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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 III

#### SPECIFIED INVESTMENTS

##### **Investments: general**

73. The following kinds of investment are specified for the purposes of section 22 of the Act.

##### **Deposits**

74. A deposit.

##### **[<sup>F1</sup>Electronic money**

74A. Electronic money.]

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##### **Textual Amendments**

**F1** Art. 74A 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), 6

##### **Contracts of insurance**

75. Rights under a contract of insurance.

##### **Shares etc.**

76.—(1) Shares or stock in the share capital of—

- (a) any body corporate (wherever incorporated), and
- (b) any unincorporated body constituted under the law of a country or territory outside the United Kingdom.

(2) Paragraph (1) includes—

- (a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 <sup>M1</sup>[<sup>F2</sup>or section 31A of the Credit Unions Act 1979]; and
- (b) any transferable shares in a body incorporated under the law of, or any part of, the United Kingdom relating to [<sup>F3</sup>co-operative and community benefit societies,] industrial and provident societies or credit unions, or in a body constituted under the law of another EEA State for purposes equivalent to those of such a body.

**Status:** Point in time view as at 01/10/2018.

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(3) But subject to paragraph (2) there are excluded from paragraph (1) shares or stock in the share capital of—

- (a) an open-ended investment company;
- (b) a building society incorporated under the law of, or any part of, the United Kingdom;
- (c) a body incorporated under the law of, or any part of, the United Kingdom relating to [<sup>F4</sup>co-operative and community benefit societies,] industrial and provident societies or credit unions;
- (d) any body constituted under the law of an EEA State for purposes equivalent to those of a body falling within sub-paragraph (b) or (c).

**Textual Amendments**

- F2** Words in art. 76 inserted (8.1.2012) by [The Legislative Reform \(Industrial and Provident Societies and Credit Unions\) Order 2011 \(S.I. 2011/2687\)](#), arts. 1(1)(b), **22**
- F3** Words in art. 76(2)(b) inserted (1.8.2014) by [The Co-operative and Community Benefit Societies and Credit Unions Act 2010 \(Consequential Amendments\) Regulations 2014 \(S.I. 2014/1815\)](#), reg. 1(2), **Sch. para. 8**
- F4** Words in art. 76(3)(c) inserted (1.8.2014) by [The Co-operative and Community Benefit Societies and Credit Unions Act 2010 \(Consequential Amendments\) Regulations 2014 \(S.I. 2014/1815\)](#), reg. 1(2), **Sch. para. 8**

**Marginal Citations**

- M1** 1986 c. 53.

**Instruments creating or acknowledging indebtedness**

77.—(1) Subject to paragraph (2), such of the following as do not fall within [<sup>F5</sup>article <sup>F6</sup>... 78]—

- (a) debentures;
- (b) debenture stock;
- (c) loan stock;
- (d) bonds;
- (e) certificates of deposit;
- (f) any other instrument creating or acknowledging indebtedness.

(2) If and to the extent that they would otherwise fall within paragraph (1), there are excluded from that paragraph—

- (a) an instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
- (b) a cheque or other bill of exchange, a banker’s draft or a letter of credit (but not a bill of exchange accepted by a banker);
- (c) a banknote, a statement showing a balance on a current, deposit or savings account, a lease or other disposition of property, or a heritable security; and
- (d) a contract of insurance.

<sup>F7</sup>(e) .....

(3) An instrument excluded from paragraph (1) of article 78 by paragraph (2)(b) of that article is not thereby to be taken to fall within paragraph (1) of this article.

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#### Textual Amendments

- F5** Words in art. 77(1) substituted (24.2.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2010 \(S.I. 2010/86\)](#), arts. 1(2), **2(2)(a)**
- F6** Words in art. 77(1) omitted (16.2.2011) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2011 \(S.I. 2011/133\)](#), arts. 1(2), **2(2)(a)** (with art. 4)
- F7** Art. 77(2)(e) omitted (16.2.2011) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2011 \(S.I. 2011/133\)](#), arts. 1(2), **2(2)(b)** (with art. 4)

#### [<sup>F8</sup>Alternative finance investment bonds

**77A.**—(1) Rights under an alternative finance investment bond, to the extent that they do not fall within article [<sup>F9</sup>77 or] 78.

