

## SCHEDULE 1 **U.K.**

Article 3(1)

### CONTRACTS OF INSURANCE

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

- C1** Sch. 1 applied in part (1.12.2001) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) Order 2001 \(S.I. 2001/1335\)](#), **art. 25(2)**, reg. 1(2); S.I. 2001/3538, art. 2(1)
- C2** Sch. 1 applied in part (1.12.2001) by [The Financial Services and Markets Act 2000 \(Financial Promotion\) Order 2001 \(S.I. 2001/1335\)](#), **art. 10(2)**, reg. 1(2); S.I. 2001/3538, art. 2(1)

## PART I **U.K.**

### CONTRACTS OF GENERAL INSURANCE

#### Accident **U.K.**

1. Contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the person insured or, in the case of a contract made by virtue of section 140, 140A or 140B of the Local Government Act 1972 <sup>M1</sup> (or, in Scotland, section 86(1) of the Local Government (Scotland) Act 1973 <sup>M2</sup>), a person for whose benefit the contract is made—

- (a) sustaining injury as the result of an accident or of an accident of a specified class; or
- (b) dying as a result of an accident or of an accident of a specified class; or
- (c) becoming incapacitated in consequence of disease or of disease of a specified class,

including contracts relating to industrial injury and occupational disease but excluding contracts falling within paragraph 2 of Part I of, or paragraph IV of Part II of, this Schedule.

#### Marginal Citations

- M1** [S.I. 1999/2725](#), amended by [S.I. 2000/1797](#).
- M2** 1972 c. 70. Section 140 was amended by the [Local Government \(Miscellaneous Provisions\) Act 1982 \(c. 30\)](#), s. 39(1) and Sch. 7, Part XVI; by the [Insurance Companies Act 1982 \(c. 50\)](#), Sch. 5, para. 13; and by the [London Regional Transport Act 1984 \(c. 32\)](#), Sch. 7. Section 140A was inserted by s. 39(2) of the [Local Government \(Miscellaneous Provisions\) Act 1982 \(c. 30\)](#), and amended by the [Planning \(Consequential Provisions\) Act 1990 \(c. 10\)](#), Sch. 2, para. 28, and by the [Environment Act 1995 \(c. 25\)](#), Sch. 24. Section 140B was inserted by s. 39(2) of the [Local Government \(Miscellaneous Provisions\) Act 1982](#), and amended by the [Local Government Act 1985 \(c. 51\)](#), Sch. 17, and by the [Local Government \(Wales\) Act 1994 \(c. 19\)](#), Sch. 15, para. 31.

#### Sickness **U.K.**

2. Contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of loss to the persons insured attributable to sickness or infirmity but excluding contracts falling within paragraph IV of Part II of this Schedule.

**Status:** Point in time view as at 01/04/2017.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 is up to date with all changes known to be in force on or before 21 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)

### **Land vehicles** U.K.

3. Contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles but excluding railway rolling stock.

### **Railway rolling stock** U.K.

4. Contract of insurance against loss of or damage to railway rolling stock.

### **Aircraft** U.K.

5. Contracts of insurance upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft.

### **Ships** U.K.

6. Contracts of insurance upon vessels used on the sea or on inland water, or upon the machinery, tackle, furniture or equipment of such vessels.

### **Goods in transit** U.K.

7. Contracts of insurance against loss of or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport.

### **Fire and natural forces** U.K.

8. Contracts of insurance against loss of or damage to property (other than property to which paragraphs 3 to 7 relate) due to fire, explosion, storm, natural forces other than storm, nuclear energy or land subsidence.

### **Damage to property** U.K.

9. Contracts of insurance against loss of or damage to property (other than property to which paragraphs 3 to 7 relate) due to hail or frost or any other event (such as theft) other than those mentioned in paragraph 8.

### **Motor vehicle liability** U.K.

10. Contracts of insurance against damage arising out of or in connection with the use of motor vehicles on land, including third-party risks and carrier's liability.

### **Aircraft liability** U.K.

11. Contracts of insurance against damage arising out of or in connection with the use of aircraft, including third-party risks and carrier's liability.

### **Liability of ships** U.K.

12. Contracts of insurance against damage arising out of or in connection with the use of vessels on the sea or on inland water, including third party risks and carrier's liability.

### **General liability** U.K.

13. Contracts of insurance against risks of the persons insured incurring liabilities to third parties, the risks in question not being risks to which paragraph 10, 11 or 12 relates.

