STATUTORY INSTRUMENTS

2001 No. 544

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

PART I

GENERAL

Citation

1. This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

Commencement

2.—(1) Except as provided by paragraph (2), this Order comes into force on the day on which section 19 of the Act comes into force.

(2) This Order comes into force—

(a) for the purposes of articles 59, 60 and 87 (funeral plan contracts) on 1st January 2002; and

(b) for the purposes of articles 61 to 63, 88, 90 and 91 (regulated mortgage contracts) **[**[F1]on such a day as the Treasury may specify**]**.

[[F2](3) Any day specified under paragraph (2)(b) must be caused to be notified in the London, Edinburgh and Belfast Gazettes published not later than one week before that day.**]**

Textual Amendments

F1 Words in art. 2(2)(b) substituted (30.8.2002) by The Financial Services and Markets Act 2000 (Commencement of Mortgage Regulation) (Amendment) Order 2002 (S.I. 2002/1777), arts. 1, **2(2)**

F2 Art. 2(3) inserted (30.8.2002) by The Financial Services and Markets Act 2000 (Commencement of Mortgage Regulation) (Amendment) Order 2002 (S.I. 2002/1777), arts. 1, **2(3)**

Interpretation

3.—(1) In this Order—

"the Act" means the Financial Services and Markets Act 2000;

[[F3]"acting as an insolvency practitioner" is to be read with section 388 of the Insolvency Act 1986 or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989 and, in any provision of this Order which provides for activities to be excluded from a specified activity, references to things done by a person acting—

(a) as an insolvency practitioner, or

(b) in reasonable contemplation of that person's appointment as an insolvency practitioner,

include anything done by the person's firm in connection with that person so acting;**]**

[[F4]"agreement provider" has the meaning given by article 63J(3);

"agreement seller" has the meaning given by article 63J(3);**]**

[[F5]"AIFM" has the meaning given by regulation 4 of the Alternative Investment Fund Managers Regulations 2013;**]**

[[F6]"aircraft operator" has the same meaning as in the emission allowance trading directive;**]**

[[F7]"alternative investment fund managers directive" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers;**]**

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

[[F8]"assignment", in relation to a credit agreement, has the meaning given by article 60L;**]**

[[F6]"auction platform" means a platform on which auctions of greenhouse gas emissions allowances are held in accordance with the emission allowance auctioning regulation;**]**

[[F8]"borrower"—

(a) in relation to a credit agreement other than a regulated mortgage contract **[**[F9]or**][**[F9],**]** an article 36H agreement (within the meaning given by article 36H) **[**[F10]or an agreement that is a green deal plan**]**, has the meaning given by article 60L;

(b) in relation to an article 36H agreement (within the meaning given by that article) other than a regulated mortgage contract, **[**[F11]has the meaning given by article 36H**]**;**]**

(c) **[**[F12]in relation to a credit agreement that is a green deal plan, has the meaning given by article 60LB;**]**

"buying" includes acquiring for valuable consideration;

"close relative" in relation to a person means—

(a) his spouse **[**[F13]or civil partner**]**;

(b) his children and step children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters; and

(c) the spouse **[**[F13]or civil partner**]** of any person within sub-paragraph (b);

[[F14]"the Commission Regulation" means **[**[F15]Commission Delegated Regulation of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive**]**;**]**

[[F8]"consumer hire agreement" has the meaning given by article 60N;**]**

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

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

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

(i) effected or carried out by a person not carrying on a banking business;

(ii) not effected merely incidentally to some other business carried on by the person effecting them; and

(iii) effected in return for the payment of one or more premiums;

(b) tontines;

(c) capital redemption contracts or pension fund management contracts, where these are effected or carried out by a person who—

(i) does not carry on a banking business; and

(ii) otherwise carries on a regulated activity of the kind specified by article 10(1) or (2);

(d) contracts to pay annuities on human life;

(e) contracts of a kind referred to in **[**[F16]Article 2(3)(b)(v) of the Solvency 2 Directive**]**; and

(f) contracts of a kind referred to in **[**[F17]Article 2(3)(c) of the Solvency 2 Directive**]**;

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

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

"contractually based investment" means—

(a) rights under a qualifying contract of insurance;

(b) any investment of the kind specified by any of articles 83, 84, 85 and 87; or

(c) any investment of the kind specified by article 89 so far as relevant to an investment falling within (a) or (b);

[[F8]**[**[F18]"credit agreement" has the meaning given by article 60B;**]**

[[F18]"credit agreement"—

(a) in relation to an agreement other than a green deal plan, has the meaning given by article 60B;

(b) in relation to a green deal plan, has the meaning given by article 60LB;**]]**

[[F14]"credit institution" means—

(a) a credit institution authorised under the **[**[F19]capital requirements directive**]** other than an institution to which Article 2.1 of the markets in financial instruments directive **[**[F20](the text of which is set out in Part 1 of Schedule 3) read with any directly applicable EU regulation made under Article 2.3 or 2.4 of the markets in financial instruments directive (and the text of Article 4 of the Commission Regulation is set out in Part 2 of Schedule 3)**]** applies, or

(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive (other than an institution to which Article 2.1 of the markets in financial instruments directive **[**[F21]read with any directly applicable EU regulation made under Article 2.3 or 2.4 of that directive**]** would apply) if it had its registered office (or if it does not have a registered office, its head office) in an EEA State;**]**

"deposit" has the meaning given by article 5 **[**[F22]except where the definition given in article 60L applies**]**;

[[F23]"designated guidance provider" has the meaning given by section 333E(1) of the Act;**]**

[[F5]"EEA AIFM" has the meaning given by regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;**]**

[[F24]"electronic money" has the meaning given by regulation 2(1) of the Electronic Money Regulations 2011;**]**

[[F6]"emission allowance auctioning regulation" means Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to the emission allowance trading directive;**]**

[[F6]"emission allowance trading directive" means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowances trading within the Community;**]**

[[F25]"EU Securitisation Regulation 2017" means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012;**]**

[[F14]"financial instrument" means any instrument listed in Section C of Annex I to the markets in financial instruments directive (the text of which is set out in Part 1 of Schedule 2) read with **[**[F26]Articles 5 to 8, 10 and 11**]** of the Commission Regulation (the text of which is set out in Part 2 of Schedule 2);**]**

[[F5]"full-scope UK AIFM" has the meaning given by regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;**]**

"funeral plan contract" has the meaning given by article 59;

[[F27]"green deal plan" has the meaning given by section 1 of the Energy Act 2011;**]**

[[F6]"greenhouse gas emissions allowances" mean "allowances" as defined in Article 3(a) of the emission allowance trading directive;**]**

[[F8]"hire-purchase agreement" has the meaning given by article 60L;**]**

[[F8]"hirer" is to be read with the definition of "consumer hire agreement" in article 60N;**]**

[[F14]"home Member State", in relation to an investment firm, has the meaning given by **[**[F28]Article 4.1.55(a)**]** of the markets in financial instruments directive, and in relation to a credit institution, has the meaning given by **[**[F29]Article 4(1)(43) of the capital requirements regulation**][**[F30], and, in relation to a mortgage intermediary, has the meaning given by Article 4(19) of the mortgages directive**]**;**]**

[[F31]"home purchase provider" has the meaning given by article 63F(3);**]**

[[F31]"home purchaser" has the meaning given by article 63F(3);**]**

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

[[F14]"investment firm" means a person whose regular occupation or business is the provision or performance of investment services and activities on a professional basis but does not include—

(a) a person to whom the markets in financial instruments directive does not apply by virtue of Article 2 of that directive **[**[F32](the text of which is set out in Part 1 of Schedule 3) read with any directly applicable EU regulation made under Article 2.3 or 2.4 of the markets in financial instruments directive (and the text of Article 4 of the Commission Regulation is set out in Part 2 of Schedule 3)**]**;

(b) a person whose home Member State is an EEA State other than the United Kingdom and to whom, by reason of the fact that the State has given effect to Article 3 of that directive, that directive does not apply by virtue of that Article;

(c) a person who does not have a home Member State and to whom (if he had his registered office in an EEA State, or, being a person other than a body corporate or a body corporate not having a registered office, if he had his head office in an EEA State) the markets in financial instruments directive would not apply by virtue of Article 2 of that directive **[**[F33]read with any directly applicable EU regulation made under Article 2.3 or 2.4 of the markets in financial instruments directive**]**;**]**

[[F34]"investment services and activities" means—

(a) any service provided to third parties listed in Section A of Annex 1 to the markets in financial instruments directive (the text of which is set out in Part 3 of Schedule 2) read with **[**[F35]Article 9 of the Commission Regulation**]** (the text of which is set out in Part 4 of Schedule 2), including the reception, transmission or submission of a bid by an investment firm or credit institution on any auction platform, in relation to any financial instrument; or

(b) any activity listed in Section A of Annex 1 to that directive, in relation to any financial instrument;**]**

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

[[F8]"lender"—

(c) in relation to a credit agreement other than a regulated mortgage contract **[**[F36]or**]**[[F36],**]** an article 36H agreement (within the meaning given by article 36H) **[**[F37]or an agreement that is a green deal plan**]**, has the meaning given by article 60L;

(d) in relation to an article 36H agreement (within the meaning given by that article) other than a regulated mortgage contract, **[**[F38]has the meaning given by article 36H**]**;**]**

(e) **[**[F39]in relation to a credit agreement that is a green deal plan, has the meaning given by article 60LB;**]**

"local authority" means—

(a) [M1]in England and Wales, a local authority within the meaning of the Local Government Act 1972 , the Greater London Authority, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) [M2]in Scotland, a local authority within the meaning of the Local Government (Scotland) Act 1973 ;

(c) [M3]in Northern Ireland, a district council within the meaning of the Local Government Act (Northern Ireland) 1972 ;

[[F40]"management company" has the meaning given by Article 2.1(b) of the UCITS directive;**]**

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

(a) underwriting contracts of insurance at Lloyd's;

(b) reinsuring such contracts in whole or in part;

(c) paying claims on such contracts;

[[F14]"market operator" means a market operator within the meaning of **[**[F41]Article 4.1.18**]** of the markets in financial instruments directive, or a person who would be a market operator if he

had his registered office, or if he does not have a registered office his head office, in an EEA State, but does not include—

(a) a person to whom the markets in financial instruments directive does not apply by virtue of Article 2 of that directive **[**[F42](the text of which is set out in Part 1 of Schedule 3) read with any directly applicable EU regulation made under Article 2.3 or 2.4 of the markets in financial instruments directive (and the text of Article 4 of the Commission Regulation is set out in Part 2 of Schedule 3)**]**;

(b) a person who does not have a home Member State to whom (if he had his registered office, or if he does not have a registered office his head office, in an EEA State) the markets in financial instruments directive would not apply by virtue of Article 2 of that directive **[**[F43]read with any directly applicable EU regulation made under Article 2.3 or 2.4 of the markets in financial instruments directive**]**;**]**

[[F7]"markets in financial instruments directive" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast);

"markets in financial instruments regulation" means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments;**]**

[[F14]"multilateral trading facility" means—

(a) a multilateral trading facility (within the meaning of **[**[F44]Article 4.1.22**]** of the markets in financial instruments directive) operated by an investment firm, a credit institution or a market operator, or

(b) a facility which—

(i) is operated by an investment firm, a credit institution or market operator which does not have a home Member State, and

(ii) if its operator had a home Member State, would be a multilateral trading facility within the meaning of **[**[F44]Article 4.1.22**]** of the markets in financial instruments directive;**]**

[[F45]"occupational pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993 but with paragraph (b) of the definition omitted;**]**

[[F6]"operator" has the same meaning as in the emission allowance trading directive;**]**

[[F7]"organised trading facility" means—

(a) an organised trading facility (within the meaning of Article 4.1.23 of the markets in financial instruments directive) operated by an investment firm, a credit institution or a market operator; or

(b) a facility which—

(i) is operated by an investment firm, a credit institution or a market operator which does not have a home Member State; and

(ii) if its operator had a home Member State, would be an organised trading facility within the meaning of Article 4.1.23 of the markets in financial instruments directive;**]**

"overseas person" means a person who—

(a) carries on activities of the kind specified by any of articles 14, 21, 25, **[**[F46]25A,**]**[F47]25B, 25C,**]**[F48]25D,**]**[F49]25DA,**]**[F50]25E,**]** 37 **[**[F51], 39A**]** 40, 45, **[**[F52]51ZA, 51ZB, 51ZC, 51ZD, 51ZE**]**, 52 **[**[F53], 53, 53A**]**[F54], 53B, 53C, **[**[F55]53D,**]** 61, 63B **[**[F56], 63F and 63J**]]** or, so far as relevant to any of those articles, article 64 (or activities of a kind which would be so specified but for the exclusion in article 72); but

(b) does not carry on any such activities, or offer to do so, from a permanent place of business maintained by him in the United Kingdom;

[[F8]"owner", in relation to a hire purchase agreement, has the meaning given by article 60N;**]**

"pension fund management contract" means a contract to manage the investments of pension funds (other than funds solely for the benefit of the officers or employees of the person effecting or carrying out the contract and their dependants or, in the case of a company, partly for the benefit of officers and employees and their dependants of its subsidiary or holding company or a subsidiary of its holding company); and for the purposes of this definition, "subsidiary" and "holding company" are to be construed in accordance with **[**[F57]section 1159 of the Companies Act 2006**]**;

[[F58]"the person's firm", in relation to a person acting as an insolvency practitioner or in reasonable contemplation of that person's appointment as an insolvency practitioner, means—

(a) the person's employer;

(b) where the person is a partner in a partnership other than a limited liability partnership, that partnership;

(c) where the person is a member of a limited liability partnership, that partnership;**]**

[[F59]"personal pension scheme" means a scheme or arrangement which is not an occupational pension scheme or a stakeholder pension scheme and which is comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people—

(a) on retirement,

(b) on having reached a particular age, or

(c) on termination of service in an employment;**]**

[[F60]"plan provider" has the meaning given by paragraph (3) of article 63B, read with paragraphs (7) and (8) of that article;**]**

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

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

(a) a reinsurance contract; nor

(b) a contract in respect of which the following conditions are met—

(i) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;

(ii) [F61]...

(iii) the contract has no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium; and

(iv) the contract makes no provision for its conversion or extension in a manner which would result in it ceasing to comply with any of the above conditions;

[[F6]"reception", "transmission" and "submission" have the same meaning in relation to a bid at an auction for an investment of the kind specified in article 82A as in the emission allowance auctioning regulation;**]**

[[F8]"regulated consumer hire agreement" has the meaning given by article 60N;**]**

[[F8]"regulated credit agreement" has the meaning given by article 60B;**]**

[[F62]"regulated home purchase plan" has the meaning given by article 63F(3);**]**

[[F62]"regulated home reversion plan" has the meaning given by article 63B(3);**]**

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

[[F63]"regulated sale and rent back agreement" has the meaning given by article 63J(3);**]**

[[F64]"relevant investment" means—

(a) rights under a qualifying contract of insurance;

(b) rights under any other contract of insurance;

(c) any investment of the kind specified by any of articles 83, 84, 85 and 87; or

(d) any investment of the kind specified by article 89 so far as relevant to an investment falling within (a) or (c);**]**

[[F8]"relevant recipient of credit" has the meaning given by article 60L;**]**

[[F8]"restricted-use credit agreement" has the meaning given in article 60L;**]**

[[F65]"reversion seller" has the meaning given by article 63B(3);**]**

[[F25]"securitisation repository" means a person registered with ESMA under Article 10 of the EU Securitisation Regulation 2017;**]**

"security" means (except where the context otherwise requires) any investment of the kind specified by any of articles 76 to 82 **[**[F66]or by article 82B**]** or, so far as relevant to any such investment, article 89;

"selling", in relation to any investment, includes disposing of the investment for valuable consideration, and for these purposes "disposing" includes—

(a) in the case of an investment consisting of rights under a contract—

  (i) surrendering, assigning or converting those rights; or

  (ii) assuming the corresponding liabilities under the contract;

(b) in the case of an investment consisting of rights under other arrangements, assuming the corresponding liabilities under the arrangements; and

(c) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;

[[F5]"small registered UK AIFM" has the meaning given by regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;**]**

"stakeholder pension scheme" has the meaning given by section 1 of the Welfare Reform and Pensions Act 1999 **[**[F67]in relation to Great Britain and has the meaning given by article 3 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 in relation to Northern Ireland**]**;

[[F7]"structured deposit" means a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as—

(a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as Euribor or Libor;

(b) a financial instrument or combination of financial instruments;

(c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or

(d) a foreign exchange rate or combination of foreign exchange rates;**]**

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

[[F68]"trade repository" means—

((a)) a person registered with ESMA under Article 55 of Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories or a person recognised by ESMA under Article 77 of that Regulation; or

((b)) a person registered with ESMA under Article 5 of the SFT regulation or a person recognised by ESMA under Article 19 of that Regulation;**]**

[[F5]"UCITS" has the meaning given by Article 1.2 of the UCITS directive;**]**

[[F5]"UK AIF" has the meaning given by regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;**]**

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

(2) For the purposes of this Order, a transaction is entered into through a person if he enters into it as agent or arranges, in a manner constituting the carrying on of an activity of the kind specified by article 25(1) **[**[F69], 25A(1), 25B(1) **[**[F70], 25C(1) or 25E(1)**]]**, for it to be entered into by another person as agent or principal.