(2) For the purposes of this article, arrangements constitute an alternative finance investment bond if—

- (a) the arrangements provide for a person (“the bond-holder”) to pay a sum of money (“the capital”) to another (“the bond-issuer”);
- (b) the arrangements identify assets, or a class of assets, which the bond-issuer will acquire for the purpose of generating income or gains directly or indirectly (“the bond assets”);
- (c) the arrangements specify a period at the end of which they cease to have effect (“the bond term”);
- (d) the bond-issuer undertakes under the arrangements—
  - (i) to make a repayment in respect of the capital (“the redemption payment”) to the bond-holder during or at the end of the bond term (whether or not in instalments); and
  - (ii) to pay to the bond-holder other payments on one or more occasions during or at the end of the bond term (“the additional payments”);
- (e) the amount of the additional payments does not exceed an amount which would, at the time at which the bond is issued, be a reasonable commercial return on a loan of the capital; and
- (f) the arrangements are a security admitted to—
  - (i) an official list (in accordance with the provisions of Directive [2001/34/EC](#) of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities); <sup>F10</sup> ...
  - (ii) trading on a regulated market ([<sup>F11</sup>as defined by Article 4.1.21 of the markets in financial instruments directive]) or on a recognised investment exchange (within the meaning of section 285 of the Act);
  - [ trading on a multilateral trading facility (as defined by Article 4.1.22 of the markets
  - <sup>F12</sup>(iii) in financial instruments directive); or
  - (iv) trading on an organised trading facility (as defined by Article 4.1.23 of the markets in financial instruments directive).]

(3) For the purposes of paragraph (2)—

- (a) the bond-issuer may acquire the bond assets before or after the arrangements take effect;
- (b) the bond assets may be property of any kind, including rights in relation to property owned by someone other than the bond-issuer;

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- (c) the identification of the bond assets mentioned in paragraph (2)(b) and the undertakings mentioned in paragraph (2)(d) may (but need not) be described as, or accompanied by a document described as, a declaration of trust;
  - (d) the reference to a period in paragraph (2)(c) includes any period specified to end upon the redemption of the bond by the bond-issuer;
  - (e) the bond-holder may (but need not) be entitled under the arrangements to terminate them, or participate in terminating them, before the end of the bond term;
  - (f) the amount of the additional payments may be—
    - (i) fixed at the beginning of the bond term;
    - (ii) determined wholly or partly by reference to the value of or income generated by the bond assets; or
    - (iii) determined in some other way;
  - (g) if the amount of the additional payments is not fixed at the beginning of the bond term, the reference in paragraph (2)(e) to the amount of the additional payments is a reference to the maximum amount of the additional payments;
  - (h) the amount of the redemption payment may (but need not) be subject to reduction in the event of a fall in the value of the bond assets or in the rate of income generated by them; and
  - (i) entitlement to the redemption payment may (but need not) be capable of being satisfied (whether or not at the option of the bond-issuer or the bond-holder) by the issue or transfer of shares or other securities.
- (4) An instrument excluded from paragraph (1) of article 78 by paragraph (2)(b) of that article is not thereby taken to fall within paragraph (1) of this article.]

