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## STATUTORY INSTRUMENTS

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# 2001 No. 544

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

### PART I GENERAL

#### Interpretation

3.—(1) In this Order—

“the Act” means the Financial Services and Markets Act 2000;

“annuities on human life” does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged, or who have been engaged, in any particular profession, trade or employment, or of the dependants of such persons;

“buying” includes acquiring for valuable consideration;

“close relative” in relation to a person means—

- (a) his spouse [<sup>F1</sup>or civil partner];
- (b) his children and step children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters; and
- (c) the spouse [<sup>F1</sup>or civil partner] of any person within sub-paragraph (b);

[<sup>F2</sup>“the Commission Regulation” means Commission Regulation 1287/2006 of 10 August 2006;]

“contract of general insurance” means any contract falling within Part I of Schedule 1;

“contract of insurance” means any contract of insurance which is a contract of long-term insurance or a contract of general insurance, and includes—

- (a) fidelity bonds, performance bonds, administration bonds, bail bonds, customs bonds or similar contracts of guarantee, where these are—
  - (i) effected or carried out by a person not carrying on a banking business;
  - (ii) not effected merely incidentally to some other business carried on by the person effecting them; and
  - (iii) effected in return for the payment of one or more premiums;
- (b) tontines;
- (c) capital redemption contracts or pension fund management contracts, where these are effected or carried out by a person who—
  - (i) does not carry on a banking business; and
  - (ii) otherwise carries on a regulated activity of the kind specified by article 10(1) or (2);

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- (d) contracts to pay annuities on human life;
- (e) contracts of a kind referred to in article 1(2)(e) of the first life insurance directive (collective insurance etc.); and
- (f) contracts of a kind referred to in article 1(3) of the first life insurance directive (social insurance);

but does not include a funeral plan contract (or a contract which would be a funeral plan contract but for the exclusion in article 60);

“contract of long-term insurance” means any contract falling within Part II of Schedule 1;

“contractually based investment” means—

- (a) rights under a qualifying contract of insurance;
- (b) any investment of the kind specified by any of articles 83, 84, 85 and 87; or
- (c) any investment of the kind specified by article 89 so far as relevant to an investment falling within (a) or (b);

[<sup>F2</sup>“credit institution” means—

- (a) a credit institution authorised under the banking consolidation directive other than an institution to which Article 2.1 of the markets in financial instruments directive (the text of which is set out in Schedule 3) applies, or
- (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive (other than an institution to which Article 2.1 of the markets in financial instruments directive would apply) if it had its registered office (or if it does not have a registered office, its head office) in an EEA State;]

“deposit” has the meaning given by article 5;

[<sup>F3</sup>“electronic money” means monetary value, as represented by a claim on the issuer, which is—

- (a) stored on an electronic device;
- (b) issued on receipt of funds; and
- (c) accepted as a means of payment by persons other than the issuer;]

[<sup>F2</sup>“financial instrument” means any instrument listed in Section C of Annex I to the markets in financial instruments directive (the text of which is set out in Part 1 of Schedule 2) read with Chapter VI of the Commission Regulation (the text of which is set out in Part 2 of Schedule 2);]

“funeral plan contract” has the meaning given by article 59;

[<sup>F2</sup>“home Member State”, in relation to an investment firm, has the meaning given by Article 4.1.20 of the markets in financial instruments directive, and in relation to a credit institution, has the meaning given by Article 4.7 of the banking consolidation directive;]

[<sup>F4</sup>“home purchase provider” has the meaning given by article 63F(3);]

[<sup>F4</sup>“home purchaser” has the meaning given by article 63F(3);]

“instrument” includes any record whether or not in the form of a document;

[<sup>F2</sup>“investment firm” means a person whose regular occupation or business is the provision or performance of investment services and activities on a professional basis but does not include—

- (a) a person to whom the markets in financial instruments directive does not apply by virtue of Article 2 of that directive (the text of which is set out in Schedule 3);

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- (b) a person whose home Member State is an EEA State other than the United Kingdom and to whom, by reason of the fact that the State has given effect to Article 3 of that directive, that directive does not apply by virtue of that Article;
- (c) a person who does not have a home Member State and to whom (if he had his registered office in an EEA State, or, being a person other than a body corporate or a body corporate not having a registered office, if he had his head office in an EEA State) the markets in financial instruments directive would not apply by virtue of Article 2 of that directive;]

[<sup>F2</sup>“investment services and activities” means—

- (a) any service provided to third parties listed in Section A of Annex I to the markets in financial instruments directive (the text of which is set out in Part 3 of Schedule 2) read with Article 52 of Commission Directive [2006/73/EC](#) of 10 August 2006 (the text of which is set out in Part 4 of Schedule 2), or
- (b) any activity listed in Section A of Annex I to that directive,  
relating to any financial instrument;]

