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STATUTORY INSTRUMENTS

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**1996 No. 2958**

**FINANCIAL SERVICES**

The Financial Services Act 1986  
(Extension of Scope of Act) Order 1996

<i>Made</i>	- - - -	<i>25 November 1996</i>
<i>Laid before Parliament</i>		<i>25 November 1996</i>
<i>Coming into force</i>		
<i>Articles 1 and 2</i>		<i>6th January 1997</i>
<i>Remainder</i>		<i>1st June 1997</i>

The Treasury in the exercise of the powers conferred on them by sections 2 and 205A(1) of the Financial Services Act 1986(2) and of all other powers enabling them in that behalf hereby make the following Order:—

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Financial Services Act 1986 (Extension of Scope of Act) Order 1996.

(2) This article and article 2 of this Order shall come into force on 6th January 1997 and the remaining articles shall come into force on 1st June 1997.

(3) In this Order, “the Act” means the Financial Services Act 1986.

**Investment companies with variable capital**

2. At the end of paragraph 16 of Schedule 1 to the Act (establishing, operating or winding up of collective investment schemes), there shall be inserted “or as depositary or sole director of an investment company with variable capital.”

**Custody of investments**

3. After paragraph 13 of Schedule 1 to the Act there shall be inserted the following—

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(1) Section 205A was inserted by section 206 of the Companies Act 1989 (c. 40).  
(2) 1986 c. 60. Certain functions of the Secretary of State under the Financial Services Act 1986, including the functions under section 2 of that Act, have been transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315).

## “Custody of Investments

**13A.—**(1) Safeguarding and administering or arranging for the safeguarding and administration of assets belonging to another where—

- (a) those assets consist of or include investments; or
- (b) the arrangements for their safeguarding and administration are such that those assets may consist of or include investments and the arrangements have at any time been held out as being arrangements under which investments would be safeguarded and administered.

(2) Offering or agreeing to safeguard and administer, or to arrange for the safeguarding and administration of, assets belonging to another where the circumstances fall within subparagraph (1)(a) or (b) above.

### *Notes*

(1) This paragraph does not apply to a person by reason of his safeguarding and administering assets, or offering or agreeing to do so, under arrangements—

- (a) under which another person (“the primary custodian”), who is permitted to provide a service falling within this paragraph, undertakes to the person to whom the assets belong a responsibility in respect of the assets which is no less onerous than the responsibility which the primary custodian would undertake to that person if the primary custodian were safeguarding and administering the assets himself, and
- (b) which are operated by the primary custodian in the course of carrying on in the United Kingdom investment business falling within this paragraph.

(2) None of the following activities constitutes the administration of assets—

- (a) providing information as to the number of units or the value of any assets safeguarded;
- (b) converting currency; and
- (c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs.

(3) For the purposes of this paragraph it is immaterial that the assets safeguarded and administered—

- (a) constitute units of a security, title to which is recorded on the relevant register of securities as being held in uncertificated form; or
- (b) may be transferred to another person, subject to a commitment by the person safeguarding and administering them, or arranging for their safeguarding and administration, that they will be replaced by equivalent assets at some future date or when so requested by the person to whom they belong.

(4) This paragraph does not apply to arrangements for the introduction of persons to another person if—

- (a) the person to whom the introduction is made is permitted to provide a service falling within this paragraph; and
- (b) the introduction is made with a view to the provision in the United Kingdom of a service falling within this paragraph or the making of arrangements operated in the United Kingdom for the provision of a service falling within this paragraph by a person who is not connected with the person by whom the introduction is made.

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

(5) For the purposes of Notes (1) and (4) above, a person is permitted to provide a service falling within this paragraph if—

- (a) he is an authorised person who may provide that service—
  - (i) without contravening any rules that apply to him under section 48 of this Act; or
  - (ii) by virtue of his membership of a recognised self-regulating organisation or his certification by a recognised professional body; or
- (b) he is an exempted person as respects any investment business which consists of or includes that service; or
- (c) he is entitled to carry on investment business in the United Kingdom which consists of or includes that service pursuant either to regulation 5 of the Banking Coordination (Second Council Directive) Regulations 1992(3) or to regulation 5 of the Investment Services Regulations 1995(4).”.

4. After sub-paragraph (3) of paragraph 18 of Schedule 1 to the Act (groups and joint enterprises) there shall be inserted the following—

“(3A) Paragraph 13A above does not apply to a service which a person provides or offers or agrees to provide or to arrangements which a person makes or offers or agrees to make for the provision of a service if—

- (a) that person is a body corporate and the service is or is to be provided to a body corporate in the same group and relates or will relate to assets which belong to that other body corporate; or
- (b) that person is or proposes to become a participator in a joint enterprise and the assets to which the service relates or will relate are or are to be held on behalf of another person who is or proposes to become a participator in the enterprise and are or are to be held for the purposes of or in connection with the enterprise.”.

