisable by another person.
- (2) An order may be made under this paragraph only if—
- (a) the person from whom the relevant functions are to be transferred has agreed in writing that the order should be made;
  - (b) the Treasury are satisfied that the manner in which, or efficiency with which, the functions are discharged would be significantly improved if they were transferred to the transferee; or
  - (c) the Treasury are satisfied that it is otherwise in the public interest that the order should be made.

#### *Supplemental*

- 2 (1) An order under this Schedule does not affect anything previously done by any person (“the previous authority”) in the exercise of functions which are transferred by the order to another person (“the new authority”).
- (2) Such an order may, in particular, include provision—
- (a) modifying or excluding any provision of Part VI, IX or XXVI in its application to any such functions;
  - (b) for reviews similar to that made, in relation to the Authority, by section 12;
  - (c) imposing on the new authority requirements similar to those imposed, in relation to the Authority, by sections 152, 155 and 354;

*Status: Point in time view as at 13/02/2007.*

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- (d) as to the giving of guidance by the new authority;
  - (e) for the delegation by the new authority of the exercise of functions under Part VI and as to the consequences of delegation;
  - (f) for the transfer of any property, rights or liabilities relating to any such functions from the previous authority to the new authority;
  - (g) for the carrying on and completion by the new authority of anything in the process of being done by the previous authority when the order takes effect;
  - (h) for the substitution of the new authority for the previous authority in any instrument, contract or legal proceedings;
  - (i) for the transfer of persons employed by the previous authority to the new authority and as to the terms on which they are to transfer;
  - (j) making such amendments to any primary or subordinate legislation (including any provision of, or made under, this Act) as the Treasury consider appropriate in consequence of the transfer of functions effected by the order.
- (3) Nothing in this paragraph is to be taken as restricting the powers conferred by section 428.
- 3 If the Treasury have made an order under paragraph 1 (“the transfer order”) they may, by a separate order made under this paragraph, make any provision of a kind that could have been included in the transfer order.

F83F83 SCHEDULE 9

**Textual Amendments**

**F83** Sch. 9 repealed (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 16**

SCHEDULE 10

Section 90(2) and (5).

COMPENSATION: EXEMPTIONS

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

**C45** Sch. 10 restricted (1.12.2001) by [S.I. 2001/2957](#), **arts. 1, 7(3)**; [S.I. 2001/3538](#), **art. 2(1)**

*Statements believed to be true*

- 1 (1) In this paragraph “statement” means—
- (a) any untrue or misleading statement in listing particulars; or
  - (b) the omission from listing particulars of any matter required to be included by section 80 or 81.



*Status: Point in time view as at 13/02/2007.*

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- (2) A person does not incur any liability under section 90(1) for loss caused by a statement if he satisfies the court that, at the time when the listing particulars were submitted to the competent authority, he reasonably believed (having made such enquiries, if any, as were reasonable) that—
- (a) the statement was true and not misleading, or
  - (b) the matter whose omission caused the loss was properly omitted,
- and that one or more of the conditions set out in sub-paragraph (3) are satisfied.
- (3) The conditions are that—
- (a) he continued in his belief until the time when the securities in question were acquired;
  - (b) they were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire them;
  - (c) before the securities were acquired, he had taken all such steps as it was reasonable for him to have taken to secure that a correction was brought to the attention of those persons;
  - (d) he continued in his belief until after the commencement of dealings in the securities following their admission to the official list and they were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused.

#### *Statements by experts*

- 2 (1) In this paragraph “statement” means a statement included in listing particulars which—
- (a) purports to be made by, or on the authority of, another person as an expert; and
  - (b) is stated to be included in the listing particulars with that other person’s consent.
- (2) A person does not incur any liability under section 90(1) for loss in respect of any securities caused by a statement if he satisfies the court that, at the time when the listing particulars were submitted to the competent authority, he reasonably believed that the other person—
- (a) was competent to make or authorise the statement, and
  - (b) had consented to its inclusion in the form and context in which it was included,
- and that one or more of the conditions set out in sub-paragraph (3) are satisfied.
- (3) The conditions are that—
- (a) he continued in his belief until the time when the securities were acquired;
  - (b) they were acquired before it was reasonably practicable to bring the fact that the expert was not competent, or had not consented, to the attention of persons likely to acquire the securities in question;
  - (c) before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that that fact was brought to the attention of those persons;
  - (d) he continued in his belief until after the commencement of dealings in the securities following their admission to the official list and they were acquired

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after such a lapse of time that he ought in the circumstances to be reasonably excused.

*Corrections of statements*

- 3 (1) In this paragraph “statement” has the same meaning as in paragraph 1.
- (2) A person does not incur liability under section 90(1) for loss caused by a statement if he satisfies the court—
- (a) that before the securities in question were acquired, a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities; or
  - (b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.
- (3) Nothing in this paragraph is to be taken as affecting paragraph 1.

*Corrections of statements by experts*

- 4 (1) In this paragraph “statement” has the same meaning as in paragraph 2.
- (2) A person does not incur liability under section 90(1) for loss caused by a statement if he satisfies the court—
- (a) that before the securities in question were acquired, the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities; or
  - (b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.
- (3) Nothing in this paragraph is to be taken as affecting paragraph 2.

*Official statements*

- 5 A person does not incur any liability under section 90(1) for loss resulting from—
- (a) a statement made by an official person which is included in the listing particulars, or
  - (b) a statement contained in a public official document which is included in the listing particulars,
- if he satisfies the court that the statement is accurately and fairly reproduced.

*False or misleading information known about*

- 6 A person does not incur any liability under section 90(1) or (4) if he satisfies the court that the person suffering the loss acquired the securities in question with knowledge—
- (a) that the statement was false or misleading,
  - (b) of the omitted matter, or
  - (c) of the change or new matter,
- as the case may be.

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*Belief that supplementary listing particulars not called for*

- 7 A person does not incur any liability under section 90(4) if he satisfies the court that he reasonably believed that the change or new matter in question was not such as to call for supplementary listing particulars.

*Meaning of “expert”*

- 8 “Expert” includes any engineer, valuer, accountant or other person whose profession, qualifications or experience give authority to a statement made by him.

VALID FROM 01/10/2010

[<sup>F84</sup>SCHEDULE 10A

Section 90A

LIABILITY OF ISSUERS IN CONNECTION WITH PUBLISHED INFORMATION

**Textual Amendments**

**F84** Sch. 10A inserted (1.10.2010 with effect in accordance with reg. 3(1) of the amending S.I.) by [The Financial Services and Markets Act 2000 \(Liability of Issuers\) Regulations 2010 \(S.I. 2010/1192\)](#), reg. 2(3), [Sch.](#)

[<sup>F85F85</sup>SCHEDULE 11

**Textual Amendments**

**F85** Sch. 11 repealed (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 16](#)

[<sup>F1</sup>SCHEDULE 11A

Section 85(5)(a)

TRANSFERABLE SECURITIES

**PART 1**

- 1 Units (within the meaning in section 237(2)) in an open-ended collective investment scheme.
- 2 Non-equity transferable securities issued by

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- (a) the government of an EEA State;
  - (b) a local or regional authority of an EEA State;
  - (c) a public international body of which an EEA State is a member;
  - (d) the European Central Bank;
  - (e) the central bank of an EEA State.
- 3 Shares in the share capital of the central bank of an EEA State.
- 4 Transferable securities unconditionally and irrevocably guaranteed by the government, or a local or regional authority, of an EEA State.
- 5 (1) Non-equity transferable securities, issued in a continuous or repeated manner by a credit institution, which satisfy the conditions in sub-paragraph (2).
- (2) The conditions are that the transferable securities—
- (a) are not subordinated, convertible or exchangeable;
  - (b) do not give a right to subscribe to or acquire other types of securities and are not linked to a derivative instrument;
  - (c) materialise reception of repayable deposits; and
  - (d) are covered by a deposit guarantee under directive 94/19/EC of the European Parliament and of the Council on deposit-guarantee schemes.
- 6 Non-fungible shares of capital—
- (a) the main purpose of which is to provide the holder with a right to occupy any immovable property, and
  - (b) which cannot be sold without that right being given up.

## PART 2]

- 7 (1) Transferable securities issued by a body specified in sub-paragraph (2) if, and only if, the proceeds of the offer of the transferable securities to the public will be used solely for the purposes of the issuer's objectives.
- (2) The bodies are
- (a) a charity within the meaning of—
    - (i) section 96(1) of the Charities Act 1993 (c. 10), or
    - (ii) section 35 of the Charities Act (Northern Ireland) 1964 (c. 33 (N.I.));
  - [<sup>F90</sup>(b) a body entered in the Scottish Charity Register;]
  - (c) a housing association within the meaning of—
    - (i) section 5(1) of the Housing Act 1985 (c. 68),
    - (ii) section 1 of the Housing Associations Act 1985 (c. 69), or
    - (iii) Article 3 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15));
  - (d) an industrial and provident society registered in accordance with—
    - (i) section 1(2)(b) of the Industrial and Provident Societies Act 1965 (c. 12), or
    - (ii) section 1(2)(b) of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.));

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- (e) a non-profit making association or body recognised by an EEA State with objectives similar to those of a body falling within any of sub-paragraphs (a) to (d).

#### Textual Amendments

**F90** Sch. 11A para. 7(2)(b) substituted (1.4.2006) by The Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242), arts. 1(3), 5, **Sch. para. 7**

- 8 (1) Non-equity transferable securities, issued in a continuous or repeated manner by a credit institution, which satisfy the conditions in sub-paragraph (2).
- (2) The conditions are—
- (a) that the total consideration of the offer is less than 50,000,000 euros (or an equivalent amount); and
- (b) those mentioned in paragraph 5(2)(a) and (b).
- (3) In determining whether sub-paragraph (2)(a) is satisfied in relation to an offer (“offer A”), offer A is to be taken together with any other offer of transferable securities of the same class made by the same person which—
- (a) was open at any time within the period of 12 months ending with the date on which offer A is first made; and
- (b) had previously satisfied sub-paragraph (2)(a).
- (4) For the purposes of this paragraph, an amount (in relation to an amount denominated in euros) is an “equivalent amount” if it is an amount of equal value denominated wholly or partly in another currency or unit of account.
- (5) The equivalent is to be calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made.
- (6) “Credit institution” means a credit institution as defined in [F91 Article 4(1)(a)] of the banking consolidation directive.