#### Textual Amendments

- F8** Art. 77A inserted (24.2.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2010 \(S.I. 2010/86\)](#), arts. 1(2), **2(3)**
- F9** Words in art. 77A(1) inserted (16.2.2011) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2011 \(S.I. 2011/133\)](#), arts. 1(2), **2(3)** (with art. 4)
- F10** Word in art. 77A(2)(f)(i) omitted (11.7.2018) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2018 \(S.I. 2018/831\)](#), arts. 1(2), **2(2)(a)**
- F11** Words in art. 77A(2)(f)(ii) substituted (11.7.2018) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2018 \(S.I. 2018/831\)](#), arts. 1(2), **2(2)(b)**
- F12** Art. 77A(2)(f)(iii)(iv) inserted (11.7.2018) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2018 \(S.I. 2018/831\)](#), arts. 1(2), **2(2)(c)**

#### Government and public securities

**78.—(1)** Subject to paragraph (2), loan stock, bonds and other instruments creating or acknowledging indebtedness, issued by or on behalf of any of the following—

- (a) the government of the United Kingdom;
- (b) the Scottish Administration;
- (c) the Executive Committee of the Northern Ireland Assembly;
- (d) the National Assembly for Wales;
- (e) the government of any country or territory outside the United Kingdom;
- (f) a local authority in the United Kingdom or elsewhere; or

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- (g) a body the members of which comprise—
  - (i) states including the United Kingdom or another EEA State; or
  - (ii) bodies whose members comprise states including the United Kingdom or another EEA State.
- (2) <sup>F13</sup>Subject to paragraph (3),] there are excluded from paragraph (1)—
  - (a) so far as applicable, the instruments mentioned in article 77(2)(a) to (d);
  - (b) any instrument creating or acknowledging indebtedness in respect of—
    - (i) money received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank;
    - (ii) money raised under the National Loans Act 1968 <sup>M2</sup> under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972 <sup>M3</sup>.

<sup>F14</sup>(3) Paragraph (2)(a) does not exclude an instrument which meets the requirements set out in sub-paragraphs (a) to (e) of article 77A(2).]

#### Textual Amendments

**F13** Words in art. 78(2) inserted (24.2.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2010 \(S.I. 2010/86\)](#), arts. 1(2), **2(4)**

**F14** Art. 78(3) inserted (24.2.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2010 \(S.I. 2010/86\)](#), arts. 1(2), **2(5)**

#### Marginal Citations

**M2** 1968 c. 13.

**M3** 1972 c. 65.

### Instruments giving entitlements to investments

**79.**—(1) Warrants and other instruments entitling the holder to subscribe for any investment of the kind specified by article 76, 77 <sup>F15</sup>, 77A] or 78.

(2) It is immaterial whether the investment to which the entitlement relates is in existence or identifiable.

(3) An investment of the kind specified by this article is not to be regarded as falling within article 83, 84 or 85.

#### Textual Amendments

**F15** Word in art. 79(1) inserted (24.2.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2010 \(S.I. 2010/86\)](#), art. 1(2), **Sch. para. 5(f)**

### Certificates representing certain securities

**80.**—(1) Subject to paragraph (2), certificates or other instruments which confer contractual or property rights (other than rights consisting of an investment of the kind specified by article 83)—

- (a) in respect of any investment of the kind specified by any of articles 76 to 79, being an investment held by a person other than the person on whom the rights are conferred by the certificate or instrument; and

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(b) the transfer of which may be effected without the consent of that person.

(2) There is excluded from paragraph (1) any certificate or other instrument which confers rights in respect of two or more investments issued by different persons, or in respect of two or more different investments of the kind specified by article 78 and issued by the same person.

### Units in a collective investment scheme

**81.** Units in a collective investment scheme (within the meaning of Part XVII of the Act).

### [<sup>F16</sup>Rights under a pension scheme

**82.**—(1) Rights under a stakeholder pension scheme.

(2) Rights under a personal pension scheme.

[<sup>F17</sup>(3) Rights or interests under a pension scheme which provides safeguarded benefits (within the meaning given in article 53E(2)).

(4) Paragraph (3) specifies a kind of investment in relation to the kind of activity specified in article 53E (advising on conversion or transfer of pension benefits), and not in relation to any other specified kind of activity.]]

#### Textual Amendments

**F16** Art. 82 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(5)**

**F17** Art. 82(3)(4) inserted (6.4.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2015 \(S.I. 2015/731\)](#), arts. 1, **2(4)**

### [<sup>F18</sup>Greenhouse gas emissions allowances

**82A.** Greenhouse gas emissions allowances which are auctioned as financial instruments or as two-day spots within the meaning of Article 3.3 of the emission allowance auctioning regulation.]