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#### **Credit** U.K.

14. Contracts of insurance against risks of loss to the persons insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due.

#### **Suretyship** U.K.

15.—(1) Contracts of insurance against the risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them.

(2) Fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, where these are—

- (a) effected or carried out by a person not carrying on a banking business;
- (b) not effected merely incidentally to some other business carried on by the person effecting them; and
- (c) effected in return for the payment of one or more premiums.

#### **Miscellaneous financial loss** U.K.

16. Contracts of insurance against any of the following risks, namely—

- (a) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on;
- (b) risks of loss to the persons insured attributable to their incurring unforeseen expense (other than loss such as is covered by contracts falling within paragraph 18);
- (c) risks which do not fall within sub-paragraph (a) or (b) and which are not of a kind such that contracts of insurance against them fall within any other provision of this Schedule.

#### **Legal expenses** U.K.

17. Contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation).

#### **Assistance** U.K.

18. Contracts of insurance providing either or both of the following benefits, namely—

- (a) assistance (whether in cash or in kind) for persons who get into difficulties while travelling, while away from home or while away from their permanent residence; or
- (b) assistance (whether in cash or in kind) for persons who get into difficulties otherwise than as mentioned in sub-paragraph (a).

## PART II U.K.

### CONTRACTS OF LONG-TERM INSURANCE

#### **Life and annuity** U.K.

I. Contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within paragraph III.

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## Marriage and birth **U.K.**

**II.** Contract of insurance to provide a sum on marriage [<sup>F1</sup>or the formation of a civil partnership] or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.

### Textual Amendments

- F1** Words in Sch. 1 Pt. II para. 2 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\(5\)](#)

## Linked long term **U.K.**

**III.** Contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by references to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).

## Permanent health **U.K.**

**IV.** Contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that—

- (a) are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time; and
- (b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.

## Tontines **U.K.**

**V.** Tontines.

## Capital redemption contracts **U.K.**

**VI.** Capital redemption contracts, where effected or carried out by a person who does not carry on a banking business, and otherwise carries on a regulated activity of the kind specified by article 10(1) or (2).

## Pension fund management **U.K.**

**VII.**

- (a) Pension fund management contracts, and
- (b) pension fund management contracts which are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest,

where effected or carried out by a person who does not carry on a banking business, and otherwise carries on a regulated activity of the kind specified by article 10(1) or (2).

## Collective insurance etc. **U.K.**

**VIII.** Contracts of a kind referred to in [<sup>F2</sup>Article 2(3)(b)(v) of the Solvency 2 Directive].

**Status:** Point in time view as at 01/04/2017.

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#### Textual Amendments

- F2** Words in Sch. 1 Pt. II para. 8 substituted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), reg. 1(2), [Sch. 2 para. 11\(5\)\(a\)](#)

### Social insurance **U.K.**

**IX.** Contracts of a kind referred to in <sup>F3</sup>Article 2(3)(c) of the Solvency 2 Directive].

#### Textual Amendments

- F3** Words in Sch. 1 Pt. II para. 9 substituted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), reg. 1(2), [Sch. 2 para. 11\(5\)\(b\)](#)

<sup>F4</sup>SCHEDULE 2 **U.K.**

Article 3(1)

### SECTIONS A AND C OF ANNEX I TO THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND RELATED <sup>F5</sup>COMMUNITY]<sup>F5</sup>EU] SUBORDINATE LEGISLATION

#### Textual Amendments

- F4** Sch. 2 substituted (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), **29**
- F5** Word in Sch. 2 heading substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **10(2)**

## PART 1 **U.K.**

### SECTION C OF ANNEX I TO THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE

“Financial instruments

1. Transferable securities;
2. Money-market instruments;
3. Units in collective investment undertakings;
4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, <sup>F6</sup>emission allowances] or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

#### Textual Amendments

- F6** Words in Sch. 2 Pt. 1 para. 4 inserted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **10(3)(a)**

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5. Options, futures, swaps, [<sup>F7</sup>forward rate agreements][<sup>F7</sup>forwards] and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties ([<sup>F8</sup>otherwise][<sup>F8</sup>other] than by reason of a default or other termination event);

#### Textual Amendments

- F7** Words in Sch. 2 Pt. 1 para. 5 substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **10(3)(b)(i)**
- F8** Word in Sch. 2 Pt. 1 para. 5 substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **10(3)(b)(ii)**