#### Textual Amendments

**F91** Words in Sch. 11A para. 8(6) substituted (1.1.2007) by The Capital Requirements Regulations 2006 (S.I. 2006/3221), reg. 29(1), **Sch. 3 para. 3**

- 9 (1) Transferable securities included in an offer where the total consideration of the offer is less than 2,500,000 euros (or an equivalent amount).
- (2) Sub-paragraphs (3) to (5) of paragraph 8 apply for the purposes of this paragraph but with the references in sub-paragraph (3) to “sub-paragraph (2)(a)” being read as references to “paragraph 9(1)”.

*Status: Point in time view as at 13/02/2007.*

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VALID FROM 01/10/2009

[<sup>F92</sup>SCHEDULE 11B

Section 96B(2)

CONNECTED PERSONS

**Textual Amendments**

**F92** Sch. 11B inserted (1.10.2009) by [The Financial Services and Markets Act 2000 \(Amendment\) Regulations 2009 \(S.I. 2009/2461\)](#), reg. 2(2)(3), **Sch.** (this amendment supersedes the amendment in para. 181(2) of Sch. 1 to the [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#))

SCHEDULE 12

Sections 111(2) and 115.

TRANSFER SCHEMES: CERTIFICATES

**PART I**

INSURANCE BUSINESS TRANSFER SCHEMES

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

**C47** Sch. 12 Pt. I (paras. 1-6) applied (1.12.2001) by [S.I. 2001/3626](#), **arts. 1, 3(c)**

- 1 (1) For the purposes of section 111(2) the appropriate certificates, in relation to an insurance business transfer scheme, are—
- (a) a certificate under paragraph 2;
  - (b) if sub-paragraph (2) applies, a certificate under paragraph 3;
  - (c) if sub-paragraph (3) applies, a certificate under paragraph 4;
  - (d) if sub-paragraph (4) applies, a certificate under paragraph 5.
- (2) This sub-paragraph applies if—
- (a) the authorised person concerned is a UK authorised person which has received authorisation under [<sup>F93</sup>Article 4 of the life assurance consolidation directive or Article 6] or of the first non-life insurance directive from the Authority; and
  - (b) the establishment from which the business is to be transferred under the proposed insurance business transfer scheme is in an EEA State other than the United Kingdom.
- (3) This sub-paragraph applies if—

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- (a) the authorised person concerned has received authorisation under [<sup>F94</sup> Article 4 of the life assurance consolidation directive] from the Authority;
  - (b) the proposed transfer relates to business which consists of the effecting or carrying out of contracts of long-term insurance; and
  - (c) as regards any policy which is included in the proposed transfer and which evidences a contract of insurance (other than reinsurance), an EEA State other than the United Kingdom is the State of the commitment.
- (4) This sub-paragraph applies if—
- (a) the authorised person concerned has received authorisation under Article 6 of the first non-life insurance directive from the Authority;
  - (b) the business to which the proposed insurance business transfer scheme relates is business which consists of the effecting or carrying out of contracts of general insurance; and
  - (c) as regards any policy which is included in the proposed transfer and which evidences a contract of insurance (other than reinsurance), the risk is situated in an EEA State other than the United Kingdom.

#### Textual Amendments

**F93** Words in Sch. 12 para. 1(2)(a) substituted (11.1.2005) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), reg. 6(7)(a)(i)

**F94** Words in Sch. 12 para. 1(3)(a) substituted (11.1.2005) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), reg. 6(7)(a)(ii)

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

**C48** Sch. 12 Pt. I para. 1(2)(a)(3)(a)(4)(a) modified (1.12.2001) by S.I. 2001/3626, arts. 1, 5(2)

#### *Certificates as to margin of solvency*

- 2 (1) A certificate under this paragraph is to be given—
- (a) by the relevant authority; or
  - (b) in a case in which there is no relevant authority, by the Authority.
- (2) A certificate given under sub-paragraph (1)(a) is one certifying that, taking the proposed transfer into account—
- (a) the transferee possesses, or will possess before the scheme takes effect, the necessary margin of solvency; or
  - (b) there is no necessary margin of solvency applicable to the transferee.
- (3) A certificate under sub-paragraph (1)(b) is one certifying that the Authority has received from the authority which it considers to be the authority responsible for supervising persons who effect or carry out contracts of insurance in the place to which the business is to be transferred that, taking the proposed transfer into account—
- (a) the transferee possesses or will possess before the scheme takes effect the margin of solvency required under the law applicable in that place; or
  - (b) there is no such margin of solvency applicable to the transferee .



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- (4) “Necessary margin of solvency” means the margin of solvency required in relation to the transferee, taking the proposed transfer into account, under the law which it is the responsibility of the relevant authority to apply.
- (5) “Margin of solvency” means the excess of the value of the assets of the transferee over the amount of its liabilities.
- (6) “Relevant authority” means—
- (a) if the transferee is an EEA firm falling within paragraph 5(d) of Schedule 3, its home state regulator;
  - (b) if the transferee is a Swiss general insurer, the authority responsible in Switzerland for supervising persons who effect or carry out contracts of insurance;
  - (c) if the transferee is an authorised person not falling within paragraph (a) or (b), the Authority.
- (7) In sub-paragraph (6), any reference to a transferee of a particular description includes a reference to a transferee who will be of that description if the proposed scheme takes effect.
- (8) “Swiss general insurer” means a body—
- (a) whose head office is in Switzerland;
  - (b) which has permission to carry on regulated activities consisting of the effecting and carrying out of contracts of general insurance; and
  - (c) whose permission is not restricted to the effecting or carrying out of contracts of reinsurance.

*Certificates as to consent*

- 3 A certificate under this paragraph is one given by the Authority and certifying that the host State regulator has been notified of the proposed scheme and that—
- (a) that regulator has responded to the notification; or
  - (b) that it has not responded but the period of three months beginning with the notification has elapsed.

*Certificates as to long-term business*

- 4 A certificate under this paragraph is one given by the Authority and certifying that the authority responsible for supervising persons who effect or carry out contracts of insurance in the State of the commitment has been notified of the proposed scheme and that—
- (a) that authority has consented to the proposed scheme; or
  - (b) the period of three months beginning with the notification has elapsed and that authority has not refused its consent.

*Certificates as to general business*

- 5 A certificate under this paragraph is one given by the Authority and certifying that the authority responsible for supervising persons who effect or carry out contracts of insurance in the EEA State in which the risk is situated has been notified of the proposed scheme and that—
- (a) that authority has consented to the proposed scheme; or

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- (b) the period of three months beginning with the notification has elapsed and that authority has not refused its consent.

VALID FROM 10/12/2007

*[<sup>F95</sup>Certificates as to legality and as to consent*

**Textual Amendments**

**F95** Sch. 12 para. 5A and cross-heading inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(5\)\(f\)](#)

- 5A (1) The certificates under this paragraph are to be given—
- (a) in the case of the certificate under sub-paragraph (2), by the Authority;
  - (b) in the case of the certificate under sub-paragraph (3), by the relevant authority.
- (2) A certificate given under this sub-paragraph is one certifying that the relevant authority has been notified of the proposed scheme and that—
- (a) the relevant authority has consented to the proposed scheme; or
  - (b) the period of three months beginning with the notification has elapsed and that relevant authority has not refused its consent.
- (3) A certificate given under this sub-paragraph is one certifying that the law of the EEA State in which the transferee is set up permits such a transfer.
- (4) “Relevant authority” means the competent authorities (within the meaning of the insurance directives) of the EEA State in which the transferee is set up.]

*Interpretation of Part I*

- 6 (1) “State of the commitment”, in relation to a commitment entered into at any date, means—
- (a) if the policyholder is an individual, the State in which he had his habitual residence at that date;
  - (b) if the policyholder is not an individual, the State in which the establishment of the policyholder to which the commitment relates was situated at that date.
- (2) “Commitment” means a commitment represented by contracts of insurance of a prescribed class.
- (3) References to the EEA State in which a risk is situated are—
- (a) if the insurance relates to a building or to a building and its contents (so far as the contents are covered by the same policy), to the EEA State in which the building is situated;
  - (b) if the insurance relates to a vehicle of any type, to the EEA State of registration;

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- (c) in the case of policies of a duration of four months or less covering travel or holiday risks (whatever the class concerned), to the EEA State in which the policyholder took out the policy;
- (d) in a case not covered by paragraphs (a) to (c)—
  - (i) if the policyholder is an individual, to the EEA State in which he has his habitual residence at the date when the contract is entered into; and
  - (ii) otherwise, to the EEA State in which the establishment of the policyholder to which the policy relates is situated at that date.

#### Commencement Information

**I31** Sch. 12 Pt I para. 6 wholly in force at 1.12.2001; Sch. 12 Pt. I para. 6 not in force at Royal Assent see s. 431(2); Sch. 12 para. 6(2) in force at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pts. 1, 3; Sch. 12 Pt. I para. 6 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

## PART II

### BANKING BUSINESS TRANSFER SCHEMES

- 7 (1) For the purposes of section 111(2) the appropriate certificates, in relation to a banking business transfer scheme, are—
- (a) a certificate under paragraph 8; and
  - (b) if sub-paragraph (2) applies, a certificate under paragraph 9.
- (2) This sub-paragraph applies if the authorised person concerned or the transferee is an EEA firm falling within paragraph 5(b) of Schedule 3.

#### *Certificates as to financial resources*

- 8 (1) A certificate under this paragraph is one given by the relevant authority and certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.
- (2) “Relevant authority” means—
- (a) if the transferee is a person with a Part IV permission or with permission under Schedule 4, the Authority;
  - (b) if the transferee is an EEA firm falling within paragraph 5(b) of Schedule 3, its home state regulator;
  - (c) if the transferee does not fall within paragraph (a) or (b), the authority responsible for the supervision of the transferee’s business in the place in which the transferee has its head office.
- (3) In sub-paragraph (2), any reference to a transferee of a particular description of person includes a reference to a transferee who will be of that description if the proposed banking business transfer scheme takes effect.

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### *Certificates as to consent of home state regulator*

- 9 A certificate under this paragraph is one given by the Authority and certifying that the home State regulator of the authorised person concerned or of the transferee has been notified of the proposed scheme and that—
- (a) the home State regulator has responded to the notification; or
  - (b) the period of three months beginning with the notification has elapsed.

VALID FROM 12/03/2009

## **[<sup>F96</sup>PART 2A**

### RECLAIM FUND BUSINESS TRANSFER SCHEMES

#### **Textual Amendments**

**F96** Sch. 12 Pt. 2A inserted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008](#) (c. 31), ss. 15, 31(1)(2), [Sch. 2 para. 5](#); S.I. 2009/490, [art. 2](#) (with art. 3)

### *Certificate as to financial resources*

- 9A For the purposes of section 111(2) the appropriate certificate, in relation to a reclaim fund business transfer scheme, is a certificate given by the Authority certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.]

