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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 II

SPECIFIED ACTIVITIES

CHAPTER XIV

FUNERAL PLAN CONTRACTS

*The activity*

**Funeral plan contracts**

**59.**—(1) Entering as provider into a funeral plan contract is a specified kind of activity.

[<sup>F1</sup>(1A) Carrying out a funeral plan contract as provider is a specified kind of activity.]

(2) A “funeral plan contract” is a contract [<sup>F2</sup>(other than one excluded by article 60)] under which—

- (a) a person (“the customer”) makes one or more payments to another person (“the provider”); and
- (b) the provider undertakes to provide, or secure that another person provides, a funeral in the United Kingdom for the customer (or some other person who is living at the date when the contract is entered into) on his death;

unless, at the time of entering into the contract, the customer and the provider intend or expect the funeral to occur within one month.

[<sup>F3</sup>(2A) For the purposes of paragraph (1A), “provider” includes a person who has assumed the undertaking referred to in paragraph (2)(b) as a result of the novation, assignment or transfer by operation of law of an existing funeral plan contract.]

[<sup>F4</sup>(3) Where—

- (a) a person (“A”) has a funeral plan contract (“the contract”) with a customer under which A has given or assumed the undertaking referred to in paragraph (2)(b);
- (b) another person (“B”) intends to give an equivalent or substantially similar undertaking (“the proposed undertaking”) to that customer;
- (c) A and B intend that B’s proposed undertaking will replace A’s undertaking;
- (d) paragraph (4) or (5) applies; and
- (e) A and B have notified the FCA in writing—
  - (i) that they consider the conditions in sub-paragraphs (a) to (d) to be met; and

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- (ii) of a date, on or after 29th July 2022, from which A and B agree to regard B's undertaking as having replaced A's undertaking for the purpose of the operation of this article;

for the purposes of paragraph (1A), B is to be treated as if B were carrying out the contract as provider from the date specified in the notification to the FCA under sub-paragraph (e)(ii).

(4) This paragraph applies if—

- (a) A and B intend that, in order for B's proposed undertaking to replace A's undertaking under the contract, B should assume A's undertaking by novation;
- (b) A has taken reasonable steps to secure the customer's written consent to the proposed novation; and
- (c) the customer has neither provided that consent nor objected, in either case within a reasonable period.

(5) This paragraph applies if it appears to A and B that it would not be reasonably practicable for B to assume A's undertaking referred to in paragraph (2)(b) by novation, assignment or operation of law, or for the conditions in paragraph (4) to be met, before the first day paragraph (1A) applies in relation to activities carried on by A in accordance with articles 1 and 1A of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021.

(6) If—

- (a) paragraph (3) applies; and
- (b) the proposed undertaking referred to in paragraph (3)(b) is given to the customer;

then that undertaking is to be treated as if it were a “funeral plan contract” for the purposes of paragraph (2).]

#### Textual Amendments

- F1** Art. 59(1A) inserted (28.1.2021 for specified purposes, 30.7.2022 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021 (S.I. 2021/90), arts. 1(2)(3), **2(4)(a)**
- F2** Words in art. 59(2) omitted (28.1.2021 for specified purposes, 30.7.2022 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021 (S.I. 2021/90), arts. 1(2)(3), **2(4)(b)**
- F3** Art. 59(2A) inserted (28.1.2021 for specified purposes, 30.7.2022 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021 (S.I. 2021/90), arts. 1(2)(3), **2(4)(c)**
- F4** Art. 59(3)-(6) inserted (16.5.2022 for specified purposes, 29.7.2022 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2022 (S.I. 2022/466), arts. 1(3), **2(2)**

#### Commencement Information

- I1** Art. 59 in force at 1.1.2002, see art. 2(2)(a)

*[<sup>F5</sup>Exclusions]*

#### Textual Amendments

- F5** Art. 60 cross-heading substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(14)**