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

Textual Amendments

F3 Words in art. 3(1) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(2)(a)**

F4 Words in art. 3(1) 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), **3(1)(a)**

F5 Words in art. 3(1) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(2)(b)**

F6 Words in art. 3(1) inserted (20.7.2012) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012 (S.I. 2012/1906), arts. 1, **2(2)(b)**

F7 Words in art. 3(1) 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), **2(12)**

F8 Words in art. 3(1) 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), **3(1)**

F9 Word in art. 3(1) substituted (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), **3(2)(a)(i)** (with art. 1(3))

F10 Words in art. 3(1) 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), **3(2)(a)(ii)** (with art. 1(3))

F11 Words in art. 3(1) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(2)(a)** (with Pt. 5)

F12 Words in art. 3(1) 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), **3(2)(b)** (with art. 1(3))

F13 Words in art. 3(1) inserted (5.12.2005) by The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114), reg. 1, **Sch. 16 para. 1(2)**

F14 Words in art. 3(1) 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), **3(b)**

F15 Words in art. 3(1) substituted (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), **2(2)**

F16 Words in art. 3(1) substituted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), **Sch. 2 para. 11(2)(a)**

F17 Words in art. 3(1) substituted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), **Sch. 2 para. 11(2)(b)**

F18 Words in art. 3(1) substituted (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), **3(3)** (with art. 1(3))

F19 Words in art. 3(1) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 51(2)(a)**

F20 Words in art. 3(1) 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), **2(3)(a)**

F21 Words in art. 3(1) 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), **2(3)(b)**

F22 Words in art. 3 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), **3(2)**

F23 Words in art. 3(1) inserted (26.3.2015) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (Pensions Guidance Exclusions) Order 2015 (S.I. 2015/489), arts. 1, **2(2)**

F24 Words in art. 3(1) substituted (9.2.2011 for specified purposes, 30.4.2011 in so far as not already in force) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 1(2), **Sch. 4 para. 12(a)(ii)** (with reg. 3)

F25 Words in art. 3 inserted (1.1.2019) by The Securitisation Regulations 2018 (S.I. 2018/1288), reg. 1, **Sch. 2 para. 2(2)**

F26 Words in art. 3(1) 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), **2(4)**

F27 Words in art. 3(1) 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), **3(4)** (with art. 1(3))

F28 Words in art. 3(1) 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), **2(5)**

F29 Words in art. 3(1) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 51(2)(b)**

F30 Words in art. 3(1) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(2)** (with Pt. 4)

F31 Words in art. 3(1) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **3(1)(a)**

F32 Words in art. 3(1) 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), **2(6)(a)**

F33 Words in art. 3(1) 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), **2(6)(b)**

F34 Words in art. 3(1) substituted (20.7.2012) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012 (S.I. 2012/1906), arts. 1, **2(2)(a)**

F35 Words in art. 3(1) 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), **2(7)**

F36 Word in art. 3(1) substituted (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), **3(5)(a)(i)** (with art. 1(3))

F37 Words in art. 3(1) 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), **3(5)(a)(ii)** (with art. 1(3))

F38 Words in art. 3(1) substituted (17.3.2016) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(2)(b)** (with Pt. 5)

F39 Words in art. 3(1) 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), **3(5)(b)** (with art. 1(3))

F40 Words in art. 3(1) substituted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), reg. 1, **Sch. para. 1(2)**

F41 Words in art. 3(1) 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), **2(8)(a)**

F42 Words in art. 3(1) 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), **2(8)(b)**

F43 Words in art. 3(1) 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), **2(8)(c)**

F44 Words in art. 3(1) 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), **2(9)**

F45 Words in art. 3(1) substituted (1.10.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(2), **2(2)(a)**

F46 Word in art. 3(1) inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **3(a)**

F47 Words in art. 3(1) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **3(1)(b)(i)**

F48 Word in art. 3(1) 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), **3(a)**

F49 Words in art. 3(1) 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), **2(10)**

F50 Word in art. 3(1) 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), **3(1)(c)(i)**

F51 Word in art. 3(1) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **3(1)(a)**

F52 Words in art. 3(1) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(2)(a)**

F53 Words in art. 3(1) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **3(b)**

F54 Words in art. 3(1) substituted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **3(1)(b)(ii)**

F55 Word in art. 3(1) 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), **3(1)(c)(ii)**

F56 Words in art. 3(1) substituted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), arts. 1(2), **3(1)(c)(iii)**

F57 Words in art. 3(1) substituted (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), arts. 1(2), **13(2)**

F58 Words in art. 3(1) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(2)(b)**

F59 Words in art. 3(1) inserted (1.10.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(2), **2(2)(b)**

F60 Words in art. 3(1) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **3(1)(c)**

F61 Words in art. 3(1) omitted (6.6.2007) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2007 (S.I. 2007/1339), arts. 1, **3**

F62 Words in art. 3(1) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **3(1)(d)**

F63 Words in art. 3(1) 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), **3(1)(b)**

F64 Words in art. 3(1) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **3(1)(b)**

F65 Words in art. 3(1) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **3(1)(e)**

F66 Words in art. 3(1) 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), **2(11)**

F67 Words in art. 3(1) inserted (6.4.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2005 (S.I. 2005/593), arts. 1, **2(2)(b)**

F68 Words in art. 3(1) substituted (13.7.2016) by The Financial Services and Markets Act 2000 (Transparency of Securities Financing Transactions and of Reuse) Regulations 2016 (S.I. 2016/715), reg. 1(2), **Sch. 2 para. 1(2)**

F69 Words in art. 3(2) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **3(2)**

F70 Words in art. 3(2) substituted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), arts. 1(2), **3(2)**

Modifications etc. (not altering text)

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

Marginal Citations

M1 1972 c. 70. The definition of "local authority" in section 270 of the 1972 Act has been amended by Sch. 17 to the Local Government Act 1985 (c. 51); and by section 1(5) of the Local Government (Wales) Act 1994 (c. 19).

M2 1973 c. 65. The definition of "local authority" in section 235 of the 1973 Act was substituted by para. 92(66) of Sch. 13 to the Local Government etc. (Scotland) Act 1994 (c. 39).

M3 1972 c. 9 (N.I.).

PART II

SPECIFIED ACTIVITIES

CHAPTER I

GENERAL

Specified activities: general

4.—(1) The following provisions of this Part specify kinds of activity for the purposes of **[**[F71]section 22(1)**]** of the Act (and accordingly any activity of one of those kinds, which is carried on by way of business [M4], and relates to an investment of a kind specified by any provision of Part III and applicable to that activity, is a regulated activity for the purposes of the Act).

(2) The kinds of activity specified by articles **[**[F72]**[**[F73]51ZA, 51ZB, 51ZC, 51ZD, 51ZE**]**, 52 and 63N**]** are also specified for the purposes of section 22(1)(b) of the Act (and accordingly any activity of one of those kinds, when carried on by way of business, is a regulated activity when carried on in relation to property of any kind).

[[F74](2A) The kinds of activity specified by Part 3A are specified for the purposes of section 22(1A)(a) of the Act (and accordingly any activity of one of those kinds, when carried on by way of business, is a regulated activity).**]**

[[F75](2B) The kinds of activity specified in Part 3B are specified for the purposes of section 22(1B) of the Act (and accordingly any activity of one of those kinds, when carried on by way of business in Great Britain, is a regulated activity).**]**

(3) Subject to paragraph (4), each provision specifying a kind of activity is subject to the exclusions applicable to that provision (and accordingly any reference in this Order to an activity of the kind specified by a particular provision is to be read subject to any such exclusions).

[[F76](4) Where an investment firm or credit institution—

(a) provides or performs investment services and activities on a professional basis, and

(b) in doing so would be treated as carrying on an activity of a kind specified by a provision of this Part but for an exclusion in any of articles 15, 16, **[**[F77]18,**]** 19, 22, 23, 29, **[**[F78]34,**]** 38, 67, 68, 69, 70 and 72E,

that exclusion is to be disregarded and, accordingly, the investment firm or credit institution is to be treated as carrying on an activity of the kind specified by the provision in question.**]**

[[F79](4A) Where a person, other than an ancillary insurance intermediary carrying out insurance distribution activities falling within Article 1.3 of the insurance distribution directive (the text of which is set out in Part 1 of Schedule 4)—

(a) for remuneration, takes up or pursues insurance distribution, or reinsurance distribution, in relation to a risk or commitment located in an EEA State, and

(b) in doing so would be treated as carrying on an activity of a specified kind by a provision of this Part but for an exclusion in any of articles 30, 66, 67 and 72AA,

that exclusion is to be disregarded (and accordingly that person is to be treated as carrying on an activity of the kind specified by the provision in question).**]**

[[F80](4B) Where—

(a) a person is a mortgage creditor or a mortgage intermediary; and

(b) in acting as a mortgage creditor or a mortgage intermediary **[**[F81]in respect of an agreement entered into, or to be entered into, on or after 21st March 2016**]**, that person would be treated as carrying on an activity of a kind specified by article 25A (arranging regulated mortgage contracts), 36A (credit broking), 53A (advising on regulated mortgage contracts), 53DA (advising on regulated credit agreements for the acquisition of land), 60B (regulated credit agreements) or 61 (entering into and administering regulated mortgage contracts), but for an exclusion or exemption provided for by this Order,

that exclusion or exemption is to be disregarded (and accordingly that person is to be treated as carrying on an activity of the kind specified by the provision in question) to the extent that such exclusion or exemption does not fall within Article 3(2) or (3) of the mortgages directive.**]**

[[F82](5) In this article—

"ancillary insurance intermediary" has the meaning given by Article 2.1(4) of the insurance distribution directive, the text of which is set out in Part 4 of Schedule 4;

"insurance distribution" has the meaning given by Articles 2.1(1) and 2.2 of the insurance distribution directive, the text of which is set out in Parts 2 and 5 of Schedule 4, respectively; and

"reinsurance distribution" has the meaning given by Articles 2.1(2) and 2.2 of the insurance distribution directive, the text of which is set out in Parts 3 and 5 of Schedule 4, respectively.**]**

Textual Amendments

F71 Words in art. 4(1) substituted (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), **3(3)(a)**

F72 Words in art. 4(2) substituted (13.7.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2009 (S.I. 2009/1389), arts. 1, **3**

F73 Words in art. 4(2) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(3)**

F74 Art. 4(2A) 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), **3(3)(b)**

F75 Art. 4(2B) inserted (E.W.S.) (29.11.2018 for specified purposes, 1.4.2019 in so far as not already in force) by The Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 (S.I. 2018/1253), art. 1(2)(3), **4**

F76 Art. 4(4) 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), **4(a)**

F77 Word in art. 4(4)(b) 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), **12(2)(a)**

F78 Word in art. 4(4)(b) 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), **12(2)(b)**

F79 Art. 4(4A) substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **3(a)**

F80 Art. 4(4B) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(3)** (with Pt. 4)

F81 Words in art. 4(4B)(b) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(3)** (with Pt. 5)

F82 Art. 4(5) substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **3(b)**

Marginal Citations

M4 The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (S.I. 2001/), made under section 419 of the Act, makes provision as to the circumstances in which persons are, or are not, to be regarded as carrying on activities by way of business.

CHAPTER II

ACCEPTING DEPOSITS

The activity

Accepting deposits

5.—(1) Accepting deposits is a specified kind of activity if—

(a) money received by way of deposit is lent to others; or

(b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on money received by way of deposit.

(2) In paragraph (1), "deposit" means a sum of money, other than one excluded by any of **[**[F83]articles 6 to 9A**]**, paid on terms—

(a) under which it will be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and

(b) which are not referable to the provision of property (other than currency) or services or the giving of security.

(3) For the purposes of paragraph (2), money is paid on terms which are referable to the provision of property or services or the giving of security if, and only if—

(a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;

(b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or

(c) without prejudice to sub-paragraph (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

Textual Amendments

F83 Words in art. 5(2) substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **3(1)**

Exclusions

Sums paid by certain persons

6.—(1) A sum is not a deposit for the purposes of article 5 if it is—

(a) paid by any of the following persons—

(i) the Bank of England, the central bank of an EEA State other than the United Kingdom, or the European Central Bank;

(ii) an authorised person who has permission to accept deposits, or to effect or carry out contracts of insurance;

(iii) an EEA firm falling within paragraph 5(b), (c) or (d) of Schedule 3 to the Act (other than one falling within paragraph (ii) above);

(iv) the National Savings Bank;

(v) a municipal bank, that is to say a company which was, immediately before the coming into force of this article, exempt from the prohibition in section 3 of the Banking Act 1987 [M5] by virtue of section 4(1) of, and paragraph 4 of Schedule 2 to, that Act;

(vi) Keesler Federal Credit Union;

(vii) a body of persons certified as a school bank by the National Savings Bank or by an authorised person who has permission to accept deposits;

(viii) a local authority;

(xi) any body which by virtue of any enactment has power to issue a precept to a local authority in England and Wales or a requisition to a local authority in Scotland, or to the expenses of which, by virtue of any enactment, a local authority in the United Kingdom is or can be required to contribute (and in this paragraph, “enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament);

(x) **[**[F84]the European Union or**]** the European Atomic Energy Community [F84]...;

(xi) the European Investment Bank;

(xii) the International Bank for Reconstruction and Development;

(xiii) the International Finance Corporation;

(xiv) the International Monetary Fund;

(xv) the African Development Bank;

(xvi) the Asian Development Bank;

(xvii) the Caribbean Development Bank;

(xviii) the Inter-American Development Bank;

(xix) the European Bank for Reconstruction and Development;

[[F85](xx) the Council of Europe Development Bank;**]**

(b) paid by a person other than one mentioned in sub-paragraph (a) in the course of carrying on a business consisting wholly or to a significant extent of lending money;

(c) paid by one company to another at a time when both are members of the same group or when the same individual is a majority shareholder controller of both of them; or

(d) paid by a person who, at the time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a director or manager of that person or who is, or is a close relative of, a controller of that person.

(2) For the purposes of paragraph (1)(c), an individual is a majority shareholder controller of a company if he is a controller of the company by virtue of paragraph (a), (c), (e) or (g) of section 422(2) of the Act, and if in his case the greatest percentage of those referred to in those paragraphs is 50 or more.

(3) In the application of sub-paragraph (d) of paragraph (1) to a sum paid by a partnership, that sub-paragraph is to have effect as if, for the reference to the person paying the sum, there were substituted a reference to each of the partners.

Textual Amendments

F84 Words in art. 6(1)(a)(x) substituted (22.4.2011) by virtue of The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3-6**

F85 Art. 6(1)(a)(xx) substituted (5.6.2002) by The Financial Services and Markets Act 2000 (Financial Promotion and Miscellaneous Amendments) Order 2002 (S.I. 2002/1310), arts. 1, **4(1)**

Marginal Citations

M5 1987 c. 22. Section 3 was amended by the Bank of England Act 1998 (c. 11), Sch. 5, paras 1 and 3. "Municipal bank" is defined in section 103 of the Banking Act 1987, which was amended by the Local Government Act 1992 (c. 19), **Sch. 3**, para. 22, and by the Local Government and Rating Act 1997 (c. 29), Sch. 3, para. 21.

Sums received by solicitors etc.

7.—(1) A sum is not a deposit for the purposes of article 5 if it is received by a practising solicitor acting in the course of his profession.

(2) In paragraph (1), "practising solicitor" means—

(a) a solicitor who is qualified to act as such under section 1 of the Solicitors Act 1974 [M6], article 4 of the Solicitors (Northern Ireland) Order 1976 [M7] or section 4 of the Solicitors (Scotland) Act 1980 [M8];

(b) a recognised body;

(c) a registered foreign lawyer in the course of providing professional services as a member of a multi-national partnership;

(d) a registered European lawyer; or

(e) a partner of a registered European lawyer who is providing professional services in accordance with—

(i) rules made under section 31 [M9] of the Solicitors Act 1974;

(ii) regulations made under article 26 of the Solicitors (Northern Ireland) Order 1976; or

(iii) rules made under section 34 of the Solicitors (Scotland) Act 1980 [M10].

(3) In this article—

(a) "a recognised body" means a body corporate recognised by—

(i) the Council of the Law Society under section 9 of the Administration of Justice Act 1985 [M11];

(ii) the Incorporated Law Society of Northern Ireland under article 26A of the Solicitors (Northern Ireland) Order 1976 [M12]; or

(iii) the Council of the Law Society of Scotland under section 34 of the Solicitors (Scotland) Act 1980;

(b) "registered foreign lawyer" has the meaning given by section 89 of the Courts and Legal Services Act 1990 [M13] or, in Scotland, section 65 of the Solicitors (Scotland) Act 1980 [M14];

(c) "multi-national partnership" has the meaning given by section 89 of the Courts and Legal Services Act 1990 but, in Scotland, is a reference to a "multi-national practice" within the meaning of section 60A of the Solicitors (Scotland) Act 1980 [M15]"registered European lawyer" has the meaning given by regulation 2(1) of the European Communities (Lawyer's Practice) Regulations 2000 [M16] or regulation 2(1) of the European Communities (Lawyer's Practice) (Scotland) Regulation 2000 [M17].

Modifications etc. (not altering text)

C2 Art. 7(1) applied (with modifications) (E.W.S.) (23.12.2011) by The Legal Services Act 2007 (Designation as a Licensing Authority) (No. 2) Order 2011 (S.I. 2011/2866), arts. 1(2), 8(3), **Sch. 3**

Marginal Citations

M6 1974 c. 47.

M7 S.I. 1976/582 (N.I. 12); relevant amending instrument is S.I. 1989/1343 (N.I. 14).

M8 1980 c. 46.

M9 Section 31 was amended by para. 10 of Sch. 17 to the Courts and Legal Services Act 1990 (c. 41), and by para. 3 of Sch. 6 to, and para. 1 of Sch. 7 to, the Access to Justice Act 1999 (c. 22).

M10 Amended by section 31 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

M11 1985 c. 61; section 9 was amended by para. 54 of Sch. 18 to the Courts and Legal Services Act 1990, and by para. 1 of Sch. 4 to the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119), and was repealed in part by Part II of Sch. 15 to the Access to Justice Act 1999.

M12 Inserted by article 10 of the Solicitors (Amendment) (Northern Ireland) Order 1989 (S.I. 1989/1343) (N.I. 14).

M13 1990 c. 41; section 89 was amended by para. 14 of Sch. 4 to the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119).

M14 Amended by para. 29(15) of Sch. 8 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

M15 Inserted by section 32 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

M16 S.I. 2000/1119.

M17 Scottish Statutory Instruments 2000 No. 121.

Sums received by persons authorised to deal etc.