#### Textual Amendments

**F18** Art. 82A inserted (20.7.2012) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2012 \(S.I. 2012/1906\)](#), arts. 1, **2(4)**

### [<sup>F19</sup>Emission allowances

**82B.**—(1) Subject to paragraph (2), emission allowances consisting of any units recognised for compliance with the requirements of the emission allowance trading directive.

(2) Paragraph (1) only applies to emission allowances in relation to which—

- (a) an investment firm or credit institution is providing or performing investment services and activities on a professional basis;
- (b) a management company is providing, in accordance with Article 6.3 of the UCITS directive, the investment services specified in paragraph 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex 1 to the markets in financial instruments directive;

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- (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Section A of Annex 1 to the markets in financial instruments directive; or
- (d) an AIFM is providing, in accordance with Article 6.4 of the alternative investment fund managers directive the investment service specified in paragraph 1, 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive.]

#### Textual Amendments

**F19** Art. 82B inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), 6

#### Options

**83.**—<sup>[F20]</sup>(1) Options to acquire or dispose of—

- (a) a security or contractually based investment (other than one of a kind specified by this article);
- (b) currency of the United Kingdom or any other country or territory;
- (c) palladium, platinum, gold or silver; <sup>F21</sup> ...
- (d) an option to acquire or dispose of an investment of the kind specified by this article by virtue of paragraph (a), (b) or (c)<sup>[F22]</sup>;
- (e) subject to paragraph (4), an option to acquire or dispose of an option to which paragraph 5, 6, 7 or 10 of Section C of Annex I to the markets in financial instruments directive <sup>[F23]</sup>read with Articles 5, 6, 7 and 8 of the Commission Regulation] (<sup>[F24]</sup>the texts of which are set out in Parts 1 and 2] of Schedule 2) applies].

<sup>[F25]</sup>(2) Subject to paragraph (4), options—

- (a) to which paragraph (1) does not apply;
- (b) which relate to commodities;
- (c) which may be settled physically; and
- (d) either—
  - (i) to which paragraph 5 or 6 of 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 <sup>[F26]</sup>(read with Articles 5 and 6 of the Commission Regulation)], applies, or
  - (ii) which in accordance with Article <sup>[F27]</sup> of the Commission Regulation (the text of which is set out in Part 2 of Schedule 2) are to be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes, and to which paragraph 7 of Section C of Annex I to the markets in financial instruments directive applies.

(3) Subject to paragraph (4), options—

- (a) to which paragraph (1) does not apply;
- (b) which may be settled physically; and
- (c) to which paragraph 10 of Section C of Annex I to the markets in financial instruments directive (read with <sup>[F28]</sup>Articles 7 and 8 of] the Commission Regulation) applies.

(4) Paragraphs (1)(e), (2) and (3) only apply to options in relation to which—

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- (a) an investment firm or credit institution is providing or performing investment services and activities on a professional basis,
  - (b) a management company is providing, in accordance with [F<sup>29</sup>Article 6(3)] of the UCITS directive, the investment service specified in paragraph 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive, F<sup>30</sup> ...
  - (c) a market operator is providing the investment service specified in [F<sup>31</sup>paragraph 8 or 9] of Section A of Annex I to the markets in financial instruments directive[F<sup>32</sup>, or
  - (d) an AIFM is providing, in accordance with Article 6.4 of the alternative investment fund managers directive the investment service specified in paragraph 1, 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive.]
- (5) Expressions used in paragraphs (1)(e), (2) and (3) and in the markets in financial instruments directive have the same meaning as in that directive.]