## **PART III**

### INSURANCE BUSINESS TRANSFERS EFFECTED OUTSIDE THE UNITED KINGDOM

- 10 (1) This paragraph applies to a proposal to execute under provisions corresponding to Part VII in a country or territory other than the United Kingdom an instrument transferring all the rights and obligations of the transferor under general or long-term insurance policies, or under such descriptions of such policies as may be specified in the instrument, to the transferee if any of the conditions in sub-paragraphs (2), (3) or (4) is met in relation to it.
- (2) The transferor is an EEA firm falling within paragraph 5(d) of Schedule 3 and the transferee is an authorised person whose margin of solvency is supervised by the Authority.
- (3) The transferor is a company authorised in an EEA State other than the United Kingdom under [<sup>F97</sup>Article 51 of the life assurance consolidation directive], or Article 23 of the first non-life insurance directive and the transferee is a UK authorised person which has received authorisation under [<sup>F98</sup>Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive].

*Status: Point in time view as at 13/02/2007.*

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- (4) The transferor is a Swiss general insurer and the transferee is a UK authorised person which has received authorisation under [F99 Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive].
- (5) In relation to a proposed transfer to which this paragraph applies, the Authority may, if it is satisfied that the transferee possesses the necessary margin of solvency, issue a certificate to that effect.
- (6) “Necessary margin of solvency” means the margin of solvency which the transferee, taking the proposed transfer into account, is required by the Authority to maintain.
- (7) “Swiss general insurer” has the same meaning as in paragraph 2.
- (8) “General policy” means a policy evidencing a contract which, if it had been effected by the transferee, would have constituted the carrying on of a regulated activity consisting of the effecting of contracts of general insurance.
- (9) “Long-term policy” means a policy evidencing a contract which, if it had been effected by the transferee, would have constituted the carrying on of a regulated activity consisting of the effecting of contracts of long-term insurance.

#### Textual Amendments

- F97** Words in Sch. 12 para. 10(3) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), **reg. 6(7)(b)(i)**
- F98** Words in Sch. 12 para. 10(3) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), **reg. 6(7)(b)(ii)**
- F99** Words in Sch. 12 para. 10(4) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), **reg. 6(7)(c)**

## SCHEDULE 13

Section 132(4).

### THE FINANCIAL SERVICES AND MARKETS TRIBUNAL

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

- C49** Sch. 13 applied (with modifications) (13.3.2008) by [The Northern Rock plc Compensation Scheme Order 2008 \(S.I. 2008/718\)](#), arts. 1(2), 2, **Sch. paras. 15-19** (as amended (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2), 5(2), **Sch. 3 para. 158(e)-(i)**)
- C50** Sch. 13 applied (with modifications) (19.12.2008) by [The Bradford & Bingley plc Compensation Scheme Order 2008 \(S.I. 2008/3249\)](#), arts. 1(2), 2, **Sch. paras. 14-18** (as amended (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2), 5(2), **Sch. 3 para. 176(e)-(i)**)
- C51** Sch. 13 applied (with modifications) (30.7.2009) by [The Dunfermline Building Society Independent Valuer Order 2009 \(S.I. 2009/1810\)](#), **arts. 14-18** (as amended (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2), 5(2), **Sch. 3 paras. 195-199**)

*Status: Point in time view as at 13/02/2007.*

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## PART I

### GENERAL

#### *Interpretation*

- 1 In this Schedule—
- “panel of chairmen” means the panel established under paragraph 3(1);
  - “lay panel” means the panel established under paragraph 3(4);
  - “rules” means rules made by the Lord Chancellor under section 132.

## PART II

### THE TRIBUNAL

#### *President*

- 2
- (1) The Lord Chancellor must appoint one of the members of the panel of chairmen to preside over the discharge of the Tribunal’s functions.
  - (2) The member so appointed is to be known as the President of the Financial Services and Markets Tribunal (but is referred to in this Act as “the President”).
  - (3) The Lord Chancellor may appoint one of the members of the panel of chairmen to be Deputy President.
  - (4) The Deputy President is to have such functions in relation to the Tribunal as the President may assign to him.
  - (5) The Lord Chancellor may not appoint a person to be the President or Deputy President unless that person—
    - (a) has a ten year general qualification within the meaning of section 71 of the <sup>M24</sup>Courts and Legal Services Act 1990;
    - (b) is an advocate or solicitor in Scotland of at least ten years’ standing; or
    - (c) is—
      - (i) a member of the Bar of Northern Ireland of at least ten years’ standing; or
      - (ii) a solicitor of the Supreme Court of Northern Ireland of at least ten years’ standing.
  - (6) If the President (or Deputy President) ceases to be a member of the panel of chairmen, he also ceases to be the President (or Deputy President).
  - (7) The functions of the President may, if he is absent or is otherwise unable to act, be discharged—
    - (a) by the Deputy President; or
    - (b) if there is no Deputy President or he too is absent or otherwise unable to act, by a person appointed for that purpose from the panel of chairmen by the Lord Chancellor.

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- [<sup>F100</sup>(8) The Lord Chancellor may appoint a person under sub-paragraph (7)(b) only after consulting the following—
- (a) the Lord Chief Justice of England and Wales;
  - (b) the Lord President of the Court of Session;
  - (c) the Lord Chief Justice of Northern Ireland.
- (9) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this paragraph.
- (10) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under this paragraph.
- (11) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this paragraph—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

#### Textual Amendments

**F100** Sch. 13 para. 2(8)-(11) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148(1), Sch. 4 para. 286(2); S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 11(x)

#### Marginal Citations

**M24** 1990 c. 41.

### Panels

- 3 (1) The Lord Chancellor must appoint a panel of persons for the purposes of serving as chairmen of the Tribunal.
- (2) A person is qualified for membership of the panel of chairmen if—
- (a) he has a seven year general qualification within the meaning of section 71 of the <sup>M25</sup>Courts and Legal Services Act 1990;
  - (b) he is an advocate or solicitor in Scotland of at least seven years' standing; or
  - (c) he is—
    - (i) a member of the Bar of Northern Ireland of at least seven years' standing; or
    - (ii) a solicitor of the Supreme Court of Northern Ireland of at least seven years' standing.
- (3) The panel of chairmen must include at least one member who is a person of the kind mentioned in sub-paragraph (2)(b).
- (4) The Lord Chancellor must also appoint a panel of persons who appear to him to be qualified by experience or otherwise to deal with matters of the kind that may be referred to the Tribunal.

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#### Marginal Citations

M25 1990 c. 41.

#### *Terms of office etc*

- 4 (1) Subject to the provisions of this Schedule, each member of the panel of chairmen and the lay panel is to hold and vacate office in accordance with the terms of his appointment.
- (2) The Lord Chancellor may remove a member of either panel (including the President) on the ground of incapacity or misbehaviour.
- [<sup>F101</sup>(2A) The Lord Chancellor may remove a person under sub-paragraph (2) only with the concurrence of the appropriate senior judge.
- (2B) The appropriate senior judge is the Lord Chief Justice of England and Wales, unless—
- (a) the person to be removed exercises functions wholly or mainly in Scotland, in which case it is the Lord President of the Court of Session, or
  - (b) the person to be removed exercises functions wholly or mainly in Northern Ireland, in which case it is the Lord Chief Justice of Northern Ireland.]

(3) A member of either panel—

    - (a) may at any time resign office by notice in writing to the Lord Chancellor;
    - (b) is eligible for re-appointment if he ceases to hold office.

#### Textual Amendments

**F101** Sch. 13 para. 4(2A)(2B) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15(1), 148(1), [Sch. 4 para. 286\(3\)](#); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 paras. 10, 11(x)

#### *Remuneration and expenses*

- 5 The Lord Chancellor may pay to any person, in respect of his service—
- (a) as a member of the Tribunal (including service as the President or Deputy President), or
  - (b) as a person appointed under paragraph 7(4),
- such remuneration and allowances as he may determine.

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

**C52** Sch. 13 para. 5 applied (with modifications) (E.W.) (23.1.2007) by [Compensation Act 2006 \(c. 29\)](#), ss. 12(5)(a), 16(1); S.I. 2007/94, [art. 3\(a\)](#)



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### Staff

- 6
- (1) The Lord Chancellor may appoint such staff for the Tribunal as he may determine.
  - (2) The remuneration of the Tribunal's staff is to be defrayed by the Lord Chancellor.
  - (3) Such expenses of the Tribunal as the Lord Chancellor may determine are to be defrayed by the Lord Chancellor.

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

**C53** Sch. 13 para. 6 applied (with modifications) (E.W.) (23.1.2007) by [Compensation Act 2006 \(c. 29\)](#), [ss. 12\(5\)\(b\)](#), [16\(1\)](#); S.I. 2007/94, [art. 3\(a\)](#)

## PART III

### CONSTITUTION OF TRIBUNAL

- 7
- (1) On a reference to the Tribunal, the persons to act as members of the Tribunal for the purposes of the reference are to be selected from the panel of chairmen or the lay panel in accordance with arrangements made by the President for the purposes of this paragraph (“the standing arrangements”).
  - (2) The standing arrangements must provide for at least one member to be selected from the panel of chairmen.
  - (3) If while a reference is being dealt with, a person serving as member of the Tribunal in respect of the reference becomes unable to act, the reference may be dealt with by—
    - (a) the other members selected in respect of that reference; or
    - (b) if it is being dealt with by a single member, such other member of the panel of chairmen as may be selected in accordance with the standing arrangements for the purposes of the reference.
  - (4) If it appears to the Tribunal that a matter before it involves a question of fact of special difficulty, it may appoint one or more experts to provide assistance.

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

**C54** Sch. 13 para. 7(3) applied (with modifications) (E.W.) (23.1.2007) by [Compensation Act 2006 \(c. 29\)](#), [ss. 12\(5\)\(c\)](#), [16\(1\)](#); S.I. 2007/94, [art. 3\(a\)](#)

**C55** Sch. 13 para. 7(4) applied (with modifications) (E.W.) (23.1.2007) by [Compensation Act 2006 \(c. 29\)](#), [ss. 12\(5\)\(c\)](#), [16\(1\)](#); S.I. 2007/94, [art. 3\(a\)](#)

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## PART IV

### TRIBUNAL PROCEDURE

- 8 For the purpose of dealing with references, or any matter preliminary or incidental to a reference, the Tribunal must sit at such times and in such place or places as the Lord Chancellor may direct [<sup>F102</sup>, after consulting the President of the Financial Services and Markets Tribunal,].