8. A sum is not a deposit for the purposes of article 5 if it is received by a person who is—

(a) an authorised person with permission to carry on an activity of the kind specified by any of articles 14, 21, 25, 37, **[**[F86]51ZA, 51ZB, 51ZC, 51ZD, 51ZE**]** and 52, or

(b) an exempt person in relation to any such activity,

in the course of, or for the purpose of, **[**[F87]carrying on any such activity (or any activity which would be such an activity but for any exclusion made by this Part)**]** with or on behalf of the person by or on behalf of whom the sum is paid.

Textual Amendments

F86 Words in art. 8(a) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(3)**

F87 Words in art. 8 substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **3**

Sums received in consideration for the issue of debt securities

9.—(1) Subject to paragraph (2), a sum is not a deposit for the purposes of article 5 if it is received by a person as consideration for the issue by him of any investment of the kind specified by article 77 or 78.

(2) The exclusion in paragraph (1) does not apply to the receipt by a person of a sum as consideration for the issue by him of commercial paper unless—

(a) the commercial paper is issued to persons—

(i) whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses; or

(ii) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses; and

(b) the redemption value of the commercial paper is not less than £100,000 (or an amount of equivalent value denominated wholly or partly in a currency other than sterling), and no part of the commercial paper may be transferred unless the redemption value of that part is not less than £100,000 (or such an equivalent amount).

[[F88](3) In paragraph (2), "commercial paper" means an investment of the kind specified by article 77 or 78 having a maturity of less than one year from the date of issue.**]**

Textual Amendments

F88 Art. 9(3) substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **12**

[[F89]Sums received in exchange for electronic money

9A. A sum is not a deposit for the purposes of article 5 if it is immediately exchanged for electronic money.**]**

Textual Amendments

F89 Art. 9A 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), **3(2)**

[F90Information society services [F91and managers of UCITS and AIFs]

9AA. Article 5 is subject to the **[**F92exclusions**]** in article 72A (information society services) **[**F93and article 72AA (managers of UCITS and AIFs).**]]**

Textual Amendments

F90 Art. 9AA inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(2)**

F91 Words in art. 9AA heading inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(4)(a)**

F92 Word in art. 9AA substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(4)(b)**

F93 Words in art. 9AA inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(4)(c)**

[F94Funds received for payment services

9AB.—(1) A sum is not a deposit for the purposes of article 5 if it is received by an authorised payment institution, an EEA authorised payment institution**[**F95, a small payment institution, an electronic money institution or an EEA authorised electronic money institution**]** from a payment service user with a view to the provision of payment services.

(2) For the purposes of paragraph (1), "authorised payment institution", "EEA authorised payment institution", "small payment institution", "payment services" and "payment service user" have the meanings given in the Payment Services Regulations **[**F96**]**2017**][**F97and "electronic money institution" and "EEA authorised electronic money institution" have the meanings given in the Electronic Money Regulations 2011.**]]**

Textual Amendments

F94 Art. 9AB inserted (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), reg. 1(2)(c), **Sch. 6 para. 4(a)**

F95 Words in art. 9AB(1) substituted (9.2.2011 for specified purposes, 30.4.2011 in so far as not already in force) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 1(2), **Sch. 4 para. 12(b)(i)** (with reg. 3)

F96 Word in art. 9AB(2) substituted (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), **Sch. 8 para. 8(a)** (with reg. 3)

F97 Words in art. 9AB(2) inserted (9.2.2011 for specified purposes, 30.4.2011 in so far as not already in force) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 1(2), **Sch. 4 para. 12(b)(ii)** (with reg. 3)

[F98Local authorities

9AC. Article 5 is subject to the exclusion in article 72G (local authorities).**]**

Textual Amendments

F98 Art. 9AC inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(3)**

[F99CHAPTER IIA

ELECTRONIC MONEY

Textual Amendments

F99 Pt. 2 Ch. 2A inserted (11.4.2002 for specified purposes, 27.4.2002 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), **4** (with arts. 9, 10)

The activity

Issuing electronic money

9B. Issuing electronic money **[**F100by—

(a) a credit institution, a credit union or a municipal bank; or

(b) a person who is deemed to have been granted authorisation under regulation 74 of the Electronic Money Regulations 2011 or who falls within regulation 76(1) of those Regulations,**]**

is a specified kind of activity.

Textual Amendments

F100 Art. 9B(a)(b) and word inserted (9.2.2011 for specified purposes, 30.4.2011 in so far as not already in force) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 1(2), **Sch. 4 para. 12(c)** (with reg. 3)

[F101**9BA.** Articles 9C to 9I and 9K apply only in the case of a person falling within regulation 76(1) of the Electronic Money Regulations 2011.**]**

Textual Amendments

F101 Art. 9BA inserted (9.2.2011 for specified purposes, 30.4.2011 in so far as not already in force) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 1(2), **Sch. 4 para. 12(d)** (with reg. 3)

Exclusions

Persons certified as small issuers etc.

9C.—(1) There is excluded from article 9B the issuing of electronic money by a person to whom **[**F102the FCA**]** has given a certificate under this article (provided the certificate has not been revoked).

(2) An application for a certificate may be made by—

(a) a body corporate, or

(b) a partnership,

(other than a credit institution as defined in **[**F103Article 4(1)(1) of the capital requirements regulation**]**) which has its head office in the United Kingdom.

(3) **[**[F104]The FCA**]** must, on the application of such a person ("A"), give A a certificate if it appears to **[**[F105]the FCA**]** that paragraph (4), (5) or (6) applies.

(4) This paragraph applies if—

(a) A does not issue electronic money except on terms that the electronic device on which the monetary value is stored is subject to a maximum storage amount of not more than 150 euro; and

(b) A's total liabilities with respect to the issuing of electronic money do not (or will not) usually exceed 5 million euro and do not (or will not) ever exceed 6 million euro.

(5) This paragraph applies if—

(a) the condition in paragraph (4)(a) is met;

(b) A's total liabilities with respect to the issuing of electronic money do not (or will not) exceed 10 million euro; and

(c) electronic money issued by A is accepted as a means of payment only by—

(i) subsidiaries of A which perform operational or other ancillary functions related to electronic money issued or distributed by A; or

(ii) other members of the same group as A (other than subsidiaries of A).

(6) This paragraph applies if—

(a) the conditions in paragraphs (4)(a) and (5)(b) are met; and

(b) electronic money issued by A is accepted as a means of payment, in the course of business, by not more than one hundred persons where—

(i) those persons accept such electronic money only at locations within the same premises or limited local area; or

(ii) those persons have a close financial or business relationship with A, such as a common marketing or distribution scheme.

(7) For the purposes of paragraph (6)(b)(i), locations are to be treated as situated within the same premises or limited local area if they are situated within—

(a) a shopping centre, airport, railway station, bus station, or campus of a university, polytechnic, college, school or similar educational establishment; or

(b) an area which does not exceed four square kilometres;

but sub-paragraphs (a) and (b) are illustrative only and are not to be treated as limiting the scope of paragraph (6)(b)(i).

(8) For the purposes of paragraph (6)(b)(ii), persons are not to be treated as having a close financial or business relationship with A merely because they participate in arrangements for the acceptance of electronic money issued by A.

(9) In this article, references to amounts in euro include references to equivalent amounts in sterling.

(10) A person to whom a certificate has been given under this article (and whose certificate has not been revoked) is referred to in this Chapter as a "certified person".

Textual Amendments

F102 Words in art. 9C(1) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

F103 Words in art. 9C(2) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 51(3)**

F104 Words in art. 9C(3) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(b)**

F105 Words in art. 9C(3) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

Applications for certificates

9D. The following provisions of the Act apply to applications to **[**[F106]the FCA**]** for certificates under 9C (and the determination of such applications) as they apply to applications for Part IV permissions (and the determination of such applications)—

[[F107](a) section 55U(1)(b) and (4) to (8);

(b) section 55V;

(c) section 55X(2) and (4)(f); and

(d) section 55Z3(1).**]**

Textual Amendments

F106 Words in art. 9D substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

F107 Art. 9D(a)-(d) substituted for art. 9D(a)-(c) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(c)**

Revocation of certificate on [[F108]FCA's] own initiative

9E.—(1) **[**[F109]The FCA**]** may revoke a certificate given to a person ("A") under article 9C if—

(a) it appears to it that A does not meet the relevant conditions, or has failed to meet the relevant conditions at any time since the certificate was given; or

(b) the person to whom the certificate was given has contravened any rule or requirement to which he is subject as a result of article 9G.

(2) For the purposes of paragraph (1), A meets the relevant conditions at any time if, at that time, paragraph (4), (5) or (6) of article 9C applies.

(3) Sections **[**[F110]55Z and 55Z3(2)**]** of the Act apply to the revocation of a certificate under paragraph (1) as they apply to the cancellation of a Part IV permission on **[**[F111]the FCA's**]** own initiative, as if references in those sections to an authorised person were references to a certified person.

Textual Amendments

F108 Word in art. 9E heading substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(d)(i)**

F109 Words in art. 9E(1) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

F110 Words in art. 9E(3) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(d)(ii)(aa)**

F111 Words in art. 9E(3) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(d)(ii)(bb)**

Revocation of certificate on request

9F.—(1) A certified person ("B") may apply to **[**[F112]the FCA**]** for his certificate to be revoked, and **[**[F112]the FCA**]** must then revoke the certificate and give B written notice that it has done so.

(2) An application under paragraph (1) must be made in such manner as **[**[F112]the FCA**]** may direct.

(3) If—

(a) B has made an application under Part IV of the Act for permission to carry on a regulated activity of the kind specified by article 9B (or for variation of an existing permission so as to add a regulated activity of that kind), and

(b) on making an application for revocation of his certificate under paragraph (1), he requests that the revocation be conditional on the granting of his application under Part IV of the Act,

the revocation of B's certificate is to be conditional on the granting of his application under Part IV of the Act.

Textual Amendments

F112 Words in art. 9F substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

Obtaining information from certified persons etc.

9G.—(1) **[**[F113]The FCA**]** may make rules requiring certified persons to provide information to **[**[F113]the FCA**]** about their activities so far as relating to the issuing of electronic money, including the amount of their liabilities with respect to the issuing of electronic money.

(2) **[**[F114]Section 138A**]** of the Act (modification or waiver of rules) applies in relation to rules made under paragraph (1) as if references in that section to an authorised person were references to a certified person.

(3) **[**[F115]Section 138D**]** of the Act (actions for damages) applies in relation to a rule made under paragraph (1) as if the reference in subsection (1) of that section to an authorised person were a reference to a certified person.

(4) **[**[F116]The FCA**]** may, by notice in writing given to a certified person, require him—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(5) Paragraph (4) applies only to information or documents reasonably required for the purposes of determining whether the certified person meets, or has met, the relevant conditions.

(6) Subsections (2), (5) and (6) of section 165 of the Act (**[**[F117]Regulator's**]** power to require information) apply to a requirement imposed under paragraph (4) as they apply to a requirement imposed under that section.

(7) Section 166 of the Act (reports by skilled persons) has effect as if—

[F118](a) . . . . . .

(b) the reference in section 166(2)(a) of the Act to an authorised person included a reference to a certified person.

(8) Subsection (4) of section 168 of the Act (appointment of persons to carry out investigations in particular cases) has effect as if it provided for subsection (5) of that section to apply if it appears to **[**[F119]the FCA**]** that there are circumstances suggesting that a certified person may not meet, or may not have met, the relevant conditions.

(9) Sections 175 (information and documents: supplemental provisions), 176 (entry of premises under warrant) and 177 (offences) of the Act apply to a requirement imposed under paragraph (4) as they apply to a requirement imposed under section 165 of the Act (the reference in section 176(3)(a) to an authorised person being read as a reference to a certified person).

(10) In this article—

(a) "specified", in paragraph (4), means specified in the notice mentioned in that paragraph;

(b) a certified person ("A") meets the relevant conditions at any time if, at that time, paragraph (4), (5) or (6) of article 9C applies.

Textual Amendments

F113 Words in art. 9G(1) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

F114 Words in art. 9G(2) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(e)(i)**

F115 Words in art. 9G(3) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(e)(ii)**

F116 Words in art. 9G(4) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

F117 Words in art. 9G(6) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(e)(iii)**

F118 Art. 9G(7)(a) omitted (1.4.2013) by virtue of The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(e)(iv)**

F119 Words in art. 9G(8) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

Supplemental

Rules prohibiting the issue of electronic money at a discount

9H.—(1) **[**[F120]The FCA**]** may make rules applying to authorised persons with permission to carry on an activity of the kind specified by article 9B, prohibiting the issue of electronic money having a monetary value greater than the funds received.

(2) **[**[F121]Section 138A**]** of the Act (modification or waiver of rules) applies in relation to rules made under paragraph (1).

Textual Amendments

F120 Words in art. 9H(1) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

F121 Words in art. 9H(2) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(f)**

False claims to be a certified person

9I. A person who is not a certified person is to be treated as guilty of an offence under section 24 of the Act (false claims to be authorised or exempt) if he—

(a) describes himself (in whatever terms) as a certified person;

(b) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is a certified person.

Exclusion of electronic money from the compensation scheme

9J. The compensation scheme established under Part XV of the Act is not to provide for the compensation of persons in respect of claims made in connection with any activity of the kind specified by article 9B.

Record of certified persons

9K. The record maintained by **[**[F122]the FCA**]** under section 347 of the Act (public record of authorised persons etc.) must include every certified person.**]**

Textual Amendments

F122 Words in art. 9K substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

Funds received for payment services

[F123]**9L.** . . . . . .

Textual Amendments

F123 Art. 9L omitted (9.2.2011 for specified purposes, 30.4.2011 in so far as not already in force) by virtue of The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 1(2), **Sch. 4 para. 12(e)** (with reg. 3)

CHAPTER III

INSURANCE

The activities

Effecting and carrying out contracts of insurance

10.—(1) Effecting a contract of insurance as principal is a specified kind of activity.

(2) Carrying out a contract of insurance as principal is a specified kind of activity.

Exclusions

Community co-insurers

11.—(1) There is excluded from article 10(1) or (2) the effecting or carrying out of a contract of insurance by an EEA firm falling within paragraph 5(d) of Schedule 3 to the Act—

(a) other than through a branch in the United Kingdom; and

(b) pursuant to a Community co-insurance operation in which the firm is participating otherwise than as the leading insurer.

(2) In paragraph (1), "Community co-insurance operation" and "leading insurer" have the same meaning as in **[**[F124]Article 190 of the Solvency 2 Directive**]**.

Textual Amendments

F124 Words in art. 11(2) substituted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), **Sch. 2 para. 11(3)**

Breakdown insurance

12.—(1) There is excluded from article 10(1) or (2) the effecting or carrying out, by a person who does not otherwise carry on an activity of the kind specified by that article, of a contract of insurance which—

(a) is a contract under which the benefits provided by that person ("the provider") are exclusively or primarily benefits in kind in the event of accident to or breakdown of a vehicle; and

(b) contains the terms mentioned in paragraph (2).

(2) Those terms are that—

(a) the assistance takes either or both of the forms mentioned in paragraph (3)(a) and (b);

(b) the assistance is not available outside the United Kingdom and the Republic of Ireland except where it is provided without the payment of additional premium by a person in the country concerned with whom the provider has entered into a reciprocal agreement; and

(c) assistance provided in the case of an accident or breakdown occurring in the United Kingdom or the Republic of Ireland is, in most circumstances, provided by the provider's servants.

(3) The forms of assistance are—

(a) repairs to the relevant vehicle at the place where the accident or breakdown has occurred; this assistance may also include the delivery of parts, fuel, oil, water or keys to the relevant vehicle;

(b) removal of the relevant vehicle to the nearest or most appropriate place at which repairs may be carried out, or to—

(i) the home, point of departure or original destination within the United Kingdom of the driver and passengers, provided the accident or breakdown occurred within the United Kingdom;

(ii) the home, point of departure or original destination within the Republic of Ireland of the driver and passengers, provided the accident or breakdown occurred within the Republic of Ireland or within Northern Ireland;

(iii) the home, point of departure or original destination within Northern Ireland of the driver and passengers, provided the accident or breakdown occurred within the Republic of Ireland;

and this form of assistance may include the conveyance of the driver or passengers of the relevant vehicle, with the vehicle, or (where the vehicle is to be conveyed only to the nearest or most appropriate place at which repairs may be carried out) separately, to the nearest location from which they may continue their journey by other means.

(4) A contract does not fail to meet the condition in paragraph (1)(a) solely because the provider may reimburse the person entitled to the assistance for all or part of any sums paid by him in respect of assistance either because he failed to identify himself as a person entitled to the assistance or because he was unable to get in touch with the provider in order to claim the assistance.

(5) In this article—

"the assistance" means the benefits to be provided under a contract of the kind mentioned in paragraph (1);

"breakdown" means an event—

(a) which causes the driver of the relevant vehicle to be unable to start a journey in the vehicle or involuntarily to bring the vehicle to a halt on a journey because of some malfunction of the vehicle or failure of it to function, and

(b) after which the journey cannot reasonably be commenced or continued in the relevant vehicle;

"the relevant vehicle" means the vehicle (including a trailer or caravan) in respect of which the assistance is required.

[[F125]Information society services [[F126]and managers of UCITS and AIFs]

12A. Article 10 is subject to the **[**[F127]exclusions**]** in article 72A (information society services), as qualified by paragraph (2) of that article **[**[F128], and article 72AA (managers of UCITS and AIFs).**]]**

Textual Amendments

F125 Art. 12A and words inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(3)**

F126 Words in art. 12A heading inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(5)(a)**

F127 Word in art. 12A substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(5)(b)**

F128 Words in art. 12A inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(5)(c)**

[[F129]Transformer vehicles: insurance risk transformation

12B. A transformer vehicle does not carry on an activity of a kind specified by article 10 by assuming a risk from an undertaking, provided the assumption of the risk is a specified kind of activity falling within article 13A (transformer vehicles: insurance risk transformation).**]**

Textual Amendments

F129 Art. 12B inserted (8.12.2017) by The Risk Transformation Regulations 2017 (S.I. 2017/1212), regs. 1(2), **5(2)**

Supplemental

Application of sections 327 and 332 of the Act to insurance market activities

13.—(1) In sections 327(5) and (7) and 332(3)(b) of the Act (exemption from the general prohibition for members of the professions, and rules in relation to such persons), the references to "a regulated activity" and "regulated activities" do not include—

(a) any activity of the kind specified by article 10(1) or (2), where—

(i) P is a member of the Society; and

(ii) by virtue of section 316 of the Act (application of the Act to Lloyd's underwriting), the general prohibition does not apply to the carrying on by P of that activity; or

(b) any activity of the kind specified by article 10(2), where—

(i) P is a former underwriting member; and

(ii) the contract of insurance in question is one underwritten by P at Lloyd's.