6. Options, futures, swaps, and any other derivative [<sup>F9</sup>contracts][<sup>F9</sup>contract] relating to commodities that can be physically settled provided that they are traded on a regulated market [<sup>F10</sup>and/or an MTF][<sup>F10</sup>, an MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled];

#### Textual Amendments

- F9** Word in Sch. 2 Pt. 1 para. 6 substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **10(3)(c)(i)**
- F10** Words in Sch. 2 Pt. 1 para. 6 substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **10(3)(c)(ii)**

[<sup>F11</sup>Option, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments;]

#### Textual Amendments

- F11** Sch. 2 Pt. 1 para. 7 substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **10(3)(d)**

8. Derivative instruments for the transfer of credit risk;

9. Financial contracts for differences;

[<sup>F12</sup>Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF;]

#### Textual Amendments

- F12** Sch. 2 Pt. 1 para. 10 substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **10(3)(e)**

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[  
<sup>F13</sup>11. Emission allowances consisting of any units recognised for compliance with the requirements of [Directive 2003/87/EC](#) (Emissions Trading Scheme).]

**Textual Amendments**

**F13** Sch. 2 Pt. 1 para. 11 inserted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **10(3)(f)**

[<sup>F14</sup>PART 2 **U.K.**

Articles 5 to 8, 10 and 11 of the Commission Regulation

**Textual Amendments**

**F14** Sch. 2 Pt. 2 substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **10(4)**

*Article 5*

*Wholesale energy products that must be physically settled*

1. For the purposes of Section C(6) of Annex I to [Directive 2014/65/EU](#), a wholesale energy product must be physically settled where all the following conditions are satisfied:

- (a) it contains provisions which ensure that parties to the contract have proportionate arrangements in place to be able to make or take delivery of the underlying commodity; a balancing agreement with the Transmission System Operator in the area of electricity and gas shall be considered a proportionate arrangement where the parties to the agreement have to ensure physical delivery of electricity or gas.
- (b) it establishes unconditional, unrestricted and enforceable obligations of the parties to the contract to deliver and take delivery of the underlying commodity;
- (c) it does not allow either party to replace physical delivery with cash settlement;
- (d) the obligations under the contract cannot be offset against obligations from other contracts between the parties concerned, without prejudice to the rights of the parties to the contract, to net their cash payment obligations.

For the purposes of point (d), operational netting in power and gas markets shall not be considered as offsetting of obligations under a contract against obligations from other contracts.

2. Operational netting shall be understood as any nomination of quantities of power and gas to be fed into a gridwork upon being so required by the rules or requests of a Transmission System Operator as defined in Article 2(4) of [Directive 2009/72/EC](#) of the European Parliament and of the Council for an entity performing an equivalent function to a Transmission System Operator at the national level. Any nomination of quantities based on operational netting shall not be at the discretion of the parties to the contract.

3. For the purposes of Section C(6) of Annex I to [Directive 2014/65/EU](#), force majeure shall include any exceptional event or a set of circumstances which are outside the control of the parties to the contract, which the parties to the contract could not have reasonably foreseen or avoided by



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the exercise of appropriate and reasonable due diligence and which prevent one or both parties to the contract from fulfilling their contractual obligations.

4. For the purposes of Section C(6) of Annex I to [Directive 2014/65/EU](#) bona fide inability to settle shall include any event or set of circumstances, not qualifying as force majeure as referred to in paragraph 3, which are objectively and expressly defined in the contract terms, for one or both parties to the contract, acting in good faith, not to fulfil their contractual obligations.

5. The existence of force majeure or bona fide inability to settle provisions shall not prevent a contract from being considered as ‘physically settled’ for the purposes of Section C(6) of Annex I to [Directive 2014/65/EU](#).

6. The existence of default clauses providing that a party is entitled to financial compensation in the case of non- or defective performance of the contract shall not prevent the contract from being considered as ‘physically settled’ within the meaning of Section C(6) of Annex I to [Directive 2014/65/EU](#).

7. The delivery methods for the contracts being considered as ‘physically settled’ within the meaning of Section C(6) of Annex I to [Directive 2014/65/EU](#) shall include at least:

- (a) physical delivery of the relevant commodities themselves;
- (b) delivery of a document giving rights of an ownership nature to the relevant commodities or the relevant quantity of the commodities concerned;
- (c) other methods of bringing about the transfer of rights of an ownership nature in relation to the relevant quantity of goods without physically delivering them including notification, scheduling or nomination to the operator of an energy supply network, that entitles the recipient to the relevant quantity of the goods.