## Plans covered by insurance or trust arrangements

- 60.**—<sup>F6</sup>(1) There is excluded from article 59 any contract under which—
- (a) the provider undertakes to secure that sums paid by the customer under the contract will be applied towards a contract of whole life insurance on the life of the customer (or other person for whom the funeral is to be provided), effected and carried out by an authorised person who has permission to effect and carry out such contracts of insurance, for the purpose of providing the funeral; or
  - (b) the provider undertakes to secure that sums paid by the customer under the contract will be held on trust for the purpose of providing the funeral, and that the following requirements are or will be met with respect to the trust—
    - (i) the trust must be established by a written instrument;
    - (ii) more than half of the trustees must be unconnected with the provider;
    - (iii) the trustees must appoint, or have appointed, an independent fund manager who is an authorised person who has permission to carry on an activity of the kind specified by article 37, and who is a person who is unconnected with the provider, to manage the assets of the trust;
    - (iv) annual accounts must be prepared, and audited by a person who is eligible for appointment as a <sup>F7</sup>statutory auditor under Part 42 of the Companies Act 2006], with respect to the assets and liabilities of the trust; and
    - (v) the assets and liabilities of the trust must, at least once every three years, be determined, calculated and verified by an actuary who is a Fellow of the Institute of Actuaries or of the Faculty of Actuaries.
- (2) For the purposes of paragraph (1)(b)(ii) and (iii), a person is unconnected with the provider if he is a person other than—
- (a) the provider;
  - (b) a member of the same group as the provider;
  - (c) a director, other officer or employee of the provider, or of any member of the same group as the provider;
  - (d) a partner of the provider;
  - (e) a close relative of a person falling within sub-paragraph (a), (c) or (d); or
  - (f) an agent of any person falling within sub-paragraphs (a) to (e).]

### Textual Amendments

**F6** Art. 60 omitted (28.1.2021 for specified purposes, 30.7.2022 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2021 \(S.I. 2021/90\)](#), arts. 1(2)(3), **2(5)**

**F7** Words in art. 60(1)(b)(iv) substituted (6.4.2008) by virtue of [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 1(tt)** (with arts. 6, 11, 12)

### Commencement Information

**I2** Art. 60 in force at 1.1.2002, see [art. 2\(2\)\(a\)](#)

## <sup>F8</sup>Local authorities

**60ZA.** Article 59 is subject to the exclusion in article 72G (local authorities).]

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### Textual Amendments

- F8** Art. 60ZA inserted (28.1.2021 for specified purposes) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2021 \(S.I. 2021/90\)](#), arts. 1(2)(3), **2(6)**

### <sup>F9</sup>[<sup>F10</sup>...<sup>F11</sup>Managers of UCITS and AIFs]

**60A.** Article 59 is subject to the [<sup>F12</sup>exclusion] in <sup>F13</sup>... [<sup>F14</sup>article 72AA (managers of [<sup>F15</sup>UK UCITS] and AIFs).]

### Textual Amendments

- F9** Words in art. 60A heading omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **5(3)(a)(iii)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Art. 60A inserted (21.8.2002) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2002 \(S.I. 2002/1776\)](#), arts. 1, **3(15)**
- F11** Words in art. 60A heading inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 1(4)(a)**
- F12** Word in art. 60A substituted (31.12.2020) by [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **5(3)(a)(i)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in art. 60A omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **5(3)(a)(ii)** (as amended by S.I. 2019/1390, regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)
- F14** Words in art. 60A inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 1(4)(c)**
- F15** Words in art. 60A substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **148(2)(n)** (with savings in S.I. 2019/680, **reg. 11** (as amended by S.I. 2019/1212, regs. 1(3), **22(3)**); 2020 c. 1, **Sch. 5 para. 1(1)**)

### <sup>F16</sup>Insolvency practitioners

**60AA.** Article 59(1A) is subject to the exclusion in article 72H (insolvency practitioners).]

### Textual Amendments

- F16** [Art. 60AA](#) inserted (16.5.2022 for specified purposes, 29.7.2022 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2022 \(S.I. 2022/466\)](#), arts. 1(3), **2(3)**

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