(2) In paragraph (1)—

"member of the Society" has the same meaning as in Lloyd's Act 1982 [M18]; and

"former underwriting member" has the meaning given by section 324(1) of the Act.

Marginal Citations

M18 1982 c. 14.

[[F130]CHAPTER 3A

Insurance risk transformation

Textual Amendments

F130 Pt. II Ch. 3A inserted (8.12.2017) by The Risk Transformation Regulations 2017 (S.I. 2017/1212), regs. 1(2), **5(3)**

Transformer vehicles: insurance risk transformation

13A. It is a specified kind of activity for a transformer vehicle to assume a risk from an undertaking where—

(a) the undertaking assumes a risk under a contract of insurance ("the underlying risk"); and

(b) the assumption of risk by the transformer vehicle has the legal or economic effect of transferring some or all of the underlying risk to the transformer vehicle.**]**

CHAPTER IV

DEALING IN INVESTMENTS AS PRINCIPAL

The activity

Dealing in investments as principal

14.—[[F131](1)**]** Buying, selling, subscribing for or underwriting securities or contractually based investments (other than investments of the kind specified by article 87, or article 89 so far as relevant to that article) as principal is a specified kind of activity.

[[F132](2) Paragraph (1) does not apply to a kind of activity to which article 25D **[**[F133]or 25DA**]** applies.**]**

Textual Amendments

F131 Art. 14(1): art. 14 renumbered as art. 14(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), **5(a)**

F132 Art. 14(2) 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), **5(b)**

F133 Words in art. 14(2) 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), **12(3)**

Exclusions

Absence of holding out etc.

15.—(1) Subject to paragraph (3), a person ("A") does not carry on an activity of the kind specified by article 14 by entering into a transaction which relates to a security or is the assignment (or, in Scotland, the assignation) of a qualifying contract of insurance (or an investment of the kind specified by article 89, so far as relevant to such a contract), unless—

(a) A holds himself out as willing, as principal, to buy, sell or subscribe for investments of the kind to which the transaction relates at prices determined by him generally and continuously rather than in respect of each particular transaction;

(b) A holds himself out as engaging in the business of buying investments of the kind to which the transaction relates, with a view to selling them;

(c) A holds himself out as engaging in the business of underwriting investments of the kind to which the transaction relates; or

(d) A regularly solicits members of the public with the purpose of inducing them, as principals or agents, to enter into transactions constituting activities of the kind specified by article 14, and the transaction is entered into as a result of his having solicited members of the public in that manner.

(2) In paragraph (1)(d), "members of the public" means any persons other than—

(a) authorised persons or persons who are exempt persons in relation to activities of the kind specified by article 14;

(b) members of the same group as A;

(c) persons who are or who propose to become participators with A in a joint enterprise;

(d) any person who is solicited by A with a view to the acquisition by A of 20 per cent or more of the voting shares in a body corporate;

(e) if A (either alone or with members of the same group as himself) holds more than 20 per cent of the voting shares in a body corporate, any person who is solicited by A with a view to—

(i) the acquisition by A of further shares in the body corporate; or

(ii) the disposal by A of shares in the body corporate to the person solicited or to a member of the same group as the person solicited;

(f) any person who—

(i) is solicited by A with a view to the disposal by A of shares in a body corporate to the person solicited or to a member of the same group as that person; and

(ii) either alone or with members of the same group holds 20 per cent or more of the voting shares in the body corporate;

(g) any person whose head office is outside the United Kingdom, who is solicited by an approach made or directed to him at a place outside the United Kingdom and whose ordinary business involves him in carrying on activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, **[**[F134]51ZA, 51ZB, 51ZC, 51ZD, 51ZE**]**, 52 and 53 or (so far as relevant to any of those articles) article 64, or would do so apart from any exclusion from any of those articles made by this Order.

(3) This article does not apply where A enters into the transaction as bare trustee or, in Scotland, as nominee for another person and is acting on that other person's instructions (but the exclusion in article 66(1) applies if the conditions set out there are met).

[[F135](4) This article is subject to article 4(4).**]**

Textual Amendments

F134 Words in art. 15(2)(g) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(3)**

F135 Art. 15(4) 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), **6**

Dealing in contractually based investments

16.—[[F136](1)**]** A person who is not an authorised person does not carry on an activity of the kind specified by article 14 by entering into a transaction relating to a contractually based investment—

(a) with or through an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or

(b) through an office outside the United Kingdom maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in carrying on activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, **[**[F137]51ZA, 51ZB, 51ZC, 51ZD, 51ZE**]**, 52 and 53 or, so far as relevant to any of those articles, article 64 (or would do so apart from any exclusion from any of those articles made by this Order).

[[F138](2) This article is subject to article 4(4).**]**

Textual Amendments

F136 Art. 16(1): art. 16 renumbered as art. 16(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), **7(a)**

F137 Words in art. 16(1)(b) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(3)**

F138 Art. 16(2) 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), **7(b)**

Acceptance of instruments creating or acknowledging indebtedness

17.—(1) A person does not carry on an activity of the kind specified by article 14 by accepting an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he has made, granted or provided.

(2) The reference in paragraph (1) to a person accepting an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.

Issue by a company of its own shares etc.

18.—(1) There is excluded from article 14 the issue by a company of its own shares or share warrants, and the issue by any person of his own debentures or debenture warrants.

(2) In this article—

(a) "company" means any body corporate other than an open-ended investment company;

(b) "shares" and "debentures" include any investment of the kind specified by article 76 **[**[F139], 77 or 77A**]**;

(c) "share warrants" and "debenture warrants" mean any investment of the kind specified by article 79 which relates to shares in the company concerned or, as the case may be, debentures issued by **[**[F140]the person concerned**]**.

[[F141](3) This article is subject to article 4(4).**]**

Textual Amendments

F139 Words in art. 18(2)(b) substituted (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(a)**

F140 Words in art. 18(2)(c) substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **4**

F141 Art. 18(3) 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), **12(4)**

[[F142]Dealing by a company in its own shares

18A.—(1) A company does not carry on an activity of the kind specified by article 14 by purchasing its own shares where **[**[F143]section 724 of the Companies Act 2006**]** (Treasury shares) applies to the shares purchased.

(2) A company does not carry on an activity of the kind specified by article 14 by dealing in its own shares held as treasury shares, in accordance with **[**[F144]section 727 (Treasury shares: disposal) or 729 (Treasury shares: cancellation) of that Act**]**.

(3) In this article "shares held as treasury shares" has the same meaning as in that Act.**]**

Textual Amendments

F142 Art. 18A inserted (1.12.2003) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2003 (S.I. 2003/2822), arts. 1, **3**

F143 Words in art. 18A(1) substituted (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), arts. 1(2), **13(3)(a)**

F144 Words in art. 18A(2) substituted (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), arts. 1(2), **13(3)(b)**

Risk management

19.—(1) A person ("B") does not carry on an activity of the kind specified by article 14 by entering as principal into a transaction with another person ("C") if—

(a) the transaction relates to investments of the kind specified by any of articles 83 to 85 (or article 89 so far as relevant to any of those articles);

(b) neither B nor C is an individual;

(c) the sole or main purpose for which B enters into the transaction (either by itself or in combination with other such transactions) is that of limiting the extent to which a relevant business will be affected by any identifiable risk arising otherwise than as a result of the carrying on of a regulated activity; and

(d) the relevant business consists mainly of activities other than—

(i) regulated activities; or

(ii) activities which would be regulated activities but for any exclusion made by this Part.

(2) In paragraph (1), "relevant business" means a business carried on by—

(a) B;

(b) a member of the same group as B; or

(c) where B and another person are, or propose to become, participators in a joint enterprise, that other person.

[[F145](3) This article is subject to article 4(4).**]**

Textual Amendments

F145 Art. 19(3) 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), **8**

[[F146]Transformer vehicles: insurance risk transformation

19A. A transformer vehicle does not carry on an activity of a kind specified by article 14 by assuming a risk from an undertaking, provided the assumption of the risk is a specified kind of activity falling within article 13A (transformer vehicles: insurance risk transformation).**]**

Textual Amendments

F146 Art. 19A inserted (8.12.2017) by The Risk Transformation Regulations 2017 (S.I. 2017/1212), regs. 1(2), **5(4)**

Other exclusions

20. Article 14 is also subject to the exclusions in articles 66 (trustees etc.), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate), 71 (employee share schemes)**[**[F147], 72 (overseas persons)**[**[F148], 72A (information society services)**[**[F149], 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)**]]**.

Textual Amendments

F147 Words in art. 20 substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(4)**

F148 Words in art. 20 substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(6)**

F149 Words in art. 20 substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(4)**

CHAPTER V

DEALING IN INVESTMENTS AS AGENT

The activity

Dealing in investments as agent

21.—[[F150](1)**]** Buying, selling, subscribing for or underwriting securities**[**[F151], structured deposits**]** or **[**[F152]relevant investments**]** (other than investments of the kind specified by article 87, or article 89 so far as relevant to that article) as agent is a specified kind of activity.

[[F153](2) Paragraph (1) does not apply to a kind of activity to which article 25D **[**[F154]or 25DA**]** applies.**]**

Textual Amendments

F150 Art. 21(1): art. 21 renumbered as art. 21(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), **9(a)**

F151 Words in art. 21(1) 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), **4(1)**

F152 Words in art. 21 substituted (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), **4(1)**

F153 Art. 21(2) 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), **9(b)**

F154 Words in art. 21(2) 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), **12(3)**

Exclusions

Deals with or through authorised persons

22.—(1) A person who is not an authorised person does not carry on an activity of the kind specified by article 21 by entering into a transaction as agent for another person ("the client") with or through an authorised person if—

(a) the transaction is entered into on advice given to the client by an authorised person; or

(b) it is clear, in all the circumstances, that the client, in his capacity as an investor, is not seeking and has not sought advice from the agent as to the merits of the client's entering into the transaction (or, if the client has sought such advice, the agent has declined to give it but has recommended that the client seek such advice from an authorised person).

[[F155](2) But the exclusion in paragraph (1) does not apply if—

(a) the transaction relates to a contract of insurance; or

(b) the agent receives from any person other than the client any pecuniary reward or other advantage, for which he does not account to the client, arising out of his entering into the transaction.**]**

[[F156](3) This article is subject to article 4(4).**]**

Textual Amendments

F155 Art. 22(2) substituted (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), **4(2)**

F156 Art. 22(3) 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), **10**

Modifications etc. (not altering text)

C3 Art. 22 modified (31.10.2001) by The Financial Services and Markets Act 2000 (Interim Permissions) Order 2001 (S.I. 2001/3374), art. 1, **Sch. para. 10** (with Sch. para. 4)

C4 Art. 22 modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), art. 1(2)(b), **Sch. para. 11** (with Sch. para. 4)

C5 Art. 22 modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), art. 1(2)(b), **Sch. para. 10(1)** (with Sch. para. 4)

C6 Art. 22 modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), art. 1(3), **Sch. para. 11** (with Sch. para. 4)

Risk management

23.—(1) A person ("B") does not carry on an activity of the kind specified by article 21 by entering as agent for a relevant person into a transaction with another person ("C") if—

(a) the transaction relates to investments of the kind specified by any of articles 83 to 85 (or article 89 so far as relevant to any of those articles);

(b) neither B nor C is an individual;

(c) the sole or main purpose for which B enters into the transaction (either by itself or in combination with other such transactions) is that of limiting the extent to which a relevant business will be affected by any identifiable risk arising otherwise than as a result of the carrying on of a regulated activity; and

(d) the relevant business consists mainly of activities other than—

(i) regulated activities; or

(ii) activities which would be regulated activities but for any exclusion made by this Part.

(2) In paragraph (1), “relevant person" means—

(a) a member of the same group as B; or

(b) where B and another person are, or propose to become, participators in a joint enterprise, that other person;

and “relevant business" means a business carried on by a relevant person.

[[F157](3) This article is subject to article 4(4).**]**

Textual Amendments

F157 Art. 23(3) 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), **11**

Other exclusions

24. Article 21 is also subject to the exclusions in articles 67 (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate), 71 (employee share schemes)**[**[F158], 72 (overseas persons)**][**[F159], 72A (information society services), 72B (activities carried on by a provider of relevant goods or services)**[**[F160], 72AA (managers of UCITS and AIFs)**[**[F161], 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)**]]]**.

Textual Amendments

F158 Words in art. 24 substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(5)**

F159 Words in art. 24 substituted (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), **4(3)**

F160 Words in art. 24 substituted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(7)**

F161 Words in art. 24 substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(5)**

[F162 CHAPTER 5A

BIDDING IN EMISSIONS AUCTIONS

Textual Amendments

F162 Pt. 2 Ch. 5A inserted (20.7.2012) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012 (S.I. 2012/1906), arts. 1, **2(3)**

The activity

Bidding in emissions auctions

24A.—(1) The reception, transmission or submission of a bid at an auction of an investment of the kind specified by article 82A conducted—

(a) on a recognised auction platform, or

(b) on any other auction platform which has been appointed under the emission allowance auctioning regulation,

is a specified kind of activity.

(2) An activity which falls within paragraph (1) (or would do so but for the exclusions in article 24B) does not form part of any other activity specified under any other article of this Order.

(3) In this article, "recognised auction platform" has the meaning given in regulation 1(3) of the Recognised Auction Platform Regulations 2011.

Exclusions

Miscellaneous exclusions

24B.—(1) There is excluded from article 24A any activity carried on by—

(a) an operator or an aircraft operator having an operator holding account, in either case bidding on its own account, including any parent undertaking, subsidiary undertaking or affiliate undertaking forming part of the same group of undertakings as the operator or the aircraft operator;

(b) business groupings of persons listed in sub-paragraph (a) bidding on their own account or acting as an agent on behalf of their members; or

(c) public bodies or state-owned entities of the Member States that control any of the persons listed in sub-paragraph (a).

(2) There is excluded from article 24A the reception, transmission or submission of a bid by an investment firm or a credit institution on any auction platform on their own account for investments of the kind specified by article 82A which are not financial instruments.

(3) In this article, the expressions "parent undertaking", "subsidiary undertaking", "affiliate undertaking", "business grouping", "public bodies" and "state-owned entities" have the same meaning as in the emission allowance auctioning regulation.]

CHAPTER VI

ARRANGING DEALS IN INVESTMENTS

The activities

Arranging deals in investments

25.—(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is—

(a) a security,

(b) a **[**[F163]relevant investment**]**, [F164]...

(c) an investment of the kind specified by article 86, or article 89 so far as relevant to that article**[**[F165], or

(d) a structured deposit,**]**

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within paragraph (1)(a), (b)**[**[F166], (c) or (d)**]** (whether as principal or agent) is also a specified kind of activity.

[[F167](3) Paragraphs (1) and (2) do not apply to a kind of activity to which article 25D **[**[F168]or 25DA**]** applies.**]**

Textual Amendments

F163 Words in art. 25(1) substituted (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), **5(1)**

F164 Word in art. 25(1)(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), **4(2)(a)(i)**

F165 Art. 25(1)(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), **4(2)(a)(ii)**

F166 Words in art. 25(2) 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), **4(2)(b)**

F167 Art. 25(3) 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), **12**

F168 Words in art. 25(3) 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), **12(3)**

[[F169]Arranging regulated mortgage contracts

25A.—(1) Making arrangements—

(a) for another person to enter into a regulated mortgage contract as borrower; or

(b) for another person to vary the terms of a regulated mortgage contract **[**[F170]falling within paragraph (1A)**]** entered into by him as borrower [F171]..., in such a way as to vary his obligations under that contract,

is a specified kind of activity.

[

[F172](1A) A regulated mortgage contract falls within this paragraph if—

(a) the contract was entered into on or after 31st October 2004; or

(b) the contract—

(i) was entered into before 31st October 2004; and

(ii) was a regulated credit agreement immediately before 21st March 2016.**]**

(2) Making arrangements with a view to a person who participates in the arrangements entering into a regulated mortgage contract as borrower is also a specified kind of activity.

[

[F173](2A) Making arrangements to enter into a regulated mortgage contract with a borrower on behalf of a lender is also a specified kind of activity.**]**

(3) In this article **[**[F174]"borrower" and "lender" have the meanings**]** given by article 61(3)(a)(i).**]**

Textual Amendments

F169 Art. 25A inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **4**

F170 Words in art. 25A(1)(b) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(4)(a)(i)** (with Pt. 5)

F171 Words in art. 25A(1)(b) omitted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(4)(a)(ii)** (with Pt. 5)

F172 Art. 25A(1A) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(4)(b)** (with Pt. 5)

F173 Art. 25A(2A) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(4)(a)** (with Pt. 4)

F174 Words in art. 25A(3) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(4)(b)** (with Pt. 4)

[[F175]**Arranging regulated home reversion plans**

25B.—(1) Making arrangements—

(a) for another person to enter into a regulated home reversion plan as reversion seller or as plan provider; or

(b) for another person to vary the terms of a regulated home reversion plan, entered into on or after 6th April 2007 by him as reversion seller or as plan provider, in such a way as to vary his obligations under that plan,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements entering into a regulated home reversion plan as reversion seller or as plan provider is also a specified kind of activity.**]**

Textual Amendments

F175 Arts. 25B, 25C 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), **4**

[[F175]Arranging regulated home purchase plans

25C.—(1) Making arrangements—

(a) for another person to enter into a regulated home purchase plan as home purchaser; or

(b) for another person to vary the terms of a regulated home purchase plan, entered into on or after 6th April 2007 by him as home purchaser, in such a way as to vary his obligations under that plan,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements entering into a regulated home purchase plan as home purchaser is also a specified kind of activity.**]**

Textual Amendments

F175 Arts. 25B, 25C 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), **4**

[[F176]Operating a multilateral trading facility

25D.—(1) The operation of a multilateral trading facility on which MiFID instruments are traded is a specified kind of activity.