## Article 6

### *Energy derivative contracts relating to oil and coal and wholesale energy products*

1. For the purposes of Section C(6) of Annex I to [Directive 2014/65/EU](#), energy derivative contracts relating to oil shall be contracts with mineral oil, of any description and petroleum gases, whether in liquid or vapour form, including products, components and derivatives of oil and oil transport fuels, including those with biofuel additives, as an underlying.

2. For the purposes of Section C(6) of Annex I to [Directive 2014/65/EU](#), energy derivative contracts relating to coal shall be contracts with coal, defined as a black or dark-brown combustible mineral substance consisting of carbonised vegetable matter, used as a fuel, as an underlying.

3. For the purposes of Section C(6) of Annex I to [Directive 2014/65/EU](#) derivative contracts that have the characteristics of wholesale energy products as defined in Article 2(4) of Regulation (EU) 1227/2011 of the European Parliament and Council shall be derivatives with electricity or natural gas as an underlying, in accordance with points (b) and (d) of Article 2(4) of that Regulation.

## Article 7

### *Other derivative financial instruments*

1. For the purposes of Section C(7) of Annex I to [Directive 2014/65/EU](#), a contract which is not a spot contract in accordance with paragraph 2 and which is not for commercial purposes as laid down in paragraph 4 shall be considered as having the characteristics of other derivative financial instruments where it satisfies the following conditions:

- (a) it meets one of the following criteria:



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- (i) it is traded on a third country trading venue that performs a similar function to a regulated market, an MTF or an OTF;
  - (ii) it is expressly stated to be traded on, or is subject to the rules of, a regulated market, an MTF, an OTF or such a third country trading venue;
  - (iii) it is equivalent to a contract traded on a regulated market, MTF, an OTF or such a third country trading venue, with regards to the price, the lot, the delivery date and other contractual terms;
- (b) it is standardised so that the price, the lot, the delivery date and other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

2. A spot contract for the purposes of paragraph 1 shall be a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods:

- (a) 2 trading days;
- (b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period.

A contract shall not be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the period referred to in paragraph 2.

3. For the purposes of Section C(10) of Annex I to [Directive 2004/39/EU](#), a derivative contract relating to an underlying referred to in that Section or in Article 8 of this Regulation shall be considered to have the characteristics of other derivative financial instruments where one of the following conditions is satisfied:

- (a) it is settled in cash or may be settled in cash at the option of one or more of the parties, otherwise than by reason of a default or other termination event;
- (b) it is traded on a regulated market, an MTF, an OTF, or a third country trading venue that performs a similar function to a regulated market, MTF or an OTF;
- (c) the conditions laid down in paragraph 1 are satisfied in relation to that contract.

4. A contract shall be considered to be for commercial purposes for the purposes of Section C(7) of Annex I to [Directive 2014/65/EU](#), and as not having the characteristics of other derivative financial instruments for the purposes of Sections C(7) and (10) of that Annex, where the following conditions are both met:

- (a) it is entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network,
- (b) it is necessary to keep in balance the supplies and uses of energy at a given time, including the case when the reserve capacity contracted by an electricity transmission system operator as defined in Article 2(4) of [Directive 2009/72/EC](#) is being transferred from one prequalified balancing service provider to another prequalified balancing service provider with the consent of the relevant transmission system operator.

#### Article 8

##### *Derivatives under Section C(10) of Annex I to [Directive 2014/65/EU](#)*

In addition to derivative contracts expressly referred to in Section C(10) of Annex I to [Directive 2014/65/EU](#), a derivative contract shall be subject to the provisions in that Section where it meets the criteria set out in that Section and in Article 7(3) of this Regulation and it relates to any of the following:

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- (a) telecommunications bandwidth;
- (b) commodity storage capacity;
- (c) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means with the exception of transmission rights related to electricity transmission cross zonal capacities when they are, on the primary market, entered into with or by a transmission system operator or any persons acting as service providers on their behalf and in order to allocate the transmission capacity;
- (d) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources, except if the contract is already with the scope of Section C(4) of Annex I to [Directive 2014/65/EU](#);
- (e) a geological, environmental or other physical variable, except if the contract is relating to any units recognised for compliance with the requirements of [Directive 2003/87/EC](#) of the European Parliament and of the Council;
- (f) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;
- (g) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;
- (h) an index or measure based on actuarial statistics.