#### Textual Amendments

**F102** Words in Sch. 13 para. 8 inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148(1), Sch. 4 para. 286(4); S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 11(x)

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

**C56** Sch. 13 para. 8 applied (with modifications) (E.W.) (23.1.2007) by Compensation Act 2006 (c. 29), ss. 12(5)(d), 16(1); S.I. 2007/94, art. 3(a)

- 9 Rules made by the Lord Chancellor under section 132 may, in particular, include provision—
- (a) as to the manner in which references are to be instituted;
  - (b) for the holding of hearings in private in such circumstances as may be specified in the rules;
  - (c) as to the persons who may appear on behalf of the parties;
  - (d) for a member of the panel of chairmen to hear and determine interlocutory matters arising on a reference;
  - (e) for the suspension of decisions of the Authority which have taken effect;
  - (f) as to the withdrawal of references;
  - (g) as to the registration, publication and proof of decisions and orders.

#### *Practice directions*

- 10 The President of the Tribunal may give directions as to the practice and procedure to be followed by the Tribunal in relation to references to it.

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

**C57** Sch. 13 para. 10 applied (with modifications) (E.W.) (23.1.2007) by Compensation Act 2006 (c. 29), ss. 12(5)(e), 16(1); S.I. 2007/94, art. 3(a)

#### *Evidence*

- 11 (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.

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- (2) The Tribunal may—
- (a) take evidence on oath and for that purpose administer oaths; or
  - (b) 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) A person who without reasonable excuse—
- (a) refuses or fails—
    - (i) to attend following the issue of a summons by the Tribunal, or
    - (ii) 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,
- is guilty of an offence.
- (4) A person guilty of an offence under sub-paragraph (3)(a) is liable on summary conviction to a fine not exceeding the statutory maximum.
- (5) A person guilty of an offence under sub-paragraph (3)(b) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

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

**C58** Sch. 13 para. 11 applied (with modifications) (E.W.) (23.1.2007) by [Compensation Act 2006 \(c. 29\)](#), ss. [12\(5\)\(f\)](#), [16\(1\)](#); S.I. 2007/94, [art. 3\(a\)](#)

*Decisions of Tribunal*

- 12 (1) A decision of the Tribunal may be taken by a majority.
- (2) The decision must—
- (a) state whether it was unanimous or taken by a majority;
  - (b) be recorded in a document which—
    - (i) contains a statement of the reasons for the decision; and
    - (ii) is signed and dated by the member of the panel of chairmen dealing with the reference.
- (3) The Tribunal must—
- (a) inform each party of its decision; and
  - (b) as soon as reasonably practicable, send to each party and, if different, to any authorised person concerned, a copy of the document mentioned in sub-paragraph (2).
- (4) The Tribunal must send the Treasury a copy of its decision.

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

**C59** Sch. 13 para. 12(1)-(3) applied (with modifications) (E.W.) (23.1.2007) by [Compensation Act 2006](#) (c. 29), [ss. 12\(5\)\(g\), 16\(1\)](#); S.I. 2007/94, [art. 3\(a\)](#)

*Costs*

- 13
- (1) If the Tribunal considers that a party to any proceedings on a reference has acted vexatiously, frivolously or unreasonably it may order that party to pay to another party to the proceedings the whole or part of the costs or expenses incurred by the other party in connection with the proceedings.
  - (2) If, in any proceedings on a reference, the Tribunal considers that a decision of the Authority which is the subject of the reference was unreasonable it may order the Authority to pay to another party to the proceedings the whole or part of the costs or expenses incurred by the other party in connection with the proceedings.

SCHEDULE 14

Section 162.

ROLE OF THE COMPETITION COMMISSION

*Provision of information by Treasury*

- 1
- (1) The Treasury's powers under this paragraph are to be exercised only for the purpose of assisting the Commission in carrying out an investigation under section 162.
  - (2) The Treasury may give to the Commission—
    - (a) any information in their possession which relates to matters falling within the scope of the investigation; and
    - (b) other assistance in relation to any such matters.
  - (3) In carrying out an investigation under section 162, the Commission must have regard to any information given to it under this paragraph.

*Consideration of matters arising on a report*

- 2
- In considering any matter arising from a report made by the [<sup>F103</sup>OFT] under section 160, the Commission must have regard to—
    - (a) any representations made to [<sup>F104</sup>the Commission] in connection with the matter by any person appearing to the Commission to have a substantial interest in the matter; and
    - (b) any cost benefit analysis prepared by the Authority (at any time) in connection with the regulatory provision or practice, or any of the regulatory provisions or practices, which are the subject of the report.

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#### Textual Amendments

- F103** Words in Sch. 14 para. 2(a) substituted (1.4.2003) by virtue of Enterprise Act 2002 (c. 40), ss. 278(1), 279, Sch. 25 para. 40(20)(a); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F104** Words in Sch. 14 para. 2(a) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, Sch. 25 para. 40(20)(a); S.I. 2003/766, art. 2, Sch. (with art. 3)

#### <sup>F105</sup>Investigations under section 162: application of Enterprise Act 2002

#### Textual Amendments

- F105** Sch. 14 paras. 2A-2C inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, Sch. 25 para. 40(20)(b); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

- 2A (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3), for the purposes of any investigation by the Commission under section 162 of this Act as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of sub-paragraph (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b) shall, in its application by virtue of sub-paragraph (1), have effect as if for sub-paragraph (ii) there were substituted—
- (“ if earlier, the day on which the report of the Commission on the investigation concerned is made or, if the Commission decides not to make a report, the day on which the Commission makes the statement required by section 162(3) of the Financial Services and Markets Act 2000. ”
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Commission in connection with an investigation under section 162 of this Act as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words [<sup>F106</sup> “the OFT, OFCOM,”] and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those

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sections by virtue of sub-paragraph (1) or (4) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.

(6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.

#### Textual Amendments

**F105** Sch. 14 paras. 2A-2C inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(20)(b)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

**F106** Words in Sch. 14 para. 2A(4) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2), **Sch. 16 para. 5** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to art. 3(3) and with art. 11)

#### Section 162: modification of Schedule 7 to the Competition Act 1998

2B For the purposes of its application in relation to the function of the Commission of deciding in accordance with section 162(2) of this Act not to make a report, paragraph 15(7) of Schedule 7 to the Competition Act 1998 (power of the Chairman to act on his own while a group is being constituted) has effect as if, after paragraph (a), there were inserted “; or

(aa) in the case of an investigation under section 162 of the Financial Services and Markets Act 2000, decide not to make a report in accordance with subsection (2) of that section (decision not to make a report where no useful purpose would be served).”

#### Textual Amendments

**F105** Sch. 14 paras. 2A-2C inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(20)(b)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

#### Reports under section 162: further provision

2C (1) For the purposes of section 163 of this Act, a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the investigation concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

(2) If a member of a group so constituted disagrees with any conclusions contained in a report made under section 162 of this Act as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission under section 162.]

#### Textual Amendments

**F105** Sch. 14 paras. 2A-2C inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(20)(b)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

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### Applied provisions

3 F107 .....

#### Textual Amendments

**F107** Sch. 14 para. 3 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278(1)(2), 279, Sch. 25 para. 40(20)(c), **Sch. 26**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

### Publication of reports

- 4
- (1) If the Commission makes a report under section 162, it must publish it in such a way as appears to it to be best calculated to bring it to the attention of the public.
  - (2) Before publishing the report the Commission must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the Commission, would or might seriously and prejudicially affect his interests.
  - (3) Before publishing the report the Commission must, so far as practicable, also exclude any matter which relates to the affairs of a particular body the publication of which, in the opinion of the Commission, would or might seriously and prejudicially affect its interests.
  - (4) Sub-paragraphs (2) and (3) do not apply in relation to copies of a report which the Commission is required to send under section 162(10).

## SCHEDULE 15

Sections 165(11) and 171(4).

### INFORMATION AND INVESTIGATIONS: CONNECTED PERSONS

#### PART I

#### RULES FOR SPECIFIC BODIES

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

- C60** Sch. 15 Pt. I (paras. 1-7) modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 15(2) (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**  
Sch. 15 Pt. I (paras. 1-7) modified (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 15(2); S.I. 2001/3538, **art. 2(1)**  
Sch. 15 Pt. I (paras. 1-7) amended (*temp.* from 11.8.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 2(2); S.I. 2001/3538, **art. 2(1)**
- C61** Sch. 15 Pt. I modified (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 8(2)**
- C62** Sch. 15 Pt. 1 modified (31.12.2011) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), **art. 9(2)**

*Status: Point in time view as at 13/02/2007.*

*Changes to legislation: Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 19 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)*

### *Corporate bodies*

- 1 If the authorised person (“BC”) is a body corporate, a person who is or has been—
- (a) an officer or manager of BC or of a parent undertaking of BC;
  - (b) an employee of BC;
  - (c) an agent of BC or of a parent undertaking of BC.

### *Partnerships*

- 2 If the authorised person (“PP”) is a partnership, a person who is or has been a member, manager, employee or agent of PP.

### *Unincorporated associations*

- 3 If the authorised person (“UA”) is an unincorporated association of persons which is neither a partnership nor an unincorporated friendly society, a person who is or has been an officer, manager, employee or agent of UA.

### *Friendly societies*

- 4 (1) If the authorised person (“FS”) is a friendly society, a person who is or has been an officer, manager or employee of FS.
- (2) In relation to FS, “officer” and “manager” have the same meaning as in section 119(1) of the <sup>M26</sup>Friendly Societies Act 1992.

#### **Marginal Citations**

**M26** 1992 c. 40.

### *Building societies*

- 5 (1) If the authorised person (“BS”) is a building society, a person who is or has been an officer or employee of BS.
- (2) In relation to BS, “officer” has the same meaning as it has in section 119(1) of the <sup>M27</sup>Building Societies Act 1986.

#### **Marginal Citations**

**M27** 1986 c. 53.

### *Individuals*

- 6 If the authorised person (“IP”) is an individual, a person who is or has been an employee or agent of IP.



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*Application to sections 171 and 172*

- 7 For the purposes of sections 171 and 172, if the person under investigation is not an authorised person the references in this Part of this Schedule to an authorised person are to be taken to be references to the person under investigation.