“joint enterprise” means an enterprise into which two or more persons (“the participators”) enter for commercial purposes related to a business or businesses (other than the business of engaging in a regulated activity) carried on by them; and, where a participator is a member of a group, each other member of the group is also to be regarded as a participator in the enterprise;

“local authority” means—

- (a) <sup>M1</sup>in England and Wales, a local authority within the meaning of the Local Government Act 1972 , the Greater London Authority, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) <sup>M2</sup>in Scotland, a local authority within the meaning of the Local Government (Scotland) Act 1973 ;
- (c) <sup>M3</sup>in Northern Ireland, a district council within the meaning of the Local Government Act (Northern Ireland) 1972 ;

[<sup>F2</sup>“management company” has the meaning given by Article 1a.2 of the UCITS directive as amended by Directive [2001/107/EC](#);

“managing agent” means a person who is permitted by the Council of Lloyd’s in the conduct of his business as an underwriting agent to perform for a member of Lloyd’s one or more of the following functions—

- (a) underwriting contracts of insurance at Lloyd’s;
- (b) reinsuring such contracts in whole or in part;
- (c) paying claims on such contracts;

[<sup>F2</sup>“market operator” means a market operator within the meaning of Article 4.1.13 of the markets in financial instruments directive, or a person who would be a market operator if he had his registered office, or if he does not have a registered office his head office, in an EEA State, but does not include—

- (a) a person to whom the markets in financial instruments directive does not apply by virtue of Article 2 of that directive (the text of which is set out in Schedule 3);
- (b) a person who does not have a home Member State to whom (if he had his registered office, or if he does not have a registered office his head office, in an EEA State) the markets in financial instruments directive would not apply by virtue of Article 2 of that directive;]

[<sup>F2</sup>“multilateral trading facility” means—

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- (a) a multilateral trading facility (within the meaning of Article 4.1.15 of the markets in financial instruments directive) operated by an investment firm, a credit institution or a market operator, or
- (b) a facility which—
  - (i) is operated by an investment firm, a credit institution or market operator which does not have a home Member State, and
  - (ii) if its operator had a home Member State, would be a multilateral trading facility within the meaning of Article 4.1.15 of the markets in financial instruments directive;]

[<sup>F5</sup>“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993 but with paragraph (b) of the definition omitted;]

“overseas person” means a person who—

- (a) carries on activities of the kind specified by any of articles 14, 21, 25, [<sup>F6</sup>25A,][<sup>F7</sup>25B, 25C,][<sup>F8</sup>25D,] 37[<sup>F9</sup>, 39A] 40, 45, 51, 52[<sup>F10</sup>, 53, 53A][<sup>F11</sup>, 53B, 53C, 61, 63B and 63F] or, so far as relevant to any of those articles, article 64 (or activities of a kind which would be so specified but for the exclusion in article 72); but
- (b) does not carry on any such activities, or offer to do so, from a permanent place of business maintained by him in the United Kingdom;

“pension fund management contract” means a contract to manage the investments of pension funds (other than funds solely for the benefit of the officers or employees of the person effecting or carrying out the contract and their dependants or, in the case of a company, partly for the benefit of officers and employees and their dependants of its subsidiary or holding company or a subsidiary of its holding company); and for the purposes of this definition, “subsidiary” and “holding company” are to be construed in accordance with section 736 of the Companies Act 1985 or article 4 of the Companies (Northern Ireland) Order 1986 ;

[<sup>F12</sup>“personal pension scheme” means a scheme or arrangement which is not an occupational pension scheme or a stakeholder pension scheme and which is comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people—

- (a) on retirement,
- (b) on having reached a particular age, or
- (c) on termination of service in an employment;]

[<sup>F13</sup>“plan provider” has the meaning given by paragraph (3) of article 63B, read with paragraphs (7) and (8) of that article;]

“property” includes currency of the United Kingdom or any other country or territory;

“qualifying contract of insurance” means a contract of long-term insurance which is not—

- (a) a reinsurance contract; nor
- (b) a contract in respect of which the following conditions are met—
  - (i) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
  - (ii) the contract provides that benefits are payable on death (other than death due to an accident) only where the death occurs within ten years of the date on which the life of the person in question was first insured under the contract, or where the death occurs before that person attains a specified age not exceeding seventy years;

- (iii) the contract has no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium; and
- (iv) the contract makes no provision for its conversion or extension in a manner which would result in it ceasing to comply with any of the above conditions;

[<sup>F14c</sup>“regulated home purchase plan” has the meaning given by article 63F(3);]

[<sup>F14c</sup>“regulated home reversion plan” has the meaning given by article 63B(3);]