#### *Article 10*

##### *Characteristics of other derivative contracts relating to currencies*

1. For the purposes of Section C (4) of Annex I to [Directive 2014/65/EU](#), other derivative contracts relating to a currency shall not be a financial instrument where the contract is one of the following:

- (a) a spot contract within the meaning of paragraph 2 of this Article,
- (b) a means of payment that:
  - (i) must be settled physically otherwise than by reason of a default or other termination event;
  - (ii) is entered into by at least a person which is not a financial counterparty within the meaning of Article 2(8) of Regulation (EU) No. 648/2012 of the European Parliament and of the Council;
  - (iii) is entered into in order to facilitate payment for identifiable goods, services or direct investment; and
  - (iv) is not traded on a trading venue.

2. A spot contract for the purposes of paragraph 1 shall be a contract for the exchange of one currency against another currency, under the terms of which delivery is scheduled to be made within the longer of the following periods:

- (a) 2 trading days in respect of any pair of the major currencies set out in paragraph 3;
- (b) for any pair of currencies where at least one currency is not a major currency, the longer of 2 trading days or the period generally accepted in the market for that currency pair as the standard delivery period;
- (c) where the contract for the exchange of those currencies is used for the main purpose of the sale or purchase of a transferable security or a unit in a collective investment undertaking, the period generally accepted in the market for the settlement of that transferable security

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or a unit in a collective investment undertaking as the standard delivery period or 5 trading days, whichever is shorter.

A contract shall not be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the currency is to be postponed and not to be performed within the period set out in the first subparagraph.

3. The major currencies for the purposes of paragraph 2 shall only include the US dollar, Euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone, Mexican peso, Croatian kuna, Bulgarian lev, Czech koruna, Danish krone, Hungarian forint, Polish zloty and Romanian leu.

4. For the purposes of paragraph 2, a trading day shall mean any day of normal trading in the jurisdiction of both the currencies that are exchanged pursuant to the contract for the exchange of those currencies and in the jurisdiction of a third currency where any of the following conditions are met:

- (a) the exchange of those currencies involves converting them through that third currency for the purposes of liquidity;
- (b) the standard delivery period for the exchange of those currencies references the jurisdiction of that third currency.

## Article 11

### Money-market instruments

Money-market instruments in accordance with Article 4(1)(17) of [Directive 2014/65/EU](#), shall include treasury bills, certificates of deposits, commercial papers and other instruments with substantively equivalent features where they have the following characteristics:

- (a) they have a value that can be determined at any time;
- (b) they are not derivatives;
- (c) they have a maturity at issuance of 397 days or less.]

## PART 3 U.K.

### SECTION A OF ANNEX I TO THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE

#### “Investment services and activities

1. Reception and transmission of orders in relation to one or more financial instruments.
2. Execution of orders on behalf of clients.
3. Dealing on own account.
4. Portfolio management.
5. Investment advice.
6. Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.
7. Placing of financial instruments without a firm commitment basis.
8. Operation of [<sup>F15</sup>Multilateral Trading Facilities][<sup>F15</sup>an MTF].”

**Status:** Point in time view as at 01/04/2017.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 is up to date with all changes known to be in force on or before 21 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)

#### Textual Amendments

**F15** Words in Sch. 2 Pt. 3 para. 8 substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **10(5)(a)**

[  
**F169.** Operation of an OTF.]

#### Textual Amendments

**F16** Sch. 2 Pt. 3 para. 9 inserted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **10(5)(b)**

## [<sup>F17</sup>PART 4 U.K.]

### Article 9 of the Commission Regulation

#### Textual Amendments

**F17** Sch. 2 Pt. 4 substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **10(6)**

#### *Article 9*

##### *Investment advice*

For the purposes of the definition of ‘investment advice’ in Article 4(1)(4) of [Directive 2014/65/EU](#), a personal recommendation shall be considered a recommendation that is made to a person in his capacity as an investor or potential investor, or in his capacity as an agent for an investor or potential investor.

That recommendation shall be presented as suitable for that person, or shall be based on a consideration of the circumstances of that person, and shall constitute a recommendation to take one of the following sets of steps:

- (a) to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument;
- (b) to exercise or not to exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.

A recommendation shall not be considered a personal recommendation if it is issued exclusively to the public.]]