**PART II**

ADDITIONAL RULES

- 8 A person who is, or at the relevant time was, the partner, manager, employee, agent, appointed representative, banker, auditor, actuary or solicitor of—
- (a) the person under investigation (“A”);
  - (b) a parent undertaking of A;
  - (c) a subsidiary undertaking of A;
  - (d) a subsidiary undertaking of a parent undertaking of A; or
  - (e) a parent undertaking of a subsidiary undertaking of A.

SCHEDULE 16

Section 203(8).

PROHIBITIONS AND RESTRICTIONS IMPOSED BY [<sup>F108</sup>OFFICE OF FAIR TRADING]

**Textual Amendments**

**F108** Sch. 16: words in heading substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(21\)\(a\)](#); S.I. 2003/766, [art. 2](#), Sch. (with [art. 3](#))

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

**C63** Sch. 16 applied (with modifications) (1.5.2009 for certain purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), [regs. 1\(2\), 26\(1\)](#) (with [reg. 3](#))

**C64** Sch. 16 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), [reg. 31\(1\)](#) (with [reg. 3](#))

*Preliminary*

- 1 In this Schedule—
- “appeal period” has the same meaning as in the <sup>M28</sup>Consumer Credit Act 1974;
- “prohibition” means a consumer credit prohibition under section 203;
- “restriction” means a restriction under section 204.

**Marginal Citations**

**M28** 1974 c. 39.

*Status: Point in time view as at 13/02/2007.*

*Changes to legislation: Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 19 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)*

*Notice of prohibition or restriction*

- 2 (1) This paragraph applies if the [F109OFT] proposes, in relation to a firm—
  - (a) to impose a prohibition;
  - (b) to impose a restriction; or
  - (c) to vary a restriction otherwise than with the agreement of the firm.
- (2) The [F109OFT] must by notice—
  - (a) inform the firm of [F110its] proposal, stating [F110its] reasons; and
  - (b) invite the firm to submit representations in accordance with paragraph 4.
- (3) If [F111the OFT] imposes the prohibition or restriction or varies the restriction, the [F109OFT] may give directions authorising the firm to carry into effect agreements made before the coming into force of the prohibition, restriction or variation.
- (4) A prohibition, restriction or variation is not to come into force before the end of the appeal period.
- (5) If the [F109OFT] imposes a prohibition or restriction or varies a restriction, [F111the OFT] must serve a copy of the prohibition, restriction or variation—
  - (a) on the Authority; and
  - (b) on the firm’s home state regulator.

**Textual Amendments**

**F109** Sch. 16: words substituted (1.4.2003) in each place by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

**F110** Sch. 16: word substituted (1.4.2003) in each place by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

**F111** Sch. 16: words substituted (1.4.2003) in both places by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

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

**C65** Sch. 16 para. 2(2) extended (1.12.2001) by S.I. 2001/3592, arts. 1(2), 24 (with art. 23(2))

**C66** Sch. 16 para. 2(3) extended (1.12.2001) by S.I. 2001/2636, arts. 1(2)(b), 53(4); S.I. 2001/3538, art. 2(1)

*Application to revoke prohibition or restriction*

- 3 (1) This paragraph applies if the [F112OFT] proposes to refuse an application made by a firm for the revocation of a prohibition or restriction.
- (2) The [F112OFT] must by notice—
  - (a) inform the firm of the proposed refusal, stating [F113its] reasons; and
  - (b) invite the firm to submit representations in accordance with paragraph 4.

**Textual Amendments**

**F112** Sch. 16: words substituted (1.4.2003) in each place by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

*Status: Point in time view as at 13/02/2007.*

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**F113** Sch. 16: word substituted (1.4.2003) in each place by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

### *Representations to [F114OFT]*

#### **Textual Amendments**

**F114** Sch. 16: words in substituted (1.4.2003) in each place by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

- 4 (1) If this paragraph applies to an invitation to submit representations, the [F115OFT] must invite the firm, within 21 days after the notice containing the invitation is given to it or such longer period as [F116the OFT] may allow—
- (a) to submit its representations in writing to [F117the OFT]; and
  - (b) to give notice to [F117the OFT], if the firm thinks fit, that it wishes to make representations orally.
- (2) If notice is given under sub-paragraph (1)(b), the [F115OFT] must arrange for the oral representations to be heard.
- (3) The [F115OFT] must give the firm notice of [F118its] determination.

#### **Textual Amendments**

**F115** Sch. 16: words substituted (1.4.2003) in each place by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

**F116** Sch. 16: words substituted (1.4.2003) in both places by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

**F117** Sch. 16: words substituted (1.4.2003) in both places by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

**F118** Sch. 16: word substituted (1.4.2003) in each place by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

### *Appeals*

- 5 Section 41 of the <sup>M29</sup>Consumer Credit Act 1974 (appeals to the Secretary of State) has effect as if—
- (a) the following determinations were mentioned in column 1 of the table set out at the end of that section—
    - (i) imposition of a prohibition or restriction or the variation of a restriction; and
    - (ii) refusal of an application for the revocation of a prohibition or restriction; and
  - (b) the firm concerned were mentioned in column 2 of that table in relation to those determinations.

*Status: Point in time view as at 13/02/2007.*

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### Marginal Citations

M29 1974 c. 39.

## SCHEDULE 17

Section 225(4).

### THE OMBUDSMAN SCHEME

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

- C67** Sch. 17 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2), **125** (with reg. 3)
- C68** Sch. 17 applied (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), **reg. 76(2)** (with reg. 3)

## PART I

### GENERAL

#### *Interpretation*

- 1 In this Schedule—  
“ombudsman” means a person who is a member of the panel; and  
“the panel” means the panel established under paragraph 4.

## PART II

### THE SCHEME OPERATOR

#### *Establishment by the Authority*

- 2 (1) The Authority must establish a body corporate to exercise the functions conferred on the scheme operator by or under this Act.
- (2) The Authority must take such steps as are necessary to ensure that the scheme operator is, at all times, capable of exercising those functions.

#### *Constitution*

- 3 (1) The constitution of the scheme operator must provide for it to have—  
(a) a chairman; and  
(b) a board (which must include the chairman) whose members are the scheme operator’s directors.
- (2) The chairman and other members of the board must be persons appointed, and liable to removal from office, by the Authority (acting, in the case of the chairman, with the approval of the Treasury).

*Status: Point in time view as at 13/02/2007.*

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- (3) But the terms of their appointment (and in particular those governing removal from office) must be such as to secure their independence from the Authority in the operation of the scheme.
- (4) The function of making voluntary jurisdiction rules under section 227 [F119], the function of making consumer credit rules, the function of making determinations under section 234A(1)] and the functions conferred by paragraphs 4, 5, 7, 9 or 14 may be exercised only by the board.
- (5) The validity of any act of the scheme operator is unaffected by—
  - (a) a vacancy in the office of chairman; or
  - (b) a defect in the appointment of a person as chairman or as a member of the board.

#### Textual Amendments

**F119** Words in Sch. 17 para. 3(4) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(10)(a), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

#### *The panel of ombudsmen*

- 4 (1) The scheme operator must appoint and maintain a panel of persons, appearing to it to have appropriate qualifications and experience, to act as ombudsmen for the purposes of the scheme.
- (2) A person's appointment to the panel is to be on such terms (including terms as to the duration and termination of his appointment and as to remuneration) as the scheme operator considers—
  - (a) consistent with the independence of the person appointed; and
  - (b) otherwise appropriate.

#### *The Chief Ombudsman*

- 5 (1) The scheme operator must appoint one member of the panel to act as Chief Ombudsman.
- (2) The Chief Ombudsman is to be appointed on such terms (including terms as to the duration and termination of his appointment) as the scheme operator considers appropriate.

#### *Status*

- 6 (1) The scheme operator is not to be regarded as exercising functions on behalf of the Crown.
- (2) The scheme operator's board members, officers and staff are not to be regarded as Crown servants.
- (3) Appointment as Chief Ombudsman or to the panel or as a deputy ombudsman does not confer the status of Crown servant.

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### *Annual reports*

- 7 (1) At least once a year—
- (a) the scheme operator must make a report to the Authority on the discharge of its functions; and
  - (b) the Chief Ombudsman must make a report to the Authority on the discharge of his functions.
- (2) Each report must distinguish between functions in relation to the scheme’s compulsory jurisdiction [<sup>F120</sup>, functions in relation to its consumer credit jurisdiction] and functions in relation to its voluntary jurisdiction.
- (3) Each report must also comply with any requirements specified in rules made by the Authority.
- (4) The scheme operator must publish each report in the way it considers appropriate.

#### **Textual Amendments**

**F120** Words in Sch. 17 para. 7(2) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(10)(b), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

### *Guidance*

- 8 The scheme operator may publish guidance consisting of such information and advice as it considers appropriate and may charge for it or distribute it free of charge.

### *Budget*

- 9 (1) The scheme operator must, before the start of each of its financial years, adopt an annual budget which has been approved by the Authority.
- (2) The scheme operator may, with the approval of the Authority, vary the budget for a financial year at any time after its adoption.
- (3) The annual budget must include an indication of—
- (a) the distribution of resources deployed in the operation of the scheme, and
  - (b) the amounts of income of the scheme operator arising or expected to arise from the operation of the scheme,
- distinguishing between the scheme’s compulsory [<sup>F121</sup>, consumer credit] and voluntary jurisdiction.

#### **Textual Amendments**

**F121** Words in Sch. 17 para. 9(3) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(10)(c), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

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

**C69** Sch. 17 para. 9(3) excluded (18.6.2001) by S.I. 2001/1821, arts. 1(1), 4(1)

*Status: Point in time view as at 13/02/2007.*

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### *Exemption from liability in damages*

- 10 (1) No person is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of any functions under this Act in relation to the compulsory jurisdiction [<sup>F122</sup>or to the consumer credit jurisdiction].
- (2) Sub-paragraph (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith; or
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the <sup>M30</sup>Human Rights Act 1998.

#### **Textual Amendments**

**F122** Words in Sch. 17 para. 10(1) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(10)(d), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

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

**C70** Sch. 17 para. 10(1) amended (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 13; S.I. 2001/3538, art. 2(1)

**C71** Sch. 17 para. 10(1) extended (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), 7

#### **Marginal Citations**

**M30** 1998 c. 42.

### *Privilege*

- 11 For the purposes of the law relating to defamation, proceedings in relation to a complaint which is subject to the compulsory jurisdiction [<sup>F123</sup>or to the consumer credit jurisdiction] are to be treated as if they were proceedings before a court.