“regulated mortgage contract” has the meaning given by article 61(3);

[<sup>F15c</sup>“relevant investment” means—

- (a) rights under a qualifying contract of insurance;
- (b) rights under any other contract of insurance;
- (c) any investment of the kind specified by any of articles 83, 84, 85 and 87; or
- (d) any investment of the kind specified by article 89 so far as relevant to an investment falling within (a) or (c);]

[<sup>F16c</sup>“reversion seller” has the meaning given by article 63B(3);]

“security” means (except where the context otherwise requires) any investment of the kind specified by any of articles 76 to 82 or, so far as relevant to any such investment, article 89;

“selling”, in relation to any investment, includes disposing of the investment for valuable consideration, and for these purposes “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 arrangements; and
- (c) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;

“stakeholder pension scheme” has the meaning given by section 1 of the Welfare Reform and Pensions Act 1999 [<sup>F17</sup>in relation to Great Britain and has the meaning given by article 3 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 in relation to Northern Ireland];

“syndicate” means one or more persons, to whom a particular syndicate number has been assigned by or under the authority of the Council of Lloyd’s, carrying out or effecting contracts of insurance written at Lloyd’s;

“voting shares”, in relation to a body corporate, means shares carrying voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of that body corporate.

(2) For the purposes of this Order, a transaction is entered into through a person if he enters into it as agent or arranges, in a manner constituting the carrying on of an activity of the kind specified by article 25(1)[<sup>F18</sup>, 25A(1), 25B(1) or 25C(1)], for it to be entered into by another person as agent or principal.

(3) For the purposes of this Order, a contract of insurance is to be treated as falling within Part II of Schedule 1, notwithstanding the fact that it contains related and subsidiary provisions such that it might also be regarded as falling within Part I of that Schedule, if its principal object is that of a contract falling within Part II and it is effected or carried out by an authorised person who has permission to effect or carry out contracts falling within paragraph I of Part II of Schedule 1.

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### Textual Amendments

- F1** Words in art. 3(1) inserted (5.12.2005) by [The Civil Partnership Act 2004 \(Amendments to Subordinate Legislation\) Order 2005 \(S.I. 2005/2114\)](#), reg. 1, **Sch. 16 para. 1(2)**
- F2** Words in art. 3(1) inserted (1.4.2007 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **3(b)**
- F3** Words in art. 3(1) inserted (27.4.2002) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2)(b), **2**
- F4** Words in art. 3(1) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **3(1)(a)**
- F5** Words in art. 3(1) substituted (1.10.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2006 \(S.I. 2006/1969\)](#), arts. 1(2), **2(2)(a)**
- F6** Word in art. 3(1) inserted (31.10.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 1\) Order 2003 \(S.I. 2003/1475\)](#), arts. 1(3), **3(a)**
- F7** Words in art. 3(1) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **3(1)(b)(i)**
- F8** Word in art. 3(1) inserted (1.4.2007 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **3(a)**
- F9** Word in art. 3(1) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(3), **3(1)(a)**
- F10** Words in art. 3(1) substituted (31.10.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 1\) Order 2003 \(S.I. 2003/1475\)](#), arts. 1(3), **3(b)**
- F11** Words in art. 3(1) substituted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **3(1)(b)(ii)**
- F12** Words in art. 3(1) inserted (1.10.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2006 \(S.I. 2006/1969\)](#), arts. 1(2), **2(2)(b)**
- F13** Words in art. 3(1) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **3(1)(c)**
- F14** Words in art. 3(1) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **3(1)(d)**
- F15** Words in art. 3(1) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(3), **3(1)(b)**
- F16** Words in art. 3(1) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **3(1)(e)**
- F17** Words in art. 3(1) inserted (6.4.2005) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2005 \(S.I. 2005/593\)](#), arts. 1, **2(2)(b)**
- F18** Words in art. 3(2) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **3(2)**

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

- C1** Art. 3 applied (21.5.2003) by [The Financial Services and Markets Act 2000 \(Collective Investment Schemes\) \(Designated Countries and Territories\) Order 2003 \(S.I. 2003/1181\)](#), arts. 1, **3(2)(a)**

**Marginal Citations**

- M1** [1972 c. 70](#). The definition of “local authority” in section 270 of the 1972 Act has been amended by Sch. 17 to the [Local Government Act 1985 \(c. 51\)](#); and by section 1(5) of the [Local Government \(Wales\) Act 1994 \(c. 19\)](#).
- M2** [1973 c. 65](#). The definition of “local authority” in section 235 of the 1973 Act was substituted by para. 92(66) of Sch. 13 to the [Local Government etc. \(Scotland\) Act 1994 \(c. 39\)](#).
- M3** [1972 c. 9 \(N.I.\)](#).

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