(2) In paragraph (1), "MiFID instrument" means any investment—

(a) of the kind specified by article 76, 77, **[**[F177]77A,**]** 78, 79, 80, 81, **[**[F178]82B,**]** 83, 84 or 85; or

(b) of the kind specified by article 89 so far as relevant to an investment falling within sub-paragraph (a),

that is a financial instrument.**]**

Textual Amendments

F176 Art. 25D 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), **13**

F177 Word in art. 25D(2)(a) 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(b)**

F178 Word in art. 25D(2)(a) 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), **12(5)**

[F179 Operating an organised trading facility

25DA.—(1) The operation of an organised trading facility on which non-equity MiFID instruments are traded is a specified kind of activity.

(2) In paragraph (1) a "non-equity MiFID instrument" means any investment—

(a) of the kind specified by article 77, 77A, 78, 79, 80, 81, 82B, 83, 84 or 85; or

(b) of the kind specified by article 89 so far as relevant to an investment falling within sub-paragraph (a),

that is a bond, a structured finance product (within the meaning of Article 2.1.28 of the markets in financial instruments regulation), an emission allowance, or a derivative (within the meaning of Article 2.1.29 of the markets in financial instruments regulation).**]**

Textual Amendments

F179 Art. 25DA 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), **3**

[F180 Arranging regulated sale and rent back agreements

25E.—(1) Making arrangements—

(a) for another person to enter into a regulated sale and rent back agreement as an agreement seller or as an agreement provider; or

(b) for another person ("A") to vary the terms of a regulated sale and rent back agreement, entered into on or after 1st July 2009 by A as agreement seller or agreement provider, in such a way as to vary A's obligations under that agreement,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements entering into a regulated sale and rent back agreement as agreement seller or agreement provider is also a specified kind of activity.**]**

Textual Amendments

F180 Art. 25E 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), **4**

Exclusions

Arrangements not causing a deal

26. There are excluded from **[**F181 articles 25(1), 25A(1), 25B(1) **[**F182, 25C(1) and 25E(1)**]]** arrangements which do not or would not bring about the transaction to which the arrangements relate.

Textual Amendments

F181 Words in art. 26 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), **5**

F182 Words in art. 26 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), **5**

Enabling parties to communicate

27. A person does not carry on an activity of the kind specified by **[**[F183]article 25(2), 25A(2), 25B(2) **[**[F184], 25C(2) or 25 E(2)**]]** merely by providing means by which one party to a transaction (or potential transaction) is able to communicate with other such parties.

Textual Amendments

F183 Words in art. 27 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), **6**

F184 Words in art. 27 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), **6**

Arranging transactions to which the arranger is a party

28.—(1) There are excluded from article 25(1) any arrangements for a transaction into which the person making the arrangements enters or is to enter as principal or as agent for some other person.

(2) There are excluded from article 25(2) any arrangements which a person makes with a view to transactions into which he enters or is to enter as principal or as agent for some other person.

[[F185](3) But the exclusions in paragraphs (1) and (2) do not apply to arrangements made for or with a view to a transaction which relates to a contract of insurance, unless the person making the arrangements either—

(a) is the only policyholder; or

(b) as a result of the transaction, would become the only policyholder.**]**

Textual Amendments

F185 Art. 28(3) 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), **5(2)**

[[F186]Arranging contracts **[**[F187], plans or agreements**]** to which the arranger is a party

28A.—(1) There are excluded from **[**[F188]articles 25A(1), 25B(1) **[**[F189], 25C(1) and 25E(1)**]]** any arrangements—

(a) for a **[**[F190]contract **[**[F191], plan or agreement**]]** into which the person making the arrangements enters or is to enter; or

(b) for a variation of a **[**[F190]contract **[**[F191], plan or agreement**]]** to which that person is (or is to become) a party.

(2) There are excluded from **[**[F192]articles 25A(2), 25B(2) **[**[F193], 25C(2) and 25E(2)**]]** any arrangements which a person makes with a view to contracts **[**[F194], plans or agreements**]** into which he enters or is to enter.**]**

Textual Amendments

F186 Art. 28A inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **7**

F187 Words in art. 28A title 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), **7(1)**

F188 Words in art. 28A(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), **7(2)(a)(i)**

F189 Words in art. 28A(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), **7(2)(a)(i)**

F190 Words in art. 28A(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), **7(2)(a)(ii)**

F191 Words in art. 28A(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), **7(2)(a)(ii)**

F192 Words in art. 28A(2) 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), **7(2)(b)(i)**

F193 Words in art. 28A(2) 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), **7(2)(b)(i)**

F194 Words in art. 28A(2) 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), **7(2)(b)(ii)**

Arranging deals with or through authorised persons

29.—(1) There are excluded from **[**[F195]articles 25(1) and (2), **[**[F196]25A(1), (2) and (2A)**]**, 25B(1) and (2) **[**[F197], 25C(1) and (2) and 25E(1) and (2)**]]** arrangements made by a person ("A") who is not an authorised person for or with a view to a transaction which is or is to be entered into by a person ("the client") with or though an authorised person if—

(a) the transaction is or is to be entered into on advice to the client by an authorised person; or

(b) it is clear, in all the circumstances, that the client, in his capacity as an **[**[F198]investor, borrower, reversion seller, plan provider, home purchaser, agreement provider or (as the case may be) agreement seller**]**, is not seeking and has not sought advice from A as to the merits of the client's entering into the transaction (or, if the client has sought such advice, A has declined to give it but has recommended that the client seek such advice from an authorised person).

[[F199](2) But the exclusion in paragraph (1) does not apply if—

(a) the transaction relates, or would relate, to a contract of insurance; or

(b) A receives from any person other than the client any pecuniary reward or other advantage, for which he does not account to the client, arising out of his making the arrangements.**]**

[[F200](3) This article is subject to article 4(4) **[**[F201]and (4B)**].]**

Textual Amendments

F195 Words in art. 29(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), **8(a)**

F196 Words in art. 29(1) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(5)(a)** (with Pt. 4)

F197 Words in art. 29(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), **8(a)**

F198 Words in art. 29(1)(b) 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), **8(b)**

F199 Art. 29(2) substituted (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), **5(3)**

F200 Art. 29(3) 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), **14**

F201 Words in art. 29(3) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(5)(b)** (with Pt. 4)

Modifications etc. (not altering text)

C7 Art. 29 modified (31.10.2001) by The Financial Services and Markets Act 2000 (Interim Permissions) Order 2001 (S.I. 2001/3374), art. 1, **Sch. para. 11** (with Sch. para. 4)

C8 Art. 29 modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), art. 1(2)(b), **Sch. para. 11** (with Sch. para. 4)

C9 Art. 29 modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), art. 1(2)(b), **Sch. para. 10(2)** (with Sch. para. 4)

C10 Art. 29 modified (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), art. 1(2), **Sch. para. 9**

C11 Art. 29 modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), art. 1(3), **Sch. para. 12** (with Sch. para. 4)

C12 Art. 29 modified (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), art. 1(2), **Sch. para. 8**

[[F202]**Arrangements made in the course of administration by authorised person**

29A.—[

[F203](1)**]** A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 25A(1)(b) as a result of—

(a) anything done by an authorised person ("B") in relation to a regulated mortgage contract which B is administering pursuant to an arrangement of the kind mentioned in article 62(a); or

(b) anything A does in connection with the administration of a regulated mortgage contract in circumstances falling within article 62(b).

[
[F204](2) A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 25B(1)(b) as a result of—

(a) anything done by an authorised person ("B") in relation to a regulated home reversion plan which B is administering pursuant to an arrangement of the kind mentioned in article 63C(a); or

(b) anything A does in connection with the administration of a regulated home reversion plan in circumstances falling within article 63C(b).

(3) A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 25C(1)(b) as a result of—

(a) anything done by an authorised person ("B") in relation to a regulated home purchase plan which B is administering pursuant to an arrangement of the kind mentioned in article 63G(a); or

(b) anything A does in connection with the administration of a regulated home purchase plan in circumstances falling within article 63G(b).**]**

[
[F205](4) A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 25E(1)(b) as a result of—

(a) anything done by an authorised person ("B") in relation to a regulated sale and rent back agreement which B is administering pursuant to an arrangement of the kind mentioned in article 63K(a); or

(b) anything A does in connection with the administration of a regulated sale and rent back agreement in circumstances falling within article 63K(b).**]]**

Textual Amendments

F202 Art. 29A inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **9**

F203 Art. 29A(1): art. 29A renumbered as art. 29A(1) (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **9(a)**

F204 Art. 29A(2)(3) 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), **9(b)**

F205 Art. 29A(4) 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), **9**

Modifications etc. (not altering text)

C13 Art. 29A(2)(a) applied (with modifications) (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), art. 1(2), **Sch. para. 10**

C14 Art. 29A(3)(a) applied (with modifications) (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), art. 1(2), **Sch. para. 10**

C15 Art. 29A(4)(a) modified (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), art. 1(2), **Sch. para. 9**

Arranging transactions in connection with lending on the security of insurance policies

30.—(1) There are excluded from article 25(1) and (2) arrangements made by a money-lender under which either—

[[F206](a) a relevant authorised person or a person acting on his behalf will introduce to the money-lender persons with whom the relevant authorised person has entered, or proposes to enter, into a relevant transaction, or will advise such persons to approach the money-lender, with a view to the money-lender lending money on the security of any contract effected pursuant to a relevant transaction;**]**

(b) a relevant authorised person gives an assurance to the money-lender as to the amount which, on the security of any contract effected pursuant to a relevant transaction, will or may be received by the money-lender should the money-lender lend money to a person introduced to him pursuant to the arrangements.

(2) In paragraph (1)—

"money-lender" means a person who is—

(a) a money-lending company within the meaning of **[**[F207]section 209 of the Companies Act 2006**]**;

(b) a body corporate incorporated under the law of, or of any part of, the United Kingdom relating to building societies; or

(c) a person whose ordinary business includes the making of loans or the giving of guarantees in connection with loans;

"relevant authorised person" means an authorised person who has permission to effect **[**[F208]contracts of insurance**]** or to sell investments of the kind specified by article 89, so far as relevant to such contracts;

"relevant transaction" means the effecting of a **[**[F209]contract of insurance**]** or the sale of an investment of the kind specified by article 89, so far as relevant to such contracts.

[[F210](3) This article is subject to article 4(4A).**]**

Textual Amendments

F206 Art. 30(1)(a) substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **5**

F207 Words in art. 30(2)(a) substituted (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), arts. 1(2), **13(4)**

F208 Words in art. 30(2) substituted (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), **5(4)(a)**

F209 Words in art. 30(2) substituted (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), **5(4)(b)**

F210 Art. 30(3) 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), **15**

Arranging the acceptance of debentures in connection with loans

31.—(1) There are excluded from article 25(1) and (2) arrangements under which a person accepts or is to accept, whether as principal or agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which is, or is to be, made, granted or provided by that person or his principal.

(2) The reference in paragraph (1) to a person accepting an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.

Provision of finance

32. There are excluded from article 25(2) arrangements having as their sole purpose the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.

Introducing

33. There are excluded from **[**[F211]articles 25(2), 25A(2), 25B(2) **[**[F212], 25C(2) and 25E(2)**]]** arrangements where—

(a) they are arrangements under which persons ("clients") will be introduced to another person;

(b) the person to whom introductions are to be made is—

(i) an authorised person;

(ii) an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or

(iii) a person who is not unlawfully carrying on regulated activities in the United Kingdom and whose ordinary business involves him in engaging in an activity of the kind specified by any of articles 14, 21, 25, **[**[F213]25A,**][**[F214]25B, 25C,**][**[F215]25E,**]** 37 **[**[F216], 39A**]** 40, 45, **[**[F217]51ZA, 51ZB, 51ZC, 51ZD, 51ZE**]**, **[**[F218]52, 53**][**[F219], 53A, 53B**[**[F220], 53C and 53D**]]** (or, so far as relevant to any of those articles, article 64), or would do so apart from any exclusion from any of those articles made by this Order; [F221]...

(c) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to investments generally or in relation to any class of investments to which the arrangements relate **[**[F222]; and

[[F223](d) The arrangements—

(i) are made with a view to a person entering into a transaction which does not relate to a contract of insurance, or

(ii) are of the type specified in article 33B (provision of information – contracts of insurance).**]]**

Textual Amendments

F211 Words in art. 33 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), **10(a)**

F212 Words in art. 33 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), **10(a)**

F213 Words in art. 33(b)(iii) inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **10(b)(i)**

F214 Words in art. 33(b)(iii) 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), **10(b)(i)**

F215 Word in art. 33(b)(iii) 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), **10(b)(i)**

F216 Word in art. 33(b)(iii) 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), **5(5)(a)**

F217 Words in art. 33(b)(iii) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(3)**

F218 Words in art. 33(b)(iii) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **10(b)(ii)**

F219 Words in art. 33(b)(iii) 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), **10(b)(ii)**

F220 Words in art. 33(b)(iii) 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), **10(b)(ii)**

F221 Word in art. 33(b)(iii) omitted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **5(5)(b)**

F222 Art. 33(d) and preceding word 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), **5(5)(c)**

F223 Art. 33(d) substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **4**

[[F224]Introducing to authorised persons etc.

33A.—(1) There are excluded from article 25A(2) arrangements where—

(a) they are arrangements under which a client is introduced to a person ("N") who is—

(i) an authorised person who has permission to carry on a regulated activity of the kind specified by any of articles 25A, 53A, and 61(1),

(ii) an appointed representative who may carry on a regulated activity of the kind specified by either of articles 25A and 53A without contravening the general prohibition, or

(iii) an overseas person who carries on activities specified by any of articles 25A, 53A and 61(1); and

(b) the conditions mentioned in paragraph (2) are satisfied.

[

F225(1A) There are excluded from article 25B(2) arrangements where—

(a) they are arrangements under which a client is introduced to a person ("N") who is—

(i) an authorised person who has permission to carry on a regulated activity of the kind specified by any of articles 25B, 53B and 63B(1),

(ii) an appointed representative who may carry on a regulated activity of the kind specified by either of articles 25B and 53B without contravening the general prohibition, or

(iii) an overseas person who carries on activities specified by any of articles 25B, 53B and 63B(1); and

(b) the conditions mentioned in paragraph (2) are satisfied.

(1B) There are excluded from article 25C(2) arrangements where—

(a) they are arrangements under which a client is introduced to a person ("N") who is—

(i) an authorised person who has permission to carry on a regulated activity of the kind specified by any of articles 25C, 53C and 63F(1),

(ii) an appointed representative who may carry on a regulated activity of the kind specified by either of articles 25C and 53C without contravening the general prohibition, or

(iii) an overseas person who carries on activities specified by any of articles 25C, 53C and 63F(1); and

(b) the conditions mentioned in paragraph (2) are satisfied.**]**

[

F226(1C) There are excluded from article 25E(2) arrangements where—

(a) they are arrangements under which a client is introduced to a person ("N") who is—

(i) an authorised person who has permission to carry on a regulated activity of the kind specified by any of articles 25E, 53D and 63J(1),

(ii) an appointed representative who may carry on a regulated activity of the kind specified by either of articles 25E or 53D without contravening the general prohibition, or

(iii) an overseas person who carries on activities specified by any of articles 25E, 53D and 63J(1); and

(b) the conditions mentioned in paragraph (2) are satisfied.**]**

(2) Those conditions are—

(a) that the person making the introduction ("P") does not receive any money, other than money payable to P on his own account, paid by the client for or in connection with any transaction which the client enters into with or through N as a result of the introduction; and

(b) that before making the introduction P discloses to the client such of the information mentioned in paragraph (3) as applies to P.

(3) That information is—

(a) that P is a member of the same group as N;

(b) details of any payment which P will receive from N, by way of fee or commission, for introducing the client to N;

(c) an indication of any other reward or advantage received or to be received by P that arises out of his introducing clients to N.

[[F227](4) In this article, "client" means—

(a) for the purposes of paragraph (1), a borrower within the meaning given by article 61(3)(a)(i), or a person who is or may be contemplating entering into a regulated mortgage contract as such a borrower;

(b) for the purposes of paragraph (1A), a reversion seller, a plan provider or a person who is or may be contemplating entering into a regulated home reversion plan as a reversion seller or as a plan provider;

(c) for the purposes of paragraph (1B), a home purchaser or a person who is or may be contemplating entering into a regulated home purchase plan as a home purchaser**[**[F228];

(d) for the purposes of paragraph (1C), an agreement provider, an agreement seller or a person who is or may be contemplating entering into a regulated sale and rent back agreement as an agreement provider or agreement seller.**]]]**

Textual Amendments

F224 Art. 33A inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **11**

F225 Art. 33A(1A)(1B) 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), **11(a)**

F226 Art. 33A(1C) 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), **11(a)**

F227 Art. 33A(4) 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), **11(b)**

F228 Art. 33A(4)(d) 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), **11(b)**

[[F229]**Provision of information – contracts of insurance**

33B.—(1) There is excluded from article 25(1) and (2) (arranging deals in investments) the making of arrangements for, or with a view to, a transaction for the sale or purchase of a contract of insurance, where that activity meets the conditions specified in paragraphs (2) and (3).

(2) The conditions specified in this paragraph are that the activity—

(a) consists of the provision of information about a potential policyholder to a relevant insurer or an insurance or reinsurance intermediary, or

(b) consists of the provision of information to a potential policyholder about—

(i) a contract of insurance, or

(ii) a relevant insurer or insurance or reinsurance intermediary.

(3) The condition specified in this paragraph is that the provider of the information does not take any step other than the provision of information to assist in the conclusion of a contract of insurance.

(4) In this article—

"insurance intermediary" has the meaning given in Article 2.1(3) of the insurance distribution directive;

"reinsurance intermediary" has the meaning given in Article 2.1(5) of the insurance distribution directive;

"relevant insurer" has the meaning given in article 39B(2) (claims management on behalf of an insurer etc.).**]**

Textual Amendments

F229 Art. 33B inserted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **5**

Arrangements for the issue of shares etc.