#### **Textual Amendments**

**F123** Words in Sch. 17 para. 11 inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(10)(d), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

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

**C72** Sch. 17 para. 11 amended (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 14; S.I. 2001/3538, art. 2(1)

**C73** Sch. 17 para. 11 extended (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), 8

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## PART III

### THE COMPULSORY JURISDICTION

#### *Introduction*

- 12 This Part of this Schedule applies only in relation to the compulsory jurisdiction.

#### *Authority's procedural rules*

- 13 (1) The Authority must make rules providing that a complaint is not to be entertained unless the complainant has referred it under the ombudsman scheme before the applicable time limit (determined in accordance with the rules) has expired.
- (2) The rules may provide that an ombudsman may extend that time limit in specified circumstances.
- (3) The Authority may make rules providing that a complaint is not to be entertained (except in specified circumstances) if the complainant has not previously communicated its substance to the respondent and given him a reasonable opportunity to deal with it.
- (4) The Authority may make rules requiring an authorised person who may become subject to the compulsory jurisdiction as a respondent to establish such procedures as the Authority considers appropriate for the resolution of complaints which—
- (a) may be referred to the scheme; and
  - (b) arise out of activity to which the Authority's powers under Part X do not apply.

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

- C74** Sch. 17 para. 13 amended (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 4; S.I. 2001/3538, art. 2(1)
- C75** Sch. 17 para. 13 modified (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), 3

#### *The scheme operator's rules*

- 14 (1) The scheme operator must make rules, to be known as “scheme rules”, which are to set out the procedure for reference of complaints and for their investigation, consideration and determination by an ombudsman.
- (2) Scheme rules may, among other things—
- (a) specify matters which are to be taken into account in determining whether an act or omission was fair and reasonable;
  - (b) provide that a complaint may, in specified circumstances, be dismissed without consideration of its merits;
  - (c) provide for the reference of a complaint, in specified circumstances and with the consent of the complainant, to another body with a view to its being determined by that body instead of by an ombudsman;



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- (d) make provision as to the evidence which may be required or admitted, the extent to which it should be oral or written and the consequences of a person's failure to produce any information or document which he has been required (under section 231 or otherwise) to produce;
  - (e) allow an ombudsman to fix time limits for any aspect of the proceedings and to extend a time limit;
  - (f) provide for certain things in relation to the reference, investigation or consideration (but not determination) of a complaint to be done by a member of the scheme operator's staff instead of by an ombudsman;
  - (g) make different provision in relation to different kinds of complaint.
- (3) The circumstances specified under sub-paragraph (2)(b) may include the following—
- (a) the ombudsman considers the complaint frivolous or vexatious;
  - (b) legal proceedings have been brought concerning the subject-matter of the complaint and the ombudsman considers that the complaint is best dealt with in those proceedings; or
  - (c) the ombudsman is satisfied that there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the ombudsman scheme.
- (4) If the scheme operator proposes to make any scheme rules it must publish a draft of the proposed rules in the way appearing to it to be best calculated to bring them to the attention of persons appearing to it to be likely to be affected.
- (5) The draft must be accompanied by a statement that representations about the proposals may be made to the scheme operator within a time specified in the statement.
- (6) Before making the proposed scheme rules, the scheme operator must have regard to any representations made to it under sub-paragraph (5).
- (7) The consent of the Authority is required before any scheme rules may be made.

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

- C76** Sch. 17 para. 14 amended (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 5; S.I. 2001/3538, art. 2(1)
- C77** Sch. 17 para. 14 modified (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), 4
- C78** Sch. 17 para. 14 modified by The Payment Services Regulations 2009 (S.I. 2009/209), Sch. 7 para. 3(2) (as inserted (1.10.2009 for certain purposes and 1.11.2009 otherwise) by S.I. 2009/2475, reg. 13)
- C79** Sch. 17 para. 14(4)(5) amended (19.7.2001) by S.I. 2001/2326, arts. 1(1)(a), 16(a); S.I. 2001/3538, art. 2(1)
- C80** Sch. 17 para. 14(4)-6) excluded by S.I. 2004/454, art. 12(2) (as inserted (15.7.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) (Amendment) Order 2004 (S.I. 2004/1609), art. 6)

*Status: Point in time view as at 13/02/2007.*

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### *Fees*

- 15 (1) Scheme rules may require a respondent to pay to the scheme operator such fees as may be specified in the rules.
- (2) The rules may, among other things—
- (a) provide for the scheme operator to reduce or waive a fee in a particular case;
  - (b) set different fees for different stages of the proceedings on a complaint;
  - (c) provide for fees to be refunded in specified circumstances;
  - (d) make different provision for different kinds of complaint.

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

- C81** Sch. 17 para. 15 amended (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326](#), [arts. 1\(1\)](#), [12\(2\)\(3\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)
- C82** Sch. 17 para. 15 extended (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) Order 2004](#) (S.I. 2004/454), [arts. 1\(2\)](#), [6\(2\)\(3\)](#)

### *Enforcement of money awards*

- 16 A money award, including interest, which has been registered in accordance with scheme rules may—
- (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court;
  - (b) be enforced in Northern Ireland as a money judgment under the <sup>M31</sup>Judgments Enforcement (Northern Ireland) Order 1981;
  - (c) be enforced in Scotland by the sheriff, as if it were a judgment or order of the sheriff and whether or not the sheriff could himself have granted such judgment or order.

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

- C83** Sch. 17 para. 16 applied (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326](#), [arts. 1\(1\)](#), [16\(4\)\(6\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### **Marginal Citations**

- M31** [S.I. 1981/226](#) (N.I.6).

## <sup>F124</sup>PART 3A

### THE CONSUMER CREDIT JURISDICTION

#### **Textual Amendments**

- F124** Sch. 17 Pt. 3A inserted (16.6.2006) by [Consumer Credit Act 2006](#) (c. 14), [ss. 59\(2\)](#), [71\(2\)](#), [Sch. 2](#); [S.I. 2006/1508](#), [art. 3\(1\)](#), [Sch. 1](#)

*Status: Point in time view as at 13/02/2007.*

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### *Introduction*

- 16A This Part of this Schedule applies only in relation to the consumer credit jurisdiction.

### *Procedure for complaints etc.*

- 16B (1) Consumer credit rules—
- (a) must provide that a complaint is not to be entertained unless the complainant has referred it under the ombudsman scheme before the applicable time limit (determined in accordance with the rules) has expired;
  - (b) may provide that an ombudsman may extend that time limit in specified circumstances;
  - (c) may provide that a complaint is not to be entertained (except in specified circumstances) if the complainant has not previously communicated its substance to the respondent and given him a reasonable opportunity to deal with it;
  - (d) may make provision about the procedure for the reference of complaints and for their investigation, consideration and determination by an ombudsman.
- (2) Sub-paragraphs (2) and (3) of paragraph 14 apply in relation to consumer credit rules under sub-paragraph (1) of this paragraph as they apply in relation to scheme rules under that paragraph.
- (3) Consumer credit rules may require persons falling within sub-paragraph (6) to establish such procedures as the scheme operator considers appropriate for the resolution of complaints which may be referred to the scheme.
- (4) Consumer credit rules under sub-paragraph (3) may make different provision in relation to persons of different descriptions or to complaints of different descriptions.
- (5) Consumer credit rules under sub-paragraph (3) may authorise the scheme operator to dispense with or modify the application of such rules in particular cases where the scheme operator—
- (a) considers it appropriate to do so; and
  - (b) is satisfied that the specified conditions (if any) are met.
- (6) A person falls within this sub-paragraph if he is licensed by a standard licence (within the meaning of the Consumer Credit Act 1974) to carry on to any extent a business of a type specified in an order under section 226A(2)(e) of this Act.

### *Fees*

- 16C (1) Consumer credit rules may require a respondent to pay to the scheme operator such fees as may be specified in the rules.
- (2) Sub-paragraph (2) of paragraph 15 applies in relation to consumer credit rules under this paragraph as it applies in relation to scheme rules under that paragraph.

### *Enforcement of money awards*

- 16D A money award, including interest, which has been registered in accordance with consumer credit rules may—

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- (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court;
- (b) be enforced in Northern Ireland as a money judgment under the Judgments Enforcement (Northern Ireland) Order 1981;
- (c) be enforced in Scotland as if it were a decree of the sheriff and whether or not the sheriff could himself have granted such a decree.

#### *Procedure for consumer credit rules*

- 16E
- (1) If the scheme operator makes any consumer credit rules, it must give a copy of them to the Authority without delay.
  - (2) If the scheme operator revokes any such rules, it must give written notice to the Authority without delay.
  - (3) The power to make such rules is exercisable in writing.
  - (4) Immediately after the making of such rules, the scheme operator must arrange for them to be printed and made available to the public.
  - (5) The scheme operator may charge a reasonable fee for providing a person with a copy of any such rules.

#### *Verification of consumer credit rules*

- 16F
- (1) The production of a printed copy of consumer credit rules purporting to be made by the scheme operator—
    - (a) on which there is endorsed a certificate signed by a member of the scheme operator's staff authorised by the scheme operator for that purpose, and
    - (b) which contains the required statements,is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
  - (2) The required statements are—
    - (a) that the rules were made by the scheme operator;
    - (b) that the copy is a true copy of the rules; and
    - (c) that on a specified date the rules were made available to the public in accordance with paragraph 16E(4).
  - (3) A certificate purporting to be signed as mentioned in sub-paragraph (1) is to be taken to have been duly signed unless the contrary is shown.

#### *Consultation*

- 16G
- (1) If the scheme operator proposes to make consumer credit rules, it must publish a draft of the proposed rules in the way appearing to it to be best calculated to bring the draft to the attention of the public.
  - (2) The draft must be accompanied by—
    - (a) an explanation of the proposed rules; and
    - (b) a statement that representations about the proposals may be made to the scheme operator within a specified time.

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- (3) Before making any consumer credit rules, the scheme operator must have regard to any representations made to it in accordance with sub-paragraph (2)(b).
- (4) If consumer credit rules made by the scheme operator differ from the draft published under sub-paragraph (1) in a way which the scheme operator considers significant, the scheme operator must publish a statement of the difference.]

## PART IV

### THE VOLUNTARY JURISDICTION

#### *Introduction*

- 17 This Part of this Schedule applies only in relation to the voluntary jurisdiction.