**[<sup>F18</sup>SCHEDULE 3 U.K.]**

Article 3(1)

Article 2 of the Markets in Financial Instruments Directive and related subordinate legislation

**Textual Amendments**

**F18** Sch. 3 substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **11**

**PART 1 U.K.**

Article 2 of the Markets in Financial Instruments Directive

*Article 2*

*Exemptions*

1. This Directive shall not apply to:
  - (a) insurance undertakings or undertakings carrying out the reinsurance and retrocession activities referred to in [Directive 2009/138/EC](#) when carrying out the activities referred to in that Directive;
  - (b) persons providing investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;
  - (c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;
  - (d) persons dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives thereof unless such persons:
    - (i) are market makers;
    - (ii) are members of or participants in a regulated market or an MTF, on the one hand, or have direct electronic access to a trading venue, on the other hand, except for non-financial entities who execute transactions on a trading venue which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups;
    - (iii) apply a high frequency algorithmic trading technique; or
    - (iv) deal on own account when executing client orders;Persons exempt under points (a), (i) or (j) are not required to meet the conditions laid down in this point in order to be exempt.
  - (e) operators with compliance obligations under [Directive 2003/87/EC](#) who, when dealing in emission allowances, do not execute client orders and who do not provide any investment services or perform any investment activities other than dealing on own account, provided that those persons do not apply a high frequency algorithmic trading technique;
  - (f) persons providing investment services consisting exclusively in the administration of employee participation schemes;

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- (g) persons providing investment services which only involve both the administration of employee participation schemes and the provision of investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;
- (h) the members of the ESCB and other national bodies performing similar functions in the Union, other public bodies charged with or intervening in the management of the public debt in the Union and international financial institutions established by two or more Member States which have the purpose of mobilising funding and providing financial assistance to the benefit of their members that are experiencing or threatened by severe financing problems;
- (i) collective investment undertakings and pension funds whether coordinated at Union level or not and the depositaries and managers of such undertakings;
- (j) persons:
  - (i) dealing on own account, including market makers, in commodity derivatives or emission allowances or derivatives thereof, excluding persons who deal on own account when executing client orders; or
  - (ii) providing investment services, other than dealing on own account, in commodity derivatives or emission allowances or derivatives thereof to the customers or suppliers of their main business;

provided that:

- for each of those cases individually and on an aggregate basis this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Directive or banking activities under [Directive 2013/36/EU](#), or acting as a market maker in relation to commodity derivatives,
- those persons do not apply a high frequency algorithmic trading technique; and
- those persons notify annually the relevant competent authority that they make use of this exemption and upon request report to the competent authority the basis on which they consider that their activity under points (i) and (ii) is ancillary to their main business;
- (k) persons providing investment advice in the course of providing another professional activity not covered by this Directive provided that the provision of such advice is not specifically remunerated;
- (l) associations set up by Danish and Finnish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;
- (m) ‘agenti di cambio’ whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 24 February 1998;
- (n) transmission system operators as defined in Article 2(4) of [Directive 2009/72/EC](#) or Article 2(4) of [Directive 2009/73/EC](#) when carrying out their tasks under those Directives, under Regulation (EC) No 714/2009, under Regulation (EC) No 715/2009 or under network codes or guidelines adopted pursuant to those Regulations, any persons acting as service providers on their behalf to carry out their task under those legislative acts or under network codes or guidelines adopted pursuant to those Regulations, and any operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy when carrying out such tasks.

That exemption shall apply to persons engaged in the activities set out in this point only where they perform investment activities or provide investment services relating to commodity derivatives in order to carry out those activities. That exemption shall not apply with regard to the operation of a secondary market, including a platform for secondary trading in financial transmission rights;

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(o) CSDs except as provided for in Article 73 of Regulation (EU) No 909/2014 of the European Parliament and of the Council.

2. The rights conferred by this Directive shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the ESCB performing their tasks as provided for by the TFEU and by Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank or performing equivalent functions under national provisions.

3. The Commission shall adopt delegated acts in accordance with Article 89 to clarify for the purposes of point (c) of paragraph 1 when an activity is provided in an incidental manner.

4. ESMA shall develop draft regulatory technical standards to specify, for the purposes of point (j) of paragraph 1, the criteria for establishing when an activity is to be considered to be ancillary to the main business at a group level.

Those criteria shall take into account at least the following elements:

- (a) the need for ancillary activities to constitute a minority of activities at a group level;
- (b) the size of their trading activity compared to the overall market trading activity in that asset class.