34.—(1) There are excluded from article 25(1) and (2)—

(a) arrangements made by a company for the purposes of issuing its own shares or share warrants; and

(b) arrangements made by any person for the purposes of issuing his own debentures or debenture warrants;

and for the purposes of article 25(1) and (2), a company is not, by reason of issuing its own shares or share warrants, and a person is not, by reason of issuing his own debentures or debenture warrants, to be treated as selling them.

(2) In paragraph (1), "company", "shares", "debentures", "share warrants" and "debenture warrants" have the meanings given by article 18(2).

[[F230](3) This article is subject to article 4(4).**]**

Textual Amendments

F230 Art. 34(3) 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), **12(6)**

International securities self-regulating organisations

35.—(1) There are excluded from article 25(1) and (2) any arrangements made for the purposes of carrying out the functions of a body or association which is approved under this article as an international securities self-regulating organisation, whether the arrangements are made by the organisation itself or by a person acting on its behalf.

(2) The Treasury may approve as an international securities self-regulating organisation any body corporate or unincorporated association with respect to which the conditions mentioned in paragraph (3) appear to them to be met if, having regard to such matters affecting international trade, overseas earnings and the balance of payments or otherwise as they consider relevant, it appears to them that to do so would be desirable and not result in any undue risk to investors.

(3) The conditions are that—

(a) the body or association does not have its head office in the United Kingdom;

(b) the body or association is not eligible for recognition under section 287 or 288 of the Act (applications by investment exchanges and clearing houses) on the ground that (whether or not it has applied, and whether or not it would be eligible on other grounds) it is unable to satisfy the requirements of one or both of paragraphs (a) and (b) of section 292(3) of the Act (requirements for overseas investment exchanges and overseas clearing houses);

[F231(ba) the body or association is also not eligible to become an EEA central counterparty (as defined in section 285(1)(c) of the Act) or a third country central counterparty (as defined in section 285(1)(d) of the Act);]

[F232(bb) the body or association is also not eligible to become an EEA CSD (as defined in section 285(1)(f) of the Act) or a third country CSD (as defined in section 285(1)(g) of the Act);]

(c) the body or association is able and willing to co-operate with [F233the FCA and the PRA] by the sharing of information and in other ways;

(d) adequate arrangements exist for co-operation between [F233the FCA and the PRA] and those responsible for the supervision of the body or association in the country or territory in which its head office is situated;

(e) the body or association has a membership composed of persons falling within any of the following categories, that is to say, authorised persons, exempt persons, and persons whose head offices are outside the United Kingdom and whose ordinary business involves them in engaging in activities which are activities of a kind specified by this Order (or would be apart from any exclusion made by this Part); and

(f) the body or association facilitates and regulates the activity of its members in the conduct of international securities business.

(4) In paragraph (3)(f), “international securities business" means the business of buying, selling, subscribing for or underwriting investments (or agreeing to do so), either as principal or agent, where—

(a) the investments are securities or [F234relevant investments] and are of a kind which, by their nature, and the manner in which the business is conducted, may be expected normally to be bought or dealt in by persons sufficiently expert to understand the risks involved; and

(b) either the transaction is international or each of the parties may be expected to be indifferent to the location of the other;

and, for the purposes of this definition, it is irrelevant that the investments may ultimately be bought otherwise than in the course of such business by persons not so expert.

(5) Any approval under this article is to be given by notice in writing; and the Treasury may by a further notice in writing withdraw any such approval if for any reason it appears to them that it is not appropriate to it to continue in force.

Textual Amendments

F231 Art. 35(3)(ba) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **33(3)** (with regs. 52-58)

F232 Art. 35(3)(bb) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 23(2)** (with regs. 7(4), 9(1))

F233 Words in art. 35(3)(c)(d) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(g)**

F234 Words in art. 35(4)(a) substituted (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), **5(6)**

Modifications etc. (not altering text)

C16 Art. 35 extended (1.12.2001) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001 (S.I. 2001/2636), arts. 1(2)(b), 2(1), **80**; S.I. 2001/3538, art. 2(1)

[F235Trade repositories

35A.—[

F236(1)**]** A trade repository does not carry on an activity of the kind specified by article 25(2) by carrying on its functions of centrally collecting and maintaining records of—

[F237(a)**]** derivatives under Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories**[**F238; or

(b) securities financing transactions under the SFT regulation**]**.

[

F239(2) The reference in paragraph (1)(a) to Regulation (EU) 648/2012 is a reference to that instrument as it has effect at the beginning of the day on which the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 are made (but see regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) Regulations 2019, which may further update the reference).**]]**

Textual Amendments

F235 Art. 35A inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **33(4)** (with regs. 52-58)

F236 Art. 35A renumbered as art. 35A(1) (23.3.2019) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(2)(e), **130**

F237 Art. 35A(a) formed from art. 35A (13.7.2016) by virtue of The Financial Services and Markets Act 2000 (Transparency of Securities Financing Transactions and of Reuse) Regulations 2016 (S.I. 2016/715), reg. 1(2), **Sch. 2 para. 1(3)(a)**

F238 Art. 35A(b) and preceding word inserted (13.7.2016) by The Financial Services and Markets Act 2000 (Transparency of Securities Financing Transactions and of Reuse) Regulations 2016 (S.I. 2016/715), reg. 1(2), **Sch. 2 para. 1(3)(b)**

F239 Art. 35A(2) inserted (23.3.2019) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(2)(e), **130**

[F240Securitisation repositories

35AB A securitisation repository does not carry on an activity of the kind specified by article 25(2) by carrying on its functions of centrally collecting and maintaining records of securitisations under the EU Securitisation Regulation 2017.**]**

Textual Amendments

F240 Art. 35AB inserted (1.1.2019) by The Securitisation Regulations 2018 (S.I. 2018/1288), reg. 1, **Sch. 2 para. 2(3)**

[F241Providing pensions guidance under Part 20A of the Act

35B.—(1) A person does not carry on an activity of the kind specified in article 25(1) or (2) by reason of providing pensions guidance under arrangements made with the Treasury pursuant to section 333B of the Act.

(2) For the purposes of paragraph (1), pensions guidance given by a designated guidance provider is given under arrangements made with the Treasury.**]**

Textual Amendments

F241 Art. 35B inserted (26.3.2015) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (Pensions Guidance Exclusions) Order 2015 (S.I. 2015/489), arts. 1, **2(3)**

Other exclusions

36.—**[**F242(1)**]** Article 25 is also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate), 71 (employee share schemes)**[**F243, 72 (overseas persons)**[**F244, 72A (information society services), 72B (activities carried on by a provider of relevant goods or services), 72C (provision of information about contracts of insurance on an incidental basis)**[**F245, 72AA (managers of UCITS and AIFs)**[**F246, 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)**]]]**.

[F247(2) **[**F248Articles 25A, 25B**[**F249, 25C and 25E**]** are**]** also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business), 72 (overseas persons)**[**F250, 72A (information society services)**[**F251, 72AA (managers of UCITS and AIFs) and 72G (local authorities)**]]**.**]**

[F252(2A) Article 25A is also subject to the exclusion in article 72I (registered consumer buy-to-let mortgage firms).**]**

[F253(3) Article 25D is also subject to **[**F254the exclusions in articles 72 (overseas persons)**[**F255, 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)**]]**.**]**

Textual Amendments

F242 Art. 36(1): art. 36 renumbered as art. 36(1) (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **12(a)**

F243 Words in art. 36 substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(6)**

F244 Words in art. 36(1) substituted (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), **5(7)**

F245 Words in art. 36(1) substituted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(7)**

F246 Words in art. 36(1) substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(6)(a)**

F247 Art. 36(2) inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **12(b)**

F248 Words in art. 36(2) 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), **12**

F249 Words in art. 36(2) 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), **12**

F250 Words in art. 36(2) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(6)**

F251 Words in art. 36(2) substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(6)(b)**

F252 Art. 36(2A) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(6)** (with Pt. 4)

F253 Art. 36(3) inserted (1.4.2007 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **16**

F254 Words in art. 36(3) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(8)**

F255 Words in art. 36(3) substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(6)(c)**

[F256 CHAPTER 6A

CREDIT BROKING

Textual Amendments

F256 Pt. II Ch. 6A, 6B 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), **4**

The activity

Credit broking

36A.—(1) Each of the following is a specified kind of activity—

(a) effecting an introduction of an individual or relevant recipient of credit who wishes to enter into a credit agreement to a person ("P") with a view to P entering into by way of business as lender a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions);

(b) effecting an introduction of an individual or relevant recipient of credit who wishes to enter into a consumer hire agreement to a person ("P") with a view to P entering into by way of business as owner a regulated consumer hire agreement or an agreement which would be a regulated consumer hire agreement but for article 60O (exempt agreements: exemptions relating to the nature of the agreement) or 60Q (exempt agreements: exemptions relating to the nature of the hirer);

(c) effecting an introduction of an individual or relevant recipient of credit who wishes to enter into a credit agreement or consumer hire agreement (as the case may be) to a person who carries on an activity of the kind specified in sub-paragraph (a) or (b) by way of business;

(d) presenting or offering an agreement which would (if entered into) be a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions);

(e) assisting an individual or relevant recipient of credit by undertaking preparatory work with a view to that person entering into a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions);

(f) entering into a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions) on behalf of a lender.

(2) Paragraph (1) does not apply in so far as the activity is an activity of the kind specified by article 36H (operating an electronic system in relation to lending).

(3) For the purposes of paragraph (1) it is immaterial whether the credit agreement or consumer hire agreement is subject to the law of a country outside the United Kingdom.

(4) For the purposes of this article, the "relevant provisions" are the following provisions—

(a) article 60C (exempt agreements: exemptions relating to the nature of the agreement);

(b) article 60D (exempt agreements: exemptions relating to the purchase of land for non-residential purposes);

(c) article 60E (exempt agreements: exemptions relating to the nature of the lender)**[**[F257], except for paragraph (5) of that article**]**;

(d) article 60G (exempt agreements: exemptions relating to the total charge for credit);

(e) article 60H (exempt agreements: exemptions relating to the nature of the borrower).

Textual Amendments

F257 Words in art. 36A(4)(c) inserted (27.6.2014) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2014 (S.I. 2014/1448), arts. 1(2), **2**

Exclusions

Introducing by individuals in the course of canvassing off trade premises

36B.—(1) There are excluded from article 36A activities carried on by an individual by canvassing off trade premises—

(a) a restricted-use credit agreement used to finance a transaction between the lender or a member of the lender's group and the borrower whether forming part of that agreement or not, or

(b) a regulated consumer hire agreement.

(2) But paragraph (1) does not apply if A carries on any other activity of a kind specified by article 36A(1)(a) to (c).

(3) A canvasses a restricted-use credit agreement or a regulated consumer hire agreement off trade premises for the purposes of this article if—

(a) A solicits the entry of an individual or relevant recipient of credit ("B") into such an agreement by making oral representations to B during a visit by A to any place (not excluded by paragraph (4)) where B is, and

(b) that visit is made by A for the purpose of making such oral representations.

(4) A place is excluded from paragraph (3) if it is a place where a business is carried on (whether on a permanent or temporary basis) by—

(a) the lender or owner,

(b) the supplier under the restricted-use credit agreement,

(c) A,

(d) a person who employs A or has appointed A as an agent, or

(e) B.

Activities for which no fee is paid

36C.—(1) There are excluded from sub-paragraphs (d), (e) and (f) of article 36A(1) activities carried on by a person for which that person does not receive a fee.

(2) For the purposes of this article, "fee" includes pecuniary consideration or any other form of financial consideration.

Transaction to which the broker is a party

36D. There are excluded from article 36A activities in relation to a regulated credit agreement (or an agreement which would be a regulated credit agreement but for the exclusions in articles 60C to 60H) or a regulated consumer hire agreement (or an agreement which would be a regulated consumer hire agreement but for the exclusions in articles 60O to 60Q) into which the person carrying on the activity enters or is to enter as lender or owner.

[F258 Activities in relation to certain agreements relating to land

36E.—(1) There are excluded from article 36A activities carried on with a view to an individual or a relevant recipient of credit entering into an investment property loan, as defined in article 61A(6) (mortgage contracts which are not regulated mortgage contracts).

(2) There are excluded from article 36A activities of a kind specified by article 25A (arranging regulated mortgage contracts) or 25C (arranging regulated home purchase plans).

(3) There are excluded from article 36A other activities not excluded by paragraph (1) or (2) which consist of effecting an introduction with a view to an individual or relevant recipient of credit entering into a relevant agreement, if the person to whom the introduction is made is an authorised person who has permission to—

(a) enter into such an agreement as lender or home purchase provider (as the case may be), or

(b) make an introduction to an authorised person who has permission to enter into such an agreement as lender or home purchase provider (as the case may be).

(4) In paragraph (3) "relevant agreement" means a regulated mortgage contract or a regulated home purchase plan.**]**

Textual Amendments

F258 Art. 36E substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(7)** (with Pt. 4)

[F259 Activities carried on by members of the legal profession etc

36F.—(1) There are excluded from article 36A (credit broking) activities carried on by—

(a) a barrister or advocate acting in that capacity;

(b) a solicitor (within the meaning of the Solicitors Act 1974) in the course of providing advocacy services or litigation services;

(c) a solicitor (within the meaning of the Solicitors (Scotland) Act 1980) in the course of providing advocacy services or litigation services;

(d) a solicitor (within the meaning of the Solicitors (Northern Ireland) Order 1976) in the course of providing advocacy services or litigation services;

(e) a relevant person (other than a person falling within sub-paragraph (a) to (d)) in the course of providing advocacy services or litigation services.

(2) In paragraph (1)—

"advocacy services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings;

"litigation services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings;

"relevant person" means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).**]**

Textual Amendments

F259 Art. 36F substituted (24.3.2015) by The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2015 (S.I. 2015/853), arts. 1(2), **3(2)**

[[F260]Other exclusions]

36G. Article 36A is also subject to **[**[F261]the exclusions in articles 72A (information society services), 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms)**]**.

Textual Amendments

F260 Art. 36G heading substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(7)**

F261 Words in art. 36G substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(8)** (with Pt. 4)

CHAPTER 6B

OPERATING AN ELECTRONIC SYSTEM IN RELATION TO LENDING

The activity

Operating an electronic system in relation to lending

36H.—(1) Where the **[**[F262]conditions in paragraphs (2), (2A) and (2C) are**]** satisfied, operating an electronic system which enables the operator ("A") to facilitate persons ("B" and "C") becoming the lender and borrower under an article 36H agreement is a specified kind of activity.

(2) The condition **[**[F263]in this paragraph**]** is that the system operated by A is capable of determining which agreements should be made available to each of B and C (whether in accordance with general instructions provided to A by B or C or otherwise).

[
[F264](2A) The condition in this paragraph is that A, or another person ("X") acting under an arrangement with A or at A's direction, undertakes to—

(a) receive payments in respect of **[**[F265]either interest or capital or both**]** due under the article 36H agreement from C, and

(b) make payments in respect of **[**[F266]either interest or capital or both**]** due under the article 36H agreement to B.

(2B) For the purposes of paragraph (2A)—

(a) an agreement by A to appoint X to perform the activities in that paragraph is to be treated as an undertaking by A within the meaning of that paragraph;

(b) it is immaterial that—

(i) payments may be subject to conditions;

(ii) A, or X, may be entitled to retain a portion or the entirety of any payment received from C.

(2C) The condition in this paragraph is that A, or another person ("X") acting under an arrangement with A or at A's direction, undertakes to perform, or A undertakes to appoint or direct another person to perform either or both of the following activities—

(a) taking steps to procure the payment of a debt under the article 36H agreement;

(b) exercising or enforcing rights under the article 36H agreement on behalf of B.**]**

[
[F267](2D) Where A carries on an activity of the kind specified in paragraph (1), it is a specified kind of activity for A to operate an electronic system where—

(a) that system enables A to facilitate a person ("B") assuming the rights of the lender under an article 36H agreement by assignment or operation of law, and

(b) the conditions in paragraphs (2), (2A) and (2C) are satisfied where C is the borrower under the agreement in sub-paragraph (a).**]**

(3) The following are specified kinds of activities if carried on by A in the course of, or in connection with, the carrying on by A of the activity specified by paragraph (1) **[**[F268]or (2D)**]**—

(a) presenting or offering article 36H agreements to **[**[F269]either B or C**]** with a view to B becoming the lender under the article 36H agreement **[**[F270]or**]** C becoming the borrower under the article 36H agreement,

(b) furnishing information relevant to the financial standing of a person ("Y") with a view to assisting in the determination as to whether another person should—

(i) enter into, as the lender, an article 36H agreement with Y, or

(ii) assume the rights of the lender under an article 36H agreement under which Y is the borrower,

(c) taking steps to procure the payment of a debt due under an article 36H agreement,

(d) **[**[F271]taking steps to perform duties, or exercise or enforce**]** rights under an article 36H agreement on behalf of the lender,

(e) **[**[F272]taking steps with a view to**]** ascertaining whether a credit information agency (within the meaning given by article 89A(6)) holds information relevant to the financial standing of an individual or relevant person,

(f) **[**[F273]taking steps with a view to**]** ascertaining the contents of such information,

(g) **[**[F274]taking steps with a view to**]** securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information, [F275]...

(h) **[**[F276]taking steps with a view to**]** securing that a credit information agency which holds such information—

(i) stops holding the information, or

(ii) does not provide it to any other person **[**[F277], or

(i) giving advice in relation to the taking of any of the steps in sub-paragraphs (e) to (h)**]**.

[[F278](4) An "article 36H agreement" is an agreement by which one person provides another person with credit and in relation to which—

(a) the condition in paragraph (4A) is satisfied, and

(b) the condition in either paragraph (5) or (6) is satisfied, or was satisfied at the time the agreement was entered into.

(4A) The condition in this paragraph is that A does not provide credit, assume the rights (by assignment or operation of law) of a person who provided credit, or receive credit under the agreement.**]**

(5) The condition in this paragraph is that the lender is an individual or relevant person.