#### *Terms of reference to the scheme*

- 18 (1) Complaints are to be dealt with and determined under the voluntary jurisdiction on standard terms fixed by the scheme operator with the approval of the Authority.
- (2) Different standard terms may be fixed with respect to different matters or in relation to different cases.
- (3) The standard terms may, in particular—
- (a) require the making of payments to the scheme operator by participants in the scheme of such amounts, and at such times, as may be determined by the scheme operator;
  - (b) make provision as to the award of costs on the determination of a complaint.
- (4) The scheme operator may not vary any of the standard terms or add or remove terms without the approval of the Authority.
- (5) The standard terms may include provision to the effect that (unless acting in bad faith) none of the following is to be liable in damages for anything done or omitted in the discharge or purported discharge of functions in connection with the voluntary jurisdiction—
- (a) the scheme operator;
  - (b) any member of its governing body;
  - (c) any member of its staff;
  - (d) any person acting as an ombudsman for the purposes of the scheme.

#### *Delegation by and to other schemes*

- 19 (1) The scheme operator may make arrangements with a relevant body—
- (a) for the exercise by that body of any part of the voluntary jurisdiction of the ombudsman scheme on behalf of the scheme; or
  - (b) for the exercise by the scheme of any function of that body as if it were part of the voluntary jurisdiction of the scheme.
- (2) A “relevant body” is one which the scheme operator is satisfied—
- (a) is responsible for the operation of a broadly comparable scheme (whether or not established by statute) for the resolution of disputes; and

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- (b) in the case of arrangements under sub-paragraph (1)(a), will exercise the jurisdiction in question in a way compatible with the requirements imposed by or under this Act in relation to complaints of the kind concerned.

- (3) Such arrangements require the approval of the Authority.

*Voluntary jurisdiction rules: procedure*

- 20 (1) If the scheme operator makes voluntary jurisdiction rules, it must give a copy to the Authority without delay.
- (2) If the scheme operator revokes any such rules, it must give written notice to the Authority without delay.
- (3) The power to make voluntary jurisdiction rules is exercisable in writing.
- (4) Immediately after making voluntary jurisdiction rules, the scheme operator must arrange for them to be printed and made available to the public.
- (5) The scheme operator may charge a reasonable fee for providing a person with a copy of any voluntary jurisdiction rules.

*Verification of the rules*

- 21 (1) The production of a printed copy of voluntary jurisdiction rules purporting to be made by the scheme operator—
  - (a) on which is endorsed a certificate signed by a member of the scheme operator's staff authorised by the scheme operator for that purpose, and
  - (b) which contains the required statements,is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are—
  - (a) that the rules were made by the scheme operator;
  - (b) that the copy is a true copy of the rules; and
  - (c) that on a specified date the rules were made available to the public in accordance with paragraph 20(4).
- (3) A certificate purporting to be signed as mentioned in sub-paragraph (1) is to be taken to have been duly signed unless the contrary is shown.

*Consultation*

- 22 (1) If the scheme operator proposes to make voluntary jurisdiction rules, it must publish a draft of the proposed rules in the way appearing to it to be best calculated to bring them to the attention of the public.
- (2) The draft must be accompanied by—
  - (a) an explanation of the proposed rules; and
  - (b) a statement that representations about the proposals may be made to the scheme operator within a specified time.
- (3) Before making any voluntary jurisdiction rules, the scheme operator must have regard to any representations made to it in accordance with sub-paragraph (2)(b).

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- (4) If voluntary jurisdiction rules made by the scheme operator differ from the draft published under sub-paragraph (1) in a way which the scheme operator considers significant, the scheme operator must publish a statement of the difference.

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

**C84** Sch. 17 para. 22(1)(2) amended (19.7.2001) by S.I. 2001/2326, arts. 1(1)(a), 16(b); S.I. 2001/3538, art. 2(1)

SCHEDULE 18

Sections 334, 336 and 338.

MUTUALS

PART I

FRIENDLY SOCIETIES

*The Friendly Societies Act 1974 (c.46)*

- 1 Omit sections 4 (provision for separate registration areas) and 10 (societies registered in one registration area carrying on business in another).
- 2 In section 7 (societies which may be registered), in subsection (2)(b), for “in the central registration area or in Scotland” substitute “ in the United Kingdom, the Channel Islands or the Isle of Man ”.
- 3 In section 11 (additional registration requirements for societies with branches), omit “and where any such society has branches in more than one registration area, section 10 above shall apply to that society”.
- 4 In section 99(4) (punishment of fraud etc and recovery of property misapplied), omit “in the central registration area”.

*The Friendly Societies Act 1992 (c.40)*

- 5 Omit sections 31 to 36A (authorisation of friendly societies business).
- 6 In section 37 (restrictions on combinations of business), omit subsections (1), (1A) and (7A) to (9).
- 7 Omit sections 38 to 43 (restrictions on business of certain authorised societies).
- 8 Omit sections 44 to 50 (regulation of friendly societies business).

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## PART II

### FRIENDLY SOCIETIES: SUBSIDIARIES AND CONTROLLED BODIES

#### *Interpretation*

- 9 In this Part of this Schedule—
- “the 1992 Act” means the <sup>M32</sup>Friendly Societies Act 1992; and
- “section 13” means section 13 of that Act.

#### **Marginal Citations**

**M32** 1992 c. 40.

#### *Qualifying bodies*

- 10 (1) Subsections (2) to (5) of section 13 (incorporated friendly societies allowed to form or acquire control or joint control only of qualifying bodies) cease to have effect.
- (2) As a result, omit—
- (a) subsections (8) and (11) of that section, and
- (b) Schedule 7 to the 1992 Act (activities which may be carried on by a subsidiary of, or body jointly controlled by, an incorporated friendly society).

#### *Bodies controlled by societies*

- 11 In section 13(9) (defined terms), after paragraph (a) insert—
- “(aa) an incorporated friendly society also has control of a body corporate if the body corporate is itself a body controlled in one of the ways mentioned in paragraph (a)(i), (ii) or (iii) by a body corporate of which the society has control;”.

#### *Joint control by societies*

- 12 In section 13(9), after paragraph (c) insert—
- “(cc) an incorporated friendly society also has joint control of a body corporate if—
- (i) a subsidiary of the society has joint control of the body corporate in a way mentioned in paragraph (c)(i), (ii) or (iii);
- (ii) a body corporate of which the society has joint control has joint control of the body corporate in such a way; or
- (iii) the body corporate is controlled in a way mentioned in paragraph (a)(i), (ii) or (iii) by a body corporate of which the society has joint control;”.

#### *Acquisition of joint control*

- 13 In section 13(9), in the words following paragraph (d), after “paragraph (c)” insert “or (cc)”.



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*Amendment of Schedule 8 to the 1992 Act*

- 14 (1) Schedule 8 to the 1992 Act (provisions supplementing section 13) is amended as follows.
- (2) Omit paragraph 3(2).
- (3) After paragraph 3 insert—
- “3A (1) A body is to be treated for the purposes of section 13(9) as having the right to appoint to a directorship if—
- (a) a person’s appointment to the directorship follows necessarily from his appointment as an officer of that body; or
- (b) the directorship is held by the body itself.
- (2) A body (“B”) and some other person (“P”) together are to be treated, for the purposes of section 13(9), as having the right to appoint to a directorship if—
- (a) P is a body corporate which has directors and a person’s appointment to the directorship follows necessarily from his appointment both as an officer of B and a director of P;
- (b) P is a body corporate which does not have directors and a person’s appointment to the directorship follows necessarily from his appointment both as an officer of B and as a member of P’s managing body; or
- (c) the directorship is held jointly by B and P.
- (3) For the purposes of section 13(9), a right to appoint (or remove) which is exercisable only with the consent or agreement of another person must be left out of account unless no other person has a right to appoint (or remove) in relation to that directorship.
- (4) Nothing in this paragraph is to be read as restricting the effect of section 13(9).”
- (4) In paragraph 9 (exercise of certain rights under instruction by, or in the interests of, incorporated friendly society) insert at the end “ or in the interests of any body over which the society has joint control ”.

*Consequential amendments*

- 15 (1) Section 52 of the 1992 Act is amended as follows.
- (2) In subsection (2), omit paragraph (d).
- (3) In subsection (3), for “(4) below” substitute “ (2) ”.
- (4) For subsection (4) substitute—
- “(4) A court may not make an order under subsection (5) unless it is satisfied that one or more of the conditions mentioned in subsection (2) are satisfied.”
- (5) In subsection (5), omit the words from “or, where” to the end.

*References in other enactments*

- 16 References in any provision of, or made under, any enactment to subsidiaries of, or bodies jointly controlled by, an incorporated friendly society are to be read as

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including references to bodies which are such subsidiaries or bodies as a result of any provision of this Part of this Schedule.

### PART III

#### BUILDING SOCIETIES

##### *The Building Societies Act 1986 (c.53)*

- 17 Omit section 9 (initial authorisation to raise funds and borrow money).
- 18 Omit Schedule 3 (supplementary provisions about authorisation).

### PART IV

#### INDUSTRIAL AND PROVIDENT SOCIETIES

##### *The Industrial and Provident Societies Act 1965 (c.12)*

- 19 Omit section 8 (provision for separate registration areas for Scotland and for England, Wales and the Channel Islands).
- 20 Omit section 70 (scale of fees to be paid in respect of transactions and inspection of documents).

### PART V

#### CREDIT UNIONS

##### *The Credit Unions Act 1979 (c.34)*

- 21 In section 6 (minimum and maximum number of members), omit subsections (2) to (6).
- 22 In section 11 (loans), omit subsections (2) and (6).
- 23 Omit sections 11B (loans approved by credit unions), 11C (grant of certificates of approval) and 11D (withdrawal of certificates of approval).
- 24 In section 12, omit subsections (4) and (5).
- 25 In section 14, omit subsections (2), (3), (5) and (6).
- 26 In section 28 (offences), omit subsection (2).

.....

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### Textual Amendments

**F125** Sch. 19 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 247(k), 278(2), 279, Sch. 26 (with s. 237); S.I. 2003/1397, art. 2(1), Sch.

## SCHEDULE 20

Section 432(1).

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The House of Commons Disqualification Act 1975 (c. 24)*

- 1 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices)—
- (a) omit—
- “Any member of the Financial Services Tribunal in receipt of remuneration”;
- and
- (b) at the appropriate place, insert—
- “Any member, in receipt of remuneration, of a panel of persons who may be selected to act as members of the Financial Services and Markets Tribunal”.