#### Textual Amendments

- F20** Art. 83(1): art. 83 renumbered as art. 83(1) (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **26(a)**
- F21** Word in art. 83(1)(c) omitted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **26(b)(i)**
- F22** Art. 83(1)(e) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **26(b)(ii)**
- F23** Words in art. 83(1)(e) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **7(2)(a)**
- F24** Words in art. 83(1)(e) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **7(2)(b)**
- F25** Art. 83(2)-(5) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **26(c)**
- F26** Words in art. 83(2)(d)(i) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **7(3)(a)**
- F27** Word in art. 83(2)(d)(ii) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **7(3)(b)**
- F28** Words in art. 83(3)(c) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **7(4)**
- F29** Words in art. 83(4)(b) substituted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), reg. 1, **Sch. para. 1(3)**
- F30** Word in art. 83(4)(b) omitted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **7(5)(a)**



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- F31** Words in art. 83(4)(c) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **7(5)(b)**
- F32** Art. 83(4)(d) and preceding word inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **7(5)(c)**

## Futures

**84.**—(1) Subject to paragraph (2), rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made.

- [<sup>F33</sup>(1A) Subject to paragraph (1D), futures—
- (a) to which paragraph (1) does not apply;
  - (b) which relate to commodities;
  - (c) which may be settled physically; and
  - (d) to which paragraph 5 or 6 of Section C of Annex I to the markets in financial instruments directive [<sup>F34</sup>(read with Articles 5 and 6 of the Commission Regulation)] applies.
- (1B) Subject to paragraph (1D), futures and forwards—
- (a) to which paragraph (1) does not apply;
  - (b) which relate to commodities;
  - (c) which may be settled physically;
  - (d) which in accordance with Article [<sup>F35</sup>7] of the Commission Regulation (the text of which is set out in Part 2 of Schedule 2) are to be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes; and
  - (e) to which paragraph 7 of Section C of Annex I to the markets in financial instruments directive applies.
- (1C) Subject to paragraph (1D), futures—
- (a) to which paragraph (1) does not apply;
  - (b) which may be settled physically; and
  - (c) to which paragraph 10 of Section C of Annex I to the markets in financial instruments directive (read with [<sup>F36</sup>Articles 7 and 8 of] the Commission Regulation) applies.

[<sup>F37</sup>(1CA) Subject to paragraph (1D), any other derivative contract, relating to currencies to which paragraph 4 of Section C of Annex 1 to the markets in financial instruments directive read with Article 10 of the Commission Regulation (the texts of which are set out in Parts 1 and 2 of Schedule 2) applies.]

(1D) Paragraph (1A), (1B)[<sup>F38</sup>, (1C) and (1CA)] only apply to futures [<sup>F39</sup>, forwards or derivative contracts] in relation to which—

- (a) an investment firm or credit institution is providing or performing investment services and activities on a professional basis,
- (b) a management [<sup>F40</sup>company is providing, in accordance with Article 6(3)] of the UCITS directive, the investment service specified in paragraph 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive, [<sup>F41</sup>...

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- (c) a market operator is providing the investment service specified in [F42] paragraph 8 or 9] of Section A of Annex I to the markets in financial instruments directive[F43], or
- (d) an AIFM is providing, in accordance with Article 6.4 of the alternative investment fund managers directive the investment service specified in paragraph 1, 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive.]
- (1E) Expressions used in paragraphs (1A) to [F44(1CA)] and in the markets in financial instruments directive have the same meaning as in that directive.]
- (2) There are excluded from paragraph (1) rights under any contract which is made for commercial and not investment purposes.
- (3) A contract is to be regarded as made for investment purposes if it is made or traded on a recognised investment exchange, or is made otherwise than on a recognised investment exchange but is expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.
- (4) A contract not falling within paragraph (3) is to be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days, unless it can be shown that there existed an understanding that (notwithstanding the express terms of the contract) delivery would not be made within seven days.
- (5) The following are indications that a contract not falling within paragraph (3) or (4) is made for commercial purposes and the absence of them is an indication that it is made for investment purposes—
- (a) one or more of the parties is a producer of the commodity or other property, or uses it in his business;
  - (b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.
- (6) It is an indication that a contract is made for commercial purposes that the prices, the lot, the delivery date or other terms are determined by the parties for the purposes of the particular contract and not by reference (or not solely by reference) to regularly published prices, to standard lots or delivery dates or to standard terms.
- (7) The following are indications that a contract is made for investment purposes—
- (a) it is expressed to be as traded on an investment exchange;
  - (b) performance of the contract is ensured by an investment exchange or a clearing house;
  - (c) there are arrangements for the payment or provision of margin.
- (8) For the purposes of paragraph (1), a price is to be taken to be agreed on when a contract is made—
- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
  - (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