(6) The condition in this paragraph is that the borrower is an individual or relevant person and—

(a) the lender provides the borrower with credit less than or equal to £25,000, or

(b) the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(7) Paragraphs (5) and (6) of article 60C (exempt agreements: exemptions relating to the nature of the agreement) apply for the purposes of paragraph (6)(b).

(8) It is immaterial for the purposes of this article whether the lender is carrying on a regulated activity.

[[F279](9) In this article—

"assignment", in relation to Scotland, means assignation;

"borrower" means a person who receives credit under an article 36H agreement or a person to whom the rights and duties of a borrower under such an agreement have passed by assignment or operation of law;

"credit" has the meaning given by article 60L;

"lender" means—

(a) a person providing credit under an article 36H agreement, or

(b) a person who by assignment or operation of law has assumed the rights of a person who provided credit under such an agreement;

"relevant person" means—

(a) a partnership consisting of two or three persons not all of whom are bodies corporate, or

(b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership.**]**

[

[F280](10) For the purposes of the application of section 22(1) of the Act (regulated activities) to an activity of a kind specified by this article, article 88D (credit agreement), and article 73 (investments: general) in so far as it relates to that article, **[**[F281]have**]** effect as if the reference to a credit agreement in article 88D includes a reference to an article 36H agreement.**]**

Textual Amendments

F262 Words in art. 36H(1) substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(9)(a)**

F263 Words in art. 36H(2) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(9)(b)**

F264 Arts. 36H(2A)-(2C) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(9)(c)**

F265 Words in art. 36H(2A)(a) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(a)** (with Pt. 5)

F266 Words in art. 36H(2A)(b) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(a)** (with Pt. 5)

F267 Art. 36H(2D) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(b)** (with Pt. 5)

F268 Words in art. 36H(3) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(i)** (with Pt. 5)

F269 Words in art. 36H(3)(a) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(ii)(aa)** (with Pt. 5)

F270 Word in art. 36H(3)(a) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(ii)(bb)** (with Pt. 5)

F271 Words in art. 36H(3)(d) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(iii)** (with Pt. 5)

F272 Words in art. 36H(3)(e) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(iv)** (with Pt. 5)

F273 Words in art. 36H(3)(f) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(iv)** (with Pt. 5)

F274 Words in art. 36H(3)(g) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(iv)** (with Pt. 5)

F275 Word in art. 36H(3)(g) revoked (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(v)** (with Pt. 5)

F276 Words in art. 36H(3)(h) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(iv)** (with Pt. 5)

F277 Art. 36H(3)(i) and word inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(vi)** (with Pt. 5)

F278 Art. 36H(4)(4A) substituted for art. 36H(4) (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(d)** (with Pt. 5)

F279 Art. 36H(9) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(d), **2(5)(e)** (with Pt. 5)

F280 Art. 36H(10) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(9)(d)**

F281 Word in art. 36H(10) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(d), **2(5)(f)** (with Pt. 5)

Exclusion

Information society services

36I. Article 36H is subject to the exclusion in article 72A (information society services).

[F282 Activities in relation to debentures and bonds

36IA. There is excluded from article 36H (operating an electronic system in relation to lending) any activity of a kind specified by article 14 (dealing in investments as principal), 25 (arranging deals in investments), 37 (managing investments) or 53 (advising on investments).**]**

Textual Amendments

F282 Art. 36IA inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(10)**

Supplemental

Meaning of "consumer"

36J.—(1) For the purposes of sections 1G, 404E and 425A of the Act (meaning of "consumer"), a person ("C") is only to be regarded as a person who uses, may use, has, may have used or has or may have contemplated using, services provided by authorised persons in carrying on a regulated activity of the kind specified by article 36H or article 64 in so far as relevant to that activity if—

(a) C is, may be, has been or may have been the lender under a relevant agreement and is an individual or relevant person, or

(b) C is, may be, has been or may have been the borrower under a relevant agreement, C is an individual or relevant person and one of the conditions in paragraph (2) is satisfied, or

(c) C meets the following conditions—

(i) C is, was or would be the lender under a relevant agreement, and

(ii) C is not, was not or would not be, as a result, carrying on a regulated activity.

(2) The conditions in this paragraph are that—

(a) the lender provides, provided or would provide the borrower with credit (within the meaning given by article 60L) less than or equal to £25,000, or

(b) the agreement is not, was not or would not be entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(3) Paragraphs (5) and (6) of article 60C (exempt agreements: exemptions relating to the nature of the agreement) apply for the purposes of paragraph (2)(b).

(4) In paragraph (1)—

"relevant agreement" means an agreement between one person ("the borrower") and another person ("the lender") by which the lender provides the borrower with credit (within the meaning given by article 60L);

"relevant person" has the meaning given in article 36H.**]**

CHAPTER VII

MANAGING INVESTMENTS

The activity

Managing investments

37. Managing assets belonging to another person, in circumstances involving the exercise of discretion, is a specified kind of activity if—

(a) the assets consist of or include any investment which is a security**[**[F283], structured deposit**]** or a contractually based investment; or

(b) the arrangements for their management are such that the assets may consist of or include such investments, and either the assets have at any time since 29th April 1988 done so, or the arrangements have at any time (whether before or after that date) been held out as arrangements under which the assets would do so.

Textual Amendments

F283 Words in art. 37(a) 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), **4(3)**

Exclusions

Attorneys

38.—**[**[F284](1)**]** A person does not carry on an activity of the kind specified by article 37 if—

(a) he is a person appointed to manage the assets in question under a power of attorney; and

(b) all routine or day-to-day decisions, so far as relating to investments of a kind mentioned in article 37(a), are taken on behalf of that person by—

(i) an authorised person with permission to carry on activities of the kind specified by article 37; [F285]...

(ii) a person who is an exempt person in relation to activities of that kind **[**[F286]; or

(iii) an overseas person.**]**

[[F287](2) This article is subject to article 4(4).**]**

Textual Amendments

F284 Art. 38(1): art. 38 renumbered as art. 38(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), **17(a)**

F285 Word in art. 38(b) omitted (1.12.2001) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **6(a)**

F286 Art. 38(b)(iii) and word inserted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **6(b)**

F287 Art. 38(2) inserted (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), **17(b)**

Other exclusions

39. Article 37 is also subject to the exclusions in articles 66 (trustees etc.), 68 (sale of goods and supply of services)**[**[F288], 69 (groups and joint enterprises)**][**[F289], 72A (information society services)**[**[F290], 72AA (managers of UCITS and AIFs)**[**[F291], 72C (provision of information about contracts of insurance on an incidental basis) and 72H (insolvency practitioners)**]]**.

Textual Amendments

F288 Words in art. 39 substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(7)**

F289 Words in art. 39 substituted (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), **6**

F290 Words in art. 39 substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(9)**

F291 Words in art. 39 substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(11)**

[[F292]CHAPTER VIIA

ASSISTING IN THE ADMINISTRATION AND PERFORMANCE OF A CONTRACT OF INSURANCE

Textual Amendments

F292 Pt. 2 Ch. 7A 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), **7**

The activity

Assisting in the administration and performance of a contract of insurance

39A. Assisting in the administration and performance of a contract of insurance is a specified kind of activity.

Exclusions

Claims management on behalf of an insurer etc.

39B.—(1) A person does not carry on an activity of the kind specified by article 39A if he acts in the course of carrying on the activity of—

(a) expert appraisal;

(b) loss adjusting on behalf of a relevant insurer; or

(c) managing claims on behalf of a relevant insurer,

and that activity is carried on in the course of carrying on any profession or business.

(2) In this article—

(a) "relevant insurer" means—

(i) a person who has Part IV permission to carry on an activity of the kind specified by article 10;

(ii) a person to whom the general prohibition does not apply by virtue of section 316(1)(a) of the Act (members of the Society of Lloyd's);

(iii) an EEA firm falling within paragraph 5(d) of Schedule 3 to the Act (insurance undertaking); or

(iv) a relevant reinsurer;

(b) "relevant reinsurer" means a person whose main business consists of accepting risks ceded by—

(i) a person falling within sub-paragraph (i), (ii) or (iii) of the definition of "relevant insurer"; [F293]...

[[F294](ii) an EEA firm falling within paragraph 5(da) of Schedule 3 to the Act (reinsurance undertaking); or

(iii) a person established outside the United Kingdom and not falling within paragraph (ii) who carries on an activity of the kind specified by article 10 by way of business.**]**

Textual Amendments

F293 Word in art. 39B(2)(b)(i) omitted (10.12.2007) by The Financial Services and Markets Act 2000 (Reinsurance Directive) Order 2007 (S.I. 2007/3254), arts. 1, 2(2)(a)

F294 Art. 39B(2)(b)(ii)(iii) substituted for art. 39B(2)(b)(ii) (10.12.2007) by The Financial Services and Markets Act 2000 (Reinsurance Directive) Order 2007 (S.I. 2007/3254), arts. 1, 2(2)(b)

Other exclusions

39C. Article 39A is also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business), 72A (information society services), 72B (activities carried on by a provider of relevant goods or services), 72C (provision of information about contracts of insurance on an incidental basis) **[**[F295], 72AA (managers of UCITS and AIFs)**[**[F296], 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)**])].**

Textual Amendments

F295 Words in art. 39C substituted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(7)**

F296 Words in art. 39C substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(12)**

[F297 CHAPTER 7B

ACTIVITIES IN RELATION TO DEBT

Textual Amendments

F297 Pt. II Ch. 7B 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), **5**

The activities

Debt adjusting

39D.—(1) When carried on in relation to debts due under a credit agreement—

(a) negotiating with the lender, on behalf of the borrower, terms for the discharge of a debt,

(b) taking over, in return for payments by the borrower, that person's obligation to discharge a debt, or

(c) any similar activity concerned with the liquidation of a debt,

is a specified kind of activity.

(2) When carried on in relation to debts due under a consumer hire agreement—

(a) negotiating with the owner, on behalf of the hirer, terms for the discharge of a debt,

(b) taking over, in return for payments by the hirer, that person's obligation to discharge a debt, or

(c) any similar activity concerned with the liquidation of a debt,

is a specified kind of activity.

Debt-counselling

39E.—(1) Giving advice to a borrower about the liquidation of a debt due under a credit agreement is a specified kind of activity.

(2) Giving advice to a hirer about the liquidation of a debt due under a consumer hire agreement is a specified kind of activity.

Debt-collecting

39F.—(1) Taking steps to procure the payment of a debt due under a credit agreement or a relevant article 36H agreement is a specified kind of activity.

(2) Taking steps to procure the payment of a debt due under a consumer hire agreement is a specified kind of activity.

(3) Paragraph (1) does not apply in so far as the activity is an activity of the kind specified by article 36H (operating an electronic system in relation to lending).

(4) In this article, "relevant article 36H agreement" means an article 36H agreement (within the meaning of article 36H) which has been entered into with the facilitation of an authorised person with permission to carry on a regulated activity of the kind specified by that article.

Debt administration

39G.—(1) Subject to paragraph (3), taking steps—

(a) to perform duties under a credit agreement or relevant article 36H agreement on behalf of the lender, or

(b) to exercise or enforce rights under such an agreement on behalf of the lender,

is a specified kind of activity

(2) Subject to paragraph (3), taking steps—

(a) to perform duties under a consumer hire agreement on behalf of the owner, or

(b) to exercise or enforce rights under such an agreement on behalf of the owner,

is a specified kind of activity.

(3) Paragraphs (1) and (2) do not apply in so far as the activity is an activity of the kind specified by article 36H (operating an electronic system in relation to lending) or article 39F (debt-collecting).

(4) In this article, "relevant article 36H agreement" means an article 36H agreement (within the meaning of article 36H) which has been entered into with the facilitation of an authorised person with permission to carry on a regulated activity of the kind specified by that article.

Exclusions

Activities where person has a connection to the agreement

39H.—(1) There are excluded from articles 39D(1), 39E(1) and 39F(1) activities carried on by a person who is—

(a) the lender under the agreement,

(b) the supplier in relation to that agreement,

(c) a person carrying on an activity of the kind specified by article 36A by way of business and who has acquired the business of the person who was the supplier in relation to the agreement, or

(d) a person who would be carrying on an activity of the kind specified by article 36A by way of business but for the exclusion in article 36B where the agreement was made in consequence of an introduction (by that person or another person) to which article 36B applies.

(2) There are excluded from articles 39D(2), 39E(2) and 39F(2) activities carried on by a person who is—

(a) the owner under the consumer hire agreement, or

(b) a person who would be carrying on an activity of the kind specified by article 36A by way of business but for the exclusion in article 36B where the agreement was made in consequence of an introduction (by that person or another person) to which article 36B applies.

(3) There is excluded from article 39G(1) steps taken under or in relation to an agreement **[**[F298]by**]** a person who is, in relation to that agreement, a person falling within paragraph (1)(a) to (d).

(4) There is excluded from article 39G(2) steps taken under or in relation to a consumer hire agreement **[**[F299]by**]** a person who is, in relation to that agreement, a person falling within paragraph (2)(a) or (b).

(5) In paragraph (1), "supplier", in relation to an agreement, means—

(a) a person, other than the lender, whose transaction with the borrower is, or is to be, financed by the agreement, or

(b) a person to whom the rights and duties of a person falling within sub-paragraph (a) have been passed by assignment or operation of law.

Textual Amendments

F298 Word in art. 39H(3) substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(13)**

F299 Word in art. 39H(4) substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(13)**

Activities carried on by certain energy suppliers

39I.—(1) There are excluded from articles 39D, 39E, 39F and 39G activities carried on by a relevant energy supplier acting in that capacity in relation to debts due under a green deal plan associated with the supplier.

(2) A green deal plan is associated with a supplier if the payments under the plan are to be made to the supplier.

(3) In this article—

(a) **[**[F300]"green deal plan" has the meaning given by section 1 of the Energy Act 2011;**]**

(b) "relevant energy supplier" has the meaning given in regulations made for the purpose of section 2(9) of **[**[F301]that Act**][**[F301]the Energy Act 2011**]**.

Textual Amendments

F300 Art. 39I(3)(a) omitted (E.W.S.) (15.7.2014) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Green Deal) (Amendment) Order 2014 (S.I. 2014/1850), arts. 1(2), **4(a)** (with art. 1(3))

F301 Words in art. 39I(3)(b) substituted (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), **4(b)** (with art. 1(3))

Activities carried on in relation to a relevant agreement in relation to land

39J. There **[**[F302]is**]** excluded from articles 39D, 39E, 39F and 39G **[**[F303]any activity that relates**]** to a regulated mortgage contract or a regulated home purchase plan **[**[F304]to the extent that the activity constitutes an activity of the kind specified by a provision of Part 2 of this Order other than articles 39D, 39E, 39F and 39G, where entering into that contract as lender constitutes an activity of the kind specified by article 61 or entering into that plan as home purchase provider constitutes an activity of the kind under article 63F**]**.

Textual Amendments

F302 Word in art. 39J substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(14)(a)**

F303 Words in art. 39J substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(14)(b)**

F304 Words in art. 39J inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(14)(c)**

[F305 Activities carried on by members of the legal profession etc

39K.—(1) There are excluded from articles 39D, 39E, 39F and 39G activities carried on by—

(a) a barrister or advocate acting in that capacity;

(b) a solicitor (within the meaning of the Solicitors Act 1974) in the course of providing advocacy services or litigation services;

(c) a solicitor (within the meaning of the Solicitors (Scotland) Act 1980) in the course of providing advocacy services or litigation services;

(d) a solicitor (within the meaning of the Solicitors (Northern Ireland) Order 1976) in the course of providing advocacy services or litigation services;

(e) a relevant person (other than a person falling within sub-paragraph (a) to (d)) in the course of providing advocacy services or litigation services.

(2) In paragraph (1)—

"advocacy services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings;

"litigation services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings;

"relevant person" means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).]

Textual Amendments

F305 Art. 39K substituted (24.3.2015) by The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2015 (S.I. 2015/853), arts. 1(2), **3(3)**

[F306 Activities carried on by reason of providing pensions guidance under Part 20A of the Act

39KA.—(1) There are excluded from article 39E activities carried on by reason of providing pensions guidance under arrangements made with the Treasury pursuant to section 333B of the Act.

(2) For the purposes of paragraph (1), pensions guidance given by a designated guidance provider is given under arrangements made with the Treasury.**]**

Textual Amendments

F306 Art. 39KA inserted (26.3.2015) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (Pensions Guidance Exclusions) Order 2015 (S.I. 2015/489), arts. 1, **2(4)**

[F307Other exclusions]

39L. Articles 39D, 39E, 39F and 39G are also subject to the **[**F308exclusions**]** in article 72A (information society services)**[**F309, article 72G (local authorities) and article 72H (insolvency practitioners)**]**.

Textual Amendments

F307 Art. 39L heading substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(15)**

F308 Word in art. 39L substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(16)(a)**

F309 Words in art. 39L inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(16)(b)**

Supplemental

Meaning of "consumer" etc.

39M.—(1) For the purposes of sections 1G, 404E and 425A of the Act (meaning of "consumer"), in so far as those provisions relate to a person ("A") carrying on a regulated activity of the kind specified by article 39F (debt-collecting) or 39G (debt administration), or article 64 (agreeing to carry on specified kinds of activity) so far as relevant to that activity the following are to be treated as a "consumer"—

(a) the borrower under the agreement or the hirer under the consumer hire agreement;

(b) someone who has been the borrower or hirer under that agreement;

(c) a person who is treated by A as a person falling within sub-paragraph (a) or (b).

(2) For the purposes of section 328(8) of the Act (meaning of "clients") in so far as that provision relates to a person ("A") carrying on a regulated activity of the kind specified by article 39F or 39G, the following are to be treated as a "client"—

(a) the borrower under the agreement or the hirer under the consumer hire agreement;

(b) someone who has been the borrower or hirer under that agreement;

(c) a person who is treated by A as a person falling within sub-paragraph (a) or (b).