### Commencement Information

**I33** Sch. 20 para. 1 wholly in force at 1.12.2001; Sch. 20 para. 1 not in force at Royal Assent see s. 431(2); Sch. 20 para. 1(b) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; Sch. 20 para. 1 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

#### *The Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

- 2 In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices)—
- (a) omit—
- “Any member of the Financial Services Tribunal in receipt of remuneration”;
- and
- (b) at the appropriate place, insert—
- “Any member, in receipt of remuneration, of a panel of persons who may be selected to act as members of the Financial Services and Markets Tribunal”.

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#### Commencement Information

**I34** Sch. 20 para. 2 wholly in force at 1.12.2001; Sch. 20 para. 2 not in force at Royal Assent see s. 431(2); Sch. 20 para. 2(b) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; Sch. 20 para. 2 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

#### *The Civil Jurisdiction and Judgments Act 1982 (c. 27)*

- 3 In paragraph 10 of Schedule 5 to the Civil Jurisdiction and Judgments Act 1982 (proceedings excluded from the operation of Schedule 4 to that Act), for “section 188 of the Financial Services Act 1986” substitute “ section 415 of the Financial Services and Markets Act 2000 ”.

#### *The Income and Corporation Taxes Act 1988 (c. 1)*

- 4 (1) The Income and Corporation Taxes Act 1988 is amended as follows.
- (2) In section 76 (expenses of management: insurance companies), in subsection (8), omit the definitions of—
- “the 1986 Act”;
  - “authorised person”;
  - “investment business”;
  - “investor”;
  - “investor protection scheme”;
  - “prescribed”; and
  - “recognised self-regulating organisation”.
- (3) In section 468 (authorised unit trusts), in subsections (6) and (8), for “78 of the Financial Services Act 1986” substitute “ 243 of the Financial Services and Markets Act 2000 ”.
- (4) In section 469(7) (other unit trust schemes), for “Financial Services Act 1986” substitute “ Financial Services and Markets Act 2000 ”.
- (5) In section 728 (information in relation to transfers of securities), in subsection (7) (a), for “Financial Services Act 1986” substitute “ Financial Services and Markets Act 2000 ”.
- (6) In section 841(3) (power to apply certain provisions of the Tax Acts to recognised investment exchange), for “Financial Services Act 1986” substitute “ Financial Services and Markets Act 2000 ”.

#### *The Finance Act 1991 (c. 31)*

- 5 (1) The Finance Act 1991 is amended as follows.
- (2) In section 47 (investor protection schemes), omit subsections (1), (2) and (4).
- (3) In section 116 (investment exchanges and clearing houses: stamp duty), in subsection (4)(b), for “Financial Services Act 1986” substitute “ Financial Services and Markets Act 2000 ”.

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*The Tribunals and Inquiries Act 1992 (c. 53)*

- 6 (1) The Tribunals and Inquiries Act 1992 is amended as follows.
- (2) In Schedule 1 (tribunals under supervision of the Council on Tribunals), for the entry relating to financial services and paragraph 18, substitute—

|                                 |   |
|---------------------------------|---|
| “Financial services and markets | 18. The Financial Services and Markets Tribunal.” |
|---------------------------------|---|

**Commencement Information**

**I35** Sch. 20 para. 6 in force at 3.7.2001; Sch. 20 para. 6 not in force at Royal Assent see s. 431(2); Sch. 20 para. 6 in force at 3.7.2001 by S.I. 2001/2364, art. 2(a) (with transitional savings in art. 3)

*The Judicial Pensions and Retirement Act 1993 (c. 8)*

- 7 (1) The Judicial Pensions and Retirement Act 1993 is amended as follows.
- (2) In Schedule 1 (offices which may be qualifying offices), in Part II, after the entry relating to the President or chairman of the Transport Tribunal insert—
- “President or Deputy President of the Financial Services and Markets Tribunal”
- (3) In Schedule 5 (relevant offices in relation to retirement provisions)—
- (a) omit the entry—
- “Member of the Financial Services Tribunal appointed by the Lord Chancellor”;
- and
- (b) at the end insert—
- “Member of the Financial Services and Markets Tribunal”.

**Commencement Information**

**I36** Sch. 20 para. 7 wholly in force at 1.12.2001; Sch. 20 para. 7 not in force at Royal Assent see s. 431(2); Sch. 20 para. 7(except sub-para. (3)(a)) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; Sch. 20 para. 7 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

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## SCHEDULE 21

Section 432(2).

### TRANSITIONAL PROVISIONS AND SAVINGS

#### *Self-regulating organisations*

- 1
- (1) No new application under section 9 of the 1986 Act (application for recognition) may be entertained.
  - (2) No outstanding application made under that section before the passing of this Act may continue to be entertained.
  - (3) After the date which is the designated date for a recognised self-regulating organisation—
    - (a) the recognition order for that organisation may not be revoked under section 11 of the 1986 Act (revocation of recognition);
    - (b) no application may be made to the court under section 12 of the 1986 Act (compliance orders) with respect to that organisation.
  - (4) The powers conferred by section 13 of the 1986 Act (alteration of rules for protection of investors) may not be exercised.
  - (5) “Designated date” means such date as the Treasury may by order designate.
  - (6) Sub-paragraph (3) does not apply to a recognised self-regulating organisation in respect of which a notice of intention to revoke its recognition order was given under section 11(3) of the 1986 Act before the passing of this Act if that notice has not been withdrawn.
  - (7) Expenditure incurred by the Authority in connection with the winding up of any body which was, immediately before the passing of this Act, a recognised self-regulating organisation is to be treated as having been incurred in connection with the discharge by the Authority of functions under this Act.
  - (8) “Recognised self-regulating organisation” means an organisation which, immediately before the passing of this Act, was such an organisation for the purposes of the 1986 Act.
  - (9) “The 1986 Act” means the <sup>M50</sup>Financial Services Act 1986.

#### **Marginal Citations**

**M50** 1986 c. 60.

#### *Self-regulating organisations for friendly societies*

- 2
- (1) No new application under paragraph 2 of Schedule 11 to the 1986 Act (application for recognition) may be entertained.
  - (2) No outstanding application made under that paragraph before the passing of this Act may continue to be entertained.
  - (3) After the date which is the designated date for a recognised self-regulating organisation for friendly societies—

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- (a) the recognition order for that organisation may not be revoked under paragraph 5 of Schedule 11 to the 1986 Act (revocation of recognition);
- (b) no application may be made to the court under paragraph 6 of that Schedule (compliance orders) with respect to that organisation.
- (4) “Designated date” means such date as the Treasury may by order designate.
- (5) Sub-paragraph (3) does not apply to a recognised self-regulating organisation for friendly societies in respect of which a notice of intention to revoke its recognition order was given under section 11(3) of the 1986 Act (as applied by paragraph 5(2) of that Schedule) before the passing of this Act if that notice has not been withdrawn.
- (6) Expenditure incurred by the Authority in connection with the winding up of any body which was, immediately before the passing of this Act, a recognised self-regulating organisation for friendly societies is to be treated as having been incurred in connection with the discharge by the Authority of functions under this Act.
- (7) “Recognised self-regulating organisation for friendly societies” means an organisation which, immediately before the passing of this Act, was such an organisation for the purposes of the 1986 Act.
- (8) “The 1986 Act” means the <sup>M51</sup>Financial Services Act 1986.

#### Marginal Citations

**M51** 1986 c. 60.

## SCHEDULE 22

Section 432(3).

### REPEALS

#### Commencement Information

**I37** [Sch. 22](#) wholly in force at 2.7.2002; [Sch. 22](#) not in force at Royal Assent see [s. 431\(2\)](#); [Sch. 22](#) in force for specified purposes at 30.4.2001 by [S.I. 2001/1282](#), [art. 2\(b\)](#); [Sch. 22](#) in force 2.7.2002 in relation to the Credit Union Act 1979 by [S.I. 2001/3538](#), [art. 2\(5\)\(b\)](#); [Sch. 22](#) in force at in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

| Chapter     | Short title   | Extent of repeal          |
|-------------|---|---------------------------|
| 1923 c. 8.  | The Industrial Assurance Act 1923.                        | The whole Act.            |
| 1948 c. 39. | The Industrial Assurance and Friendly Societies Act 1948. | The whole Act.            |
| 1965 c. 12. | The Industrial and Provident Societies Act 1965.          | Section 8.<br>Section 70. |

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|             |   |  |
|-------------|---|--|
| 1974 c. 46. | The Friendly Societies Act 1974.                          | Section 4.<br><br>Section 10.<br><br>In section 11, from “and where” to “that society”.<br><br>In section 99(4), “in the central registration area”.   |
| 1975 c. 24. | The House of Commons Disqualification Act 1975.           | In Schedule 1, in Part III, “Any member of the Financial Services Tribunal in receipt of remuneration”.  |
| 1975 c. 25. | The Northern Ireland Assembly Dis-qualification Act 1975. | In Schedule 1, in Part III, “Any member of the Financial Services Tribunal in receipt of remuneration”.  |
| 1977 c. 46. | The Insurance Brokers (Registration) Act 1977.            | The whole Act.   |
| 1979 c. 34. | The Credit Unions Act 1979.                               | Section 6(2) to (6).<br><br>Section 11(2) and (6).<br><br>Sections 11B, 11C and 11D.<br><br>Section 12(4) and (5).<br><br>In section 14, subsections (2), (3), (5) and (6).<br><br>Section 28(2).                      |
| 1986 c. 53. | The Building Societies Act 1986.                          | Section 9.<br><br>Schedule 3.  |
| 1988 c. 1.  | The Income and Corporation Taxes Act 1988.                | In section 76, in subsection (8), the definitions of “the 1986 Act”, “authorised person”, “investment business”, “investor”, “investor protection scheme”, “prescribed” and “recognised self-regulating organisation”. |
| 1991 c. 31. | The Finance Act 1991.                                     | In section 47, subsections (1), (2) and (4).   |
| 1992 c. 40. | The Friendly Societies Act 1992.                          | In section 13, subsections (2) to (5), (8) and (11).<br><br>Sections 31 to 36.<br><br>In section 37, subsections (1), (1A) and (7A) to (9).  |



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*Status: Point in time view as at 13/02/2007.*

*Changes to legislation: Financial Services and Markets Act 2000 is up to date with all changes known to be in force on or before 19 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)*

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|------------|--|---|
|            |  | Sections 38 to 50.  |
|            |  | In section 52, subsection (2) (d) and, in subsection (5), the words from “or where” to the end. |
|            |  | Schedule 7.   |
|            |  | In Schedule 8, paragraph 3(2).  |
| 1993 c. 8. | The Judicial Pensions and Retirement Act 1993. | In Schedule 5, “Member of the Financial Services Tribunal appointed by the Lord Chancellor”.    |

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