5. After sub-paragraph (4) of paragraph 19 of Schedule 1 to the Act (sale of goods and supply of services) there shall be inserted the following—

“(4A) Paragraph 13A above does not apply to a service which the supplier provides or offers or agrees to provide or to arrangements which the supplier makes or offers or agrees to make for the provision of a service where the assets to which the service relates or will relate are or are to be held for the purposes of or in connection with the sale or supply or a related sale or supply.”.

6. In sub-paragraph (1) of paragraph 20 of Schedule 1 to the Act (employees’ share schemes), for “and 13” there shall be substituted “, 13 and 13A”.

7. After sub-paragraph (2) of paragraph 22 of Schedule 1 to the Act (trustees and personal representatives) there shall be inserted the following—

“(2A) Paragraph 13A above does not apply to anything done by a person as a trustee or personal representative unless—

- (a) he holds himself out as providing a service falling within paragraph 13A above; or
- (b) he is remunerated for providing such a service in addition to any remuneration he receives for discharging his duties as trustee or personal representative.”.

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(3) [S.I. 1992/3218](#).  
(4) [S.I. 1995/3275](#).

**8.—(1)** After sub-paragraph (2) of paragraph 24 of Schedule 1 to the Act<sup>(5)</sup> (advice given or arrangements made in course of profession or non-investment business) there shall be inserted the following—

“(2A) Paragraph 13A above does not apply to the provision of a service or to arrangements made for the provision of a service where—

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

(2) For sub-paragraph (3) of paragraph 24 of Schedule 1 to the Act there shall be substituted the following—

“(3) Advice shall not be regarded as falling within sub-paragraph (1)(b) above, the making of arrangements shall not be regarded as falling within sub-paragraph (2)(b) above and the provision of a service or the arranging for the provision of a service shall not be regarded as falling within sub-paragraph (2A)(b) above if the giving of the advice, the making of the arrangements or the provision, or the arranging for the provision, of the service is remunerated separately from the other advice or services.”.

**9.** After paragraph 24 of Schedule 1 to the Act shall be inserted the following—

“Custody of group pension funds by certain insurance companies

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

(2) In sub-paragraph (1) above “relevant insurance company” means an insurance company to which Part II of the Insurance Companies Act 1982<sup>(6)</sup> applies but to which section 22 of this Act does not apply.”.

**10.** In sub-paragraph (1) of paragraph 27 of Schedule 1 to the Act (overseas persons: unsolicited or legitimately solicited transaction etc. with or for other persons) after “paragraphs 13,” there shall be inserted “13A,”.

25th November 1996

*Michael Bates*  
*Richard Ottaway*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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(5) Sub-paragraphs (2) and (3) of paragraph 24 of Schedule 1 were substituted by the Financial Services Act 1986 (Restriction of Scope of Act and Meaning of Collective Investment Scheme) Order 1988 (S.I. 1988/803).

(6) 1982 c. 50.

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## EXPLANATORY NOTE

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

The Order extends the activities that constitute the carrying on of investment business for the purposes of the Financial Services Act 1986 (c. 60) (“FSA”) to include first, certain specified activities carried out in relation to investment companies with variable capital and secondly, the custody of assets which include or could include investments.

With regard to the former, the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 (S.I. 1996/2827) (“the ECA Regulations”) provide for the establishment for the first time in Great Britain of collective investment schemes which take the form of open-ended investment companies. The ECA Regulations were made under section 2(2) of the European Communities Act 1972 (c. 68) in order to give effect to Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (known as “the UCITS Directive”). The companies established in accordance with the ECA Regulations are referred to in the Regulations as “investment companies with variable capital”. The ECA Regulations (paragraph 22 of Schedule 8) amend section 207 of the Financial Services Act (interpretation) so as to give the terms “investment companies with variable capital” and “depository”, when used in relation to such companies, the same meaning in the Act as they have in the Regulations.

So far as custody is concerned, the Order brings within the scope of the FSA the safeguarding and administration of assets where those assets include or could include investments. The activities of nominees and sub-custodians are excluded where a primary custodian takes responsibility for that activity. In addition certain other activities are excluded from the definition of administration and the making of arrangements. The Order amends the provisions in Parts III and IV of Schedule 1 to the FSA by providing exceptions relating to services provided to other members of the same group, to fellow participators in a joint enterprise, to custody provided in connection with a sale of goods or supply of services or an employees’ share scheme, to services provided by persons when acting as trustees or personal representatives, to services provided in the course of a profession or non-investment business where the services are a necessary adjunct to the provision of professional or other non-investment business services, to services provided for a group pension fund by certain insurance companies, and to services provided by a person who does not have a permanent place of business in the United Kingdom who has either not solicited persons for the purposes of providing the service or who has legitimately solicited them.