In determining the extent to which ancillary activities constitute a minority of activities at a group level ESMA may determine that the capital employed for carrying out the ancillary activity relative to the capital employed for carrying out the main business is to be considered. However, that factor shall in no case be sufficient to demonstrate that the activity is ancillary to the main business of the group.

The activities referred to in this paragraph shall be considered at a group level.

The elements referred to in the second and third subparagraphs shall exclude:

- (a) intra-group transactions as referred to in Article 3 of Regulation (EU) No 648/2012 that serve group-wide liquidity or risk management purposes;
- (b) transactions in derivatives which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity;
- (c) transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a trading venue, where such obligations are required by regulatory authorities in accordance with Union law or with national laws, regulations and administrative provisions, or by trading venues.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

## PART 2 **U.K.**

### Article 4 of the Commission Regulation

#### *Article 4*

##### *Provision of investment service in an incidental manner*

For the purpose of the exemption in point (c) of Article 2(1) of [Directive 2014/65/EU](#), an investment service shall be deemed to be provided in an incidental manner in the course of a professional activity where the following conditions are satisfied:



**Status:** Point in time view as at 01/04/2017.

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- (a) a close and factual connection exists between the professional activity and the provision of the investment service to the same client, such that the investment service can be regarded as accessory to the main professional activity;
- (b) the provision of investment services to the clients of the main professional activity does not aim to provide a systematic source of income to the person providing the professional activity; and
- (c) the person providing the professional activity does not market or otherwise promote his ability to provide investment services, except where these are disclosed to clients as being accessory to the main professional activity.]

[<sup>F19</sup>SCHEDULE 4 U.K.]

Article 4

#### RELEVANT TEXT OF THE INSURANCE MEDIATION DIRECTIVE

##### Textual Amendments

**F19** Sch. 4 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), **12**

Part 1 U.K.

#### Article 1.2

“This Directive shall not apply to persons providing mediation services for insurance contracts if all the following conditions are met:

- (a) the insurance contract only requires knowledge of the insurance cover that is provided;
- (b) the insurance contract is not a life assurance contract;
- (c) the insurance contract does not cover any liability risks;
- (d) the principal professional activity of the person is other than insurance mediation;
- (e) the insurance is complementary to the product or service supplied by any provider, where such insurance covers:
  - (i) the risk of breakdown, loss of or damage to goods supplied by that provider; or
  - (ii) damage to or loss of baggage and other risks linked to the travel booked with that provider, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel;
- (f) the amount of the annual premium does not exceed EUR 500 and the total duration of the insurance contract, including any renewals, does not exceed five years.”

## Part II **U.K.**

### Article 2.3

““Insurance mediation” means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation.”

## Part III **U.K.**

### Article 2.4

““Reinsurance mediation” means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by a reinsurance undertaking or an employee of a reinsurance undertaking who is acting under the responsibility of the reinsurance undertaking are not considered as reinsurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract, the management of claims of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as reinsurance mediation.”]

## [<sup>F20</sup>SCHEDULE 4A **E+W+S**

Article 60LB

### MEANING OF “BORROWER” IN RELATION TO GREEN DEAL CREDIT AGREEMENTS

#### Textual Amendments

**F20** Sch. 4A inserted (E.W.S.) (15.7.2014) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Green Deal\) \(Amendment\) Order 2014 \(S.I. 2014/1850\)](#), arts. 1(2), **11** (with art. 1(3))

<i>Article of this Order</i>	<i>References to “borrower” are to be read as references to the—</i>
Article 36B	improver
Article 36H	improver
Article 36J	improver
Article 39D	current bill payer

**Status:** Point in time view as at 01/04/2017.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 is up to date with all changes known to be in force on or before 21 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)

<i>Article of this Order</i>	<i>References to “borrower” are to be read as references to the—</i>
	previous bill payer
Article 39E	current bill payer
	previous bill payer
Article 39M	current bill payer
	previous bill payer
Article 60C	improver
Article 60H	improver
Article 60L, so far as relating to definitions of “deposit” and “security”	improver
Article 60LA	improver
	first bill payer
	current bill payer
	previous bill payer
Article 60M	improver
	first bill payer
	current bill payer
	previous bill payer]

[<sup>F21</sup>SCHEDULE 5 U.K.]