#### Textual Amendments

**F33** Art. 84(1A)-(1E) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), 27

**Changes to legislation:** The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, PART III is up to date with all changes known to be in force on or before 03 August 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)

- F34** Words in art. 84(1A)(d) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **8(2)**
- F35** Word in art. 84(1B)(d) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **8(3)**
- F36** Words in art. 84(1C)(c) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **8(4)**
- F37** Art. 84(1CA) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **8(5)**
- F38** Words in art. 84(1D) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **8(6)(a)**
- F39** Words in art. 84(1D) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **8(6)(b)**
- F40** Words in art. 84(1D)(b) substituted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), reg. 1, **Sch. para. 1(4)**
- F41** Word in art. 84(1D)(b) omitted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **8(6)(c)**
- F42** Words in art. 84(1D)(c) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **8(6)(d)**
- F43** Art. 84(1D)(d) and preceding word inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **8(6)(e)**
- F44** Word in art. 84(1E) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **8(7)**

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

- C1** Art. 84 applied (1.12.2001) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) Order 2001 \(S.I. 2001/1335\)](#), reg. 1(2), **Sch. 1 para. 22(3)**; S.I. 2001/3538, art. 2(1)

**Contracts for differences etc.**

- 85.**—(1) Subject to paragraph (2), 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.
- (2) There are excluded from paragraph (1)—
- (a) rights under a contract if the parties intend that the profit is to be secured or the loss is to be avoided by one or more of the parties taking delivery of any property to which the contract relates;

**Status:** Point in time view as at 01/10/2018.

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- (b) rights under a contract under which money is received by way of deposit on terms that any interest or other return to be paid on the sum deposited will be calculated by reference to fluctuations in an index or other factor;
  - (c) rights under any contract under which—
    - (i) money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank; or
    - (ii) money is raised under the National Loans Act 1968 under the auspices of the Director of Savings or treated as so raised by virtue of section 11(3) of the National Debt Act 1972;
  - (d) rights under a qualifying contract of insurance.
- [<sup>F45</sup>(3) Subject to paragraph (4), derivative instruments for the transfer of credit risk—
- (a) to which neither article 83 nor paragraph (1) applies; and
  - (b) to which paragraph 8 of Section C of Annex I to the markets in financial instruments directive applies.
- (4) Paragraph (3) only applies to derivatives in relation to which—
- (a) an investment firm or credit institution is providing or performing investment services and activities on a professional basis,
  - (b) a management company is providing, in accordance with [<sup>F46</sup>Article 6(3)] of the UCITS directive, the investment service specified in paragraph 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive,<sup>F47</sup> ...
  - (c) a market operator is providing the investment service specified in [<sup>F48</sup>paragraph 8 or 9] of Section A of Annex I to the markets in financial instruments directive[<sup>F49</sup>, or
  - (d) an AIFM is providing, in accordance with Article 6.4 of the alternative investment fund managers directive the investment service specified in paragraph 1, 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive.]
- [
- <sup>F50</sup>(4A) Subject to paragraph (4B), a derivative contract of a binary or other fixed outcomes nature—
- (a) to which paragraph (1) does not apply;
  - (b) which is settled in cash; and
  - (c) which is a financial instrument to which paragraph 4, 5, 6, 7 or 10 of Section C of Annex I to the markets in financial instruments directive read with Articles 5 to 8 and 10 of the Commission Regulation (the texts of which are set out in Parts 1 and 2 of Schedule 2) applies.
- (4B) Paragraph (4A) only applies to derivatives in relation to which—
- (a) an investment firm or credit institution is providing or performing investment services and activities on a professional basis,
  - (b) a management company is providing, in accordance with Article 6.3 of the UCITS directive, the investment service specified in paragraph 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive,
  - (c) a market operator is providing the investment service specified in paragraph 8 or 9 of Section A of Annex I to the markets in financial instruments directive,