Article 63R

SPECIFIED BENCHMARKS

**Textual Amendments**

**F21** Sch. 5 substituted (1.4.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2015 \(S.I. 2015/369\)](#), arts. 1, 3

The benchmarks known by the following names are specified—

1. The London Interbank Offered Rate, also known as LIBOR;
2. ISDAFIX;
3. Sterling Overnight Index Average, also known as SONIA;
4. Repurchase Overnight Index Average, also known as RONIA;
5. WM/Reuters London 4 p.m. Closing Spot Rate;

**Changes to legislation:** The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 is up to date with all changes known to be in force on or before 21 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)

6. London Gold Fixing;
7. LBMA Silver Price;
8. ICE Brent Index.]

[<sup>F22</sup>SCHEDULE 6 U.K.]

Article 51ZA

FUNCTIONS INCLUDED IN THE ACTIVITY OF MANAGING  
A UCITS: ANNEX II TO THE UCITS DIRECTIVE

**Textual Amendments**

**F22** Schs. 6-8 inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 1(17)**

1. Investment management.
2. Administration—
  - (a) legal and fund management accounting services;
  - (b) customer inquiries;
  - (c) valuation and pricing (including tax returns);
  - (d) regulatory compliance monitoring;
  - (e) maintenance of unit-holder register;
  - (f) distribution of income;
  - (g) unit issues and redemptions;
  - (h) contract settlements (including certificate dispatch);
  - (i) record keeping.
3. Marketing.

SCHEDULE 7 U.K.]

Article 51ZC

ADDITIONAL ACTIVITIES INCLUDED IN THE ACTIVITY OF  
MANAGING AN AIF LISTED IN PARAGRAPH 2 OF ANNEX I TO  
THE ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE

**U.K.**

- (a) Administration—
  - (i) legal and fund management accounting services;
  - (ii) customer inquiries;
  - (iii) valuation and pricing, including tax returns;
  - (iv) regulatory compliance monitoring;
  - (v) maintenance of unit-/shareholder register;

**Status:** Point in time view as at 01/04/2017.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 is up to date with all changes known to be in force on or before 21 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)

- (vi) distribution of income;
- (vii) unit/shares issues and redemptions;
- (viii) contract settlements, including certificate dispatch;
- (ix) record keeping;
- (b) Marketing;
- (c) Activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services related to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

## SCHEDULE 8 **U.K.**

Article 51ZF

### PERSONS EXCLUDED FROM REGULATED ACTIVITY OF MANAGING AN AIF

#### Interpretation of this Schedule **U.K.**

1. Any expression used in this Schedule which is used in the alternative investment fund managers directive has the same meaning as in that directive.

#### Persons excluded **U.K.**

2. A small registered UK AIFM, in respect of the AIFs managed by it by virtue of which it is entitled to be registered as a small registered UK AIFM (but not in respect of any other AIFs managed by it).

3. An AIFM in so far as it manages one or more AIFs whose only investors are—

- (a) the AIFM,
- (b) the parent undertakings of the AIFM,
- (c) the subsidiaries of the AIFM, or
- (d) other subsidiaries of those parent undertakings,

provided that none of the investors is an AIF.

4. An institution for occupational retirement provision which falls within the scope of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, including, where applicable, the authorised entities responsible for managing such institutions and acting on their behalf referred to in Article 2.1 of that directive, or the investment managers appointed pursuant to Article 19.1 of that directive, in so far as they do not manage AIFs.

5. The European Central Bank, the European Investment Bank, the European Investment Fund, a bilateral development bank, the World Bank, the International Monetary Fund, any other supranational institution or similar international organisation, or a European Development Finance Institution, in the event that such institution or organisation manages AIFs and in so far as those AIFs act in the public interest.

6. A national central bank.

7. A national, regional or local government or body or other institution which manages funds supporting social security and pension systems.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 is up to date with all changes known to be in force on or before 21 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)

8. A holding company.
9. An employee participation scheme or employee savings scheme.
10. A securitisation special purpose entity.

[<sup>F23</sup>11. An AIFM, the registered office of which is not in an EEA State [<sup>F24</sup>, that is registered in the United Kingdom in accordance with Article 3 of the alternative investment fund managers directive].]

#### Textual Amendments

- F23** Sch. 8 para. 11 omitted (coming into force in accordance with reg. 1(4) of the amending S.I.) by virtue of [The Alternative Investment Fund Managers \(Amendment\) Regulations 2013 \(S.I. 2013/1797\)](#), **Sch. 2 para. 2**
- F24** Words in Sch. 8 para. 11 inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), regs. 1, **81(3)**

**Status:**

Point in time view as at 01/04/2017.

**Changes to legislation:**

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