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- (d) an AIFM is providing, in accordance with Article 6.4 of the alternative investment fund managers directive the investment service specified in paragraph 1, 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive, or
  - (e) a person is carrying on the activity specified by article 25(2).]
- (5) "Derivative instruments for the transfer of credit risk" has the same meaning as in the markets in financial instruments directive.]

#### Textual Amendments

- F45** Art. 85(3)-(5) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **28**
- F46** Words in art. 85(4)(b) substituted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), reg. 1, **Sch. para. 1(5)**
- F47** Word in art. 85(4)(b) omitted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **9(2)(a)**
- F48** Words in art. 85(4)(c) substituted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **9(2)(b)**
- F49** Art. 85(4)(d) and preceding word inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **9(2)(c)**
- F50** Art. 85(4A)(4B) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **9(3)**

#### Lloyd's syndicate capacity and syndicate membership

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

#### Funeral plan contracts

- 87.** Rights under a funeral plan contract.

#### Commencement Information

- I1** Art. 87 in force at 1.1.2002, see art. 2(2)(a)

#### Regulated mortgage contracts

- 88.** Rights under a regulated mortgage contract.

#### Commencement Information

- I2** Art. 88 in force at 31.10.2004, see art. 1(2)(b) (as read with Treasury notice dated 9.7.2003)

**Status:** Point in time view as at 01/10/2018.

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### [<sup>F51</sup>Regulated home reversion plans

**88A.** Rights under a regulated home reversion plan.]

#### Textual Amendments

**F51** Arts. 88A, 88B 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), **23**

### [<sup>F51</sup>Regulated home purchase plans

**88B.** Rights under a regulated home purchase plan.]

#### Textual Amendments

**F51** Arts. 88A, 88B 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), **23**

### [<sup>F52</sup>Regulated sale and rent back agreements

**88C.** Rights under a regulated sale and rent back agreement.]

#### Textual Amendments

**F52** Art. 88C inserted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **21**

### [<sup>F53</sup>Credit agreement

**88D.** Rights under a credit agreement.

#### Textual Amendments

**F53** Arts. 88D, 88E inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **7**

### Consumer hire agreement

**88E.** Rights under a consumer hire agreement.]

#### Textual Amendments

**F53** Arts. 88D, 88E inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **7**

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## Rights to or interests in investments

**89.**—(1) Subject to paragraphs (2) to (4), any right to or interest in anything which is specified by any other provision of this Part (other than [<sup>F54</sup>article 88, [<sup>F55</sup>88A, 88B or 88C]])).

(2) Paragraph (1) does not include interests under the trusts of an occupational pension scheme.

[<sup>F56</sup>(2A) Paragraph (2) does not apply where the kind of activity specified in article 53E (advising on conversion or transfer of pension benefits) is carried on by way of business in relation to the interests under the trusts of an occupational pension scheme.]

(3) Paragraph (1) does not include—

- (a) rights to or interests in a contract of insurance of the kind referred to in paragraph (1)(a) of article 60; or
- (b) interests under a trust of the kind referred to in paragraph (1)(b) of that article.

(4) Paragraph (1) does not include anything which is specified by any other provision of this Part.

### Textual Amendments

- F54** Words in art. 89(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), **24**
- F55** Words in art. 89(1) substituted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **22**
- F56** Art. 89(2A) inserted (6.4.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2015 \(S.I. 2015/731\)](#), arts. 1, **2(5)**

**Status:**

Point in time view as at 01/10/2018.

**Changes to legislation:**

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, PART III is up to date with all changes known to be in force on or before 03 August 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.