(3) In this article, "borrower" includes (in addition to those persons included in the definition in article 60L)—

(a) any person providing a guarantee or indemnity under the agreement, and

(b) a person to whom the rights and duties of a person falling within sub-paragraph (a) have passed by assignment or operation of law.**]**

CHAPTER VIII

SAFEGUARDING AND ADMINISTERING INVESTMENTS

The activity

Safeguarding and administering investments

40.—(1) The activity consisting of both—

(a) the safeguarding of assets belonging to another, and

(b) the administration of those assets,

or arranging for one or more other persons to carry on that activity, is a specified kind of activity if the condition in sub-paragraph (a) or (b) of paragraph (2) is met.

(2) The condition is that—

(a) the assets consist of or include any investment which is a security or a contractually based investment; or

(b) the arrangements for their safeguarding and administration are such that the assets may consist of or include such investments, and either the assets have at any time since 1st June 1997 done so, or the arrangements have at any time (whether before or after that date) been held out as ones under which such investments would be safeguarded and administered.

(3) For the purposes of this article—

(a) it is immaterial that title to the assets safeguarded and administered is held in uncertificated form;

(b) it is immaterial that the assets safeguarded and administered may be transferred to another person, subject to a commitment by the person safeguarding and administering them, or arranging for their safeguarding and administration, that they will be replaced by equivalent assets at some future date or when so requested by the person to whom they belong.

Exclusions

Acceptance of responsibility by third party

41.—(1) There are excluded from article 40 any activities which a person carries on pursuant to arrangements which—

(a) are ones under which a qualifying custodian undertakes to the person to whom the assets belong a responsibility in respect of the assets which is no less onerous than the qualifying custodian would have if the qualifying custodian were safeguarding and administering the assets; and

(b) are operated by the qualifying custodian in the course of carrying on in the United Kingdom an activity of the kind specified by article 40.

(2) In paragraph (1), “qualifying custodian" means a person who is—

(a) an authorised person who has permission to carry on an activity of the kind specified by article 40, or

(b) an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt.

Introduction to qualifying custodians

42.—(1) There are excluded from article 40 any arrangements pursuant to which introductions are made by a person ("P") to a qualifying custodian with a view to the qualifying custodian providing in the United Kingdom a service comprising an activity of the kind specified by article 40, where the qualifying person (or other person who is to safeguard and administer the assets in question) is not connected with P.

(2) For the purposes of paragraph (1)—

(a) "qualifying custodian" has the meaning given by article 41(2); and

(b) a person is connected with P if either he is a member of the same group as P, or P is remunerated by him.

[[F310]Depositaries of UCITS and AIFs

42A. A person does not carry on an activity of the kind specified by article 40 if the person carries on the activity in relation to—

(a) a UCITS, and the person has a Part 4A permission to carry on the activity specified in article 51ZB in respect of that UCITS; or

(b) an AIF, and the person has a Part 4A permission to carry on the activity specified in article 51ZD in respect of that AIF.**]**

Textual Amendments

F310 Art. 42A inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(10)**

Modifications etc. (not altering text)

C17 Art. 42A applied (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), regs. 1, **76(6)**

Activities not constituting administration

43. The following activities do not constitute the administration of assets for the purposes of article 40—

(a) providing information as to the number of units or the value of any assets safeguarded;

(b) converting currency;

(c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs.

Other exclusions

44. Article 40 is also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises)**[**[F311], 71 (employee share schemes)**][**[F312], 72A (information society services)**[**[F313], 72AA (managers of UCITS and AIFs)**[**[F314], 72C (provisions of information about contracts of insurance on an incidental basis) and 72H (insolvency practitioners)**]]]**.

Textual Amendments

F311 Words in art. 44 substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(8)**

F312 Words in art. 44 substituted (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), **8**

F313 Words in art. 44 substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(9)**

F314 Words in art. 44 substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(17)**

CHAPTER IX

SENDING DEMATERIALISED INSTRUCTIONS

The activities

Sending dematerialised instructions

45.—(1) Sending, on behalf of another person, dematerialised instructions relating to a security **[**[F315]or a contractually based investment**]** is a specified kind of activity, where those instructions are sent by means of a relevant system **[**[F316]within the meaning of the 2001 Regulations**]**.

(2) Causing dematerialised instructions relating to a security **[**[F317]or a contractually based investment**]** to be sent **[**[F318]on behalf of another person**]** by means of such a system is also a specified kind of activity where the person causing them to be sent is a system-participant.

(3) In this Chapter—

[[F319](a) "the 2001 Regulations" means the Uncertificated Securities Regulations 2001;**]**

(b) "dematerialised instruction", [F320]..., "settlement bank" and "system-participant" have the meaning given by regulation 3 of the **[**[F321]2001**]** Regulations.

Textual Amendments

F315 Words in art. 45(1) inserted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **13(1)(a)**

F316 Words in art. 45(1) substituted (27.3.2019) by The Uncertificated Securities (Amendment and EU Exit) Regulations 2019 (S.I. 2019/679), regs. 1(2), **6(a)** (with regs. 10-12)

F317 Words in art. 45(2) 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), **13(2)**

F318 Words in art. 45(2) inserted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **7**

F319 Art. 45(3)(a) substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **13(3)(a)**

F320 Word in art. 45(3)(b) omitted (27.3.2019) by virtue of The Uncertificated Securities (Amendment and EU Exit) Regulations 2019 (S.I. 2019/679), regs. 1(2), **6(b)** (with regs. 10-12)

F321 Word in art. 45(3)(b) substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **13(3)(b)**

Exclusions

Instructions on behalf of participating issuers

46. There is excluded from article 45 the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is a participating issuer within the meaning of the **[**[F322]2001**]** Regulations.

Textual Amendments

F322 Word in art. 46 substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **13(4)**

Instructions on behalf of settlement banks

47. There is excluded from article 45 the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is a settlement bank in its capacity as such.

Instructions in connection with takeover offers

48.—(1) There is excluded from article 45 of the act of sending, or causing to be sent, a dematerialised instruction where the person on whose behalf the instruction is sent or caused to be sent is an offeror making a takeover offer.

(2) In this article—

(a) "offeror" means, in the case of a takeover offer made by two or more persons jointly, the joint offers or any of them;

(b) "takeover offer" means—

(i) an offer to acquire shares (which in this sub-paragraph has the same meaning as in **[**[F323]section 974 of the Companies Act 2006**]**) in a body corporate incorporated in the United Kingdom which is a takeover offer within the meaning of **[**[F324]Chapter 3 of Part 28**]** of that Act (or would be such an offer if that Part of that Act applied in relation to any body corporate);

(ii) an offer to acquire all or substantially all the shares, or all the shares of a particular class, in a body corporate incorporated outside the United Kingdom; or

(iii) an offer made to all the holders of shares, or shares of a particular class, in a body corporate to acquire a specified proportion of those shares;

but in determining whether an offer falls within paragraph (ii) there are to be disregarded any shares which the offeror or any associate of his (within the meaning of **[**[F325]section 988 of the Companies Act 2006**]**) holds or has contracted to acquire; and in determining whether an offer falls within paragraph (iii) the offeror, any such associate and any person whose shares the offeror or any such associate has contracted to acquire is not to be regarded as a holder of shares.

Textual Amendments

F323 Words in art. 48(2)(b) substituted (6.4.2007) by The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), art. 1(3), **Sch. 3 para. 8(2)**

F324 Words in art. 48(2)(b) substituted (6.4.2007) by The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), art. 1(3), **Sch. 3 para. 8(3)**

F325 Words in art. 48(2)(b) substituted (6.4.2007) by The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), art. 1(3), **Sch. 3 para. 8(4)**

Instructions in the course of providing a network

49. There is excluded from article 45 the act of sending, or causing to be sent, a dematerialised instruction as a necessary part of providing a network, the purpose of which is to carry dematerialised instructions which are at all time properly authenticated (within the meaning of the **[**[F326]2001**]** Regulations).

Textual Amendments

F326 Word in art. 49 substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **13(4)**

Other exclusions

50. Article 45 is also subject to the exclusions in articles 66 (trustees etc.)**[**[F327], 69 (groups and joint enterprises)**[**[F328], 72A (information society services)**[**[F329], 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)**]]]**.

Textual Amendments

F327 Words in art. 50 substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(9)**

F328 Words in art. 50 substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(6)**

F329 Words in art. 50 substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(18)**

CHAPTER X

[F330]COLLECTIVE INVESTMENT ...

Textual Amendments

F330 Word in Pt. 2 Ch. 10 heading omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(11)**

The activities

Establishing etc. a collective investment scheme

[F331]**51.** . . . . . .

Textual Amendments

F331 Arts. 51ZA-51ZG substituted for arts. 51 and cross-heading (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(12)**

[[F331]Managing a UCITS

51ZA.—(1) Managing a UCITS is a specified kind of activity.

(2) A person manages a UCITS when the person carries on collective portfolio management of the UCITS within the meaning of the UCITS directive, which includes the functions referred to in Annex 2 to that directive (the text of which is set out in Schedule 6) in relation to a UCITS.

(3) If a person manages a UCITS and also carries on other activities in connection with or for the purposes of the management of that UCITS, such other activities are also included in the activity specified in paragraph (1).

Textual Amendments

F331 Arts. 51ZA-51ZG substituted for arts. 51 and cross-heading (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(12)**

Acting as trustee or depositary of a UCITS

51ZB.—(1) Acting as—

(a) the trustee of an authorised unit trust scheme, or

(b) the depositary of an open-ended investment company or authorised contractual scheme,

where the scheme or company is a UCITS, is a specified kind of activity.

(2) In paragraph (1), "authorised contractual scheme", "authorised unit trust scheme", "trustee" and "depositary" have the meanings given by section 237 of the Act (other definitions).

Textual Amendments

F331 Arts. 51ZA-51ZG substituted for arts. 51 and cross-heading (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(12)**

Managing an AIF

51ZC.—(1) Managing an AIF is a specified kind of activity.

(2) A person manages an AIF when the person performs at least risk management or portfolio management for the AIF.

(3) A person does not manage an AIF if the functions they perform for the AIF have been delegated to it by another person, provided that such other person is not an AIFM that has delegated such functions to the extent that it is a letter-box entity.

(4) Paragraph (5) applies if a person manages an AIF, and also carries on—

(a) one or more of the additional activities listed in paragraph 2 of Annex 1 to the alternative investment fund managers directive (the text of which is set out in Schedule 7) for that AIF; or

(b) one or more other activities in connection with or for the purposes of the management of that AIF.

(5) The additional or other activities are included in the activity specified in paragraph (1).

(6) Any expression used in this article which is not defined in this Order and is used in the alternative investment fund managers directive has the same meaning as in that directive.

Textual Amendments

F331 Arts. 51ZA-51ZG substituted for arts. 51 and cross-heading (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(12)**

Acting as trustee or depositary of an AIF

51ZD.—(1) Acting as—

(a) the depositary of an AIF falling within paragraph (2),

(b) the trustee of an authorised unit trust scheme which is an AIF that does not fall within paragraph (2), or

(c) the depositary of an open-ended investment company or authorised contractual scheme which is an AIF that does not fall within paragraph (2),

is a specified kind of activity.

(2) An AIF falls within this paragraph if it is—

(a) an AIF managed by a full-scope UK AIFM; or

(b) a UK AIF managed by an EEA AIFM.

(3) In paragraph (1)(a) "depositary" means—

(a) a person appointed in compliance with the requirement for the AIFM to appoint a depositary at Article 21.1 of the alternative investment fund managers directive; or

(b) an Article 36 custodian as defined in regulation 57(5)(a) of the Alternative Investment Fund Managers Regulations 2013.

(4) In paragraph (1)(b) "authorised unit trust scheme" and "trustee" have the meanings given by section 237 of the Act.

(5) In paragraph (1)(c) "authorised contractual scheme" and "depositary" have the meanings given by section 237 of the Act.

(6) Until 22nd July 2017, an AIF also falls within paragraph (2) if the FCA or an authority in another EEA State has permitted a person with its registered office or a branch in the United Kingdom to be appointed as a depositary of the AIF in accordance with Article 61.5 of the alternative investment fund managers directive.

Textual Amendments

F331 Arts. 51ZA-51ZG substituted for arts. 51 and cross-heading (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(12)**

Establishing etc. a collective investment scheme

51ZE. Establishing, operating or winding up a collective investment scheme is a specified kind of activity.

Textual Amendments

F331 Arts. 51ZA-51ZG substituted for arts. 51 and cross-heading (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(12)**

Exclusions

Persons excluded from managing an AIF

51ZF. There is excluded from article 51ZC the activity of managing an AIF if the person carrying on the activity is listed or described in Schedule 8.

Operating a collective investment scheme in relation to a UCITS or an AIF

51ZG.—(1) A person does not carry on an activity of the kind specified by article 51ZE if the person carries on the activity—

(a) in relation to a UCITS, and—

(i) at the time the person carries on the activity, the UCITS is managed by a person with a Part 4A permission to carry on the activity specified by article 51ZA in respect of that UCITS; or

(ii) no more than the permitted period has passed since the UCITS was managed by a person with such a Part 4A permission; or

(b) in relation to an AIF, and—

(i) at the time the person carries on the activity, the AIF is managed by—

(aa) a person with a Part 4A permission to carry on the activity specified by article 51ZC in respect of that AIF; or

(bb) a person registered as a small registered UK AIFM because the conditions in regulation 10(4) of the Alternative Investment Fund Managers Regulations 2013 are met in respect of that AIF; or

(ii) no more than the permitted period has passed since the AIF was managed by a person with such a Part 4A permission or registration.

(2) In this article "the permitted period" means a period calculated as follows—

(a) subject to sub-paragraphs (b) and (c), the period is 30 days;

(b) if, before the end of the period, the FCA receives notice of the action being taken to appoint a person with a Part 4A permission or registration to manage the UCITS or AIF, the period is extended by a further 30 days, and may be so extended a second time;

(c) if, before the end of the period calculated in accordance with sub-paragraphs (a) and (b), the FCA receives notice of a proposal in respect of the UCITS or AIF for a new manager under section 251(3) of the Act, a new operator under section 261Q(5) of the Act or a new director under regulation 21(1)(e) of the Open-Ended Investment Company Regulations 2001, the period is further extended until the earlier of—

(i) the date on which the FCA gives written notice of its approval to the proposal;

(ii) the date on which the FCA gives a decision notice refusing the proposal; or

(iii) one month after the date on which notice of the proposal was given.**]**

[F331] …

[[F332][F333]Other exclusions]

51A. [[F334]Articles 51ZA, 51ZB, 51ZC, 51ZD, and 51ZE are also] subject to the [[F335]exclusions] in article 72A (information society services)[[F336], 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)].]

Textual Amendments

F332 Art. 51A and cross-heading inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(10)**

F333 Art. 51A heading substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(19)**

F334 Words in art. 51A substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 2 para. 1(13)

F335 Word in art. 51A substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 2 para. 1(4)(b)

F336 Words in art. 51A substituted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(20)**

CHAPTER XI

[F337]… PENSION SCHEMES

Textual Amendments

F337 Word in Pt. 2 Ch. 11 title omitted (1.10.2006 for specified purposes, 6.4.2007 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(2), **2(3)**

The activities

[[F338]Establishing etc. a pension scheme

52. The following are specified kinds of activity—

(a) establishing, operating or winding up a stakeholder pension scheme;

(b) establishing, operating or winding up a personal pension scheme.]

Textual Amendments

F338 Art. 52 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(4)**

[F339 Exclusion

Textual Amendments

F339 Art. 52A and cross-heading inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(11)**

[F340 Other exclusions]

52A. Article 52 is subject to the **[F341** exclusions**]** in article 72A (information society services)**[F342**, 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)**].]**

Textual Amendments

F340 Art. 52A heading substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(21)**

F341 Word in art. 52A substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(4)(b)**

F342 Words in art. 52A substituted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(22)**

[F343 CHAPTER XIA

PROVIDING BASIC ADVICE ON STAKEHOLDER PRODUCTS

Textual Amendments

F343 Pt. 2 Ch. 11A inserted (6.4.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2004 (S.I. 2004/2737), arts. 1(1), **3**

The activity

Providing basic advice on stakeholder products

52B.—(1) Providing basic advice to a retail consumer on a stakeholder product is a specified kind of activity.

(2) For the purposes of paragraph (1), a person ("P") provides basic advice when—

(a) he asks a retail consumer questions to enable him to assess whether a stakeholder product is appropriate for that consumer; and

(b) relying on the information provided by the retail consumer P assesses that a stakeholder product is appropriate for the retail consumer and—

(i) describes that product to that consumer;

(ii) gives a recommendation of that product to that consumer; and

(c) the retail consumer has indicated to P that he has understood the description and the recommendation in sub-paragraph (b).

(3) In this article—

"retail consumer" means any person who is advised by P on the merits of opening or buying a stakeholder product in the course of a business carried on by P and who does not receive the advice in the course of a business carried on by him;

"stakeholder product" means—

(a) an account which qualifies as a stakeholder child trust fund within the meaning given by the Child Trust Funds Regulations 2004;

(b) **[**[F344]rights under a stakeholder pension scheme;**]**

"relevant stakeholder pension scheme" means a stakeholder pension scheme within the meaning given by section 1 of the Welfare Reform and Pensions Act 1999 and which is subject to lifestyling, and

"lifestyling" means the process, applied from a date at least five years before the member's retirement date, or, in the case of a member who joins the scheme less than five years before his retirement date, immediately after he becomes a member, and continuing until the member's retirement date, by which an investment strategy is adopted by the trustees or manager which aims progressively to minimise the variation or potential variation in the value of the member's rights caused by market conditions from time to time, and the words "member" and "scheme" have the same meaning as they have in the Welfare Reform and Pensions Act 1999;

(c) an investment of a kind specified in regulations made by the Treasury.**]**

Textual Amendments

F344 Words in art. 52B(3) substituted (6.4.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2005 (S.I. 2005/593), arts. 1, **2(3)**

[[F345]Exclusion

Textual Amendments

F345 Art. 52C and cross-heading inserted (26.3.2015) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (Pensions Guidance Exclusions) Order 2015 (S.I. 2015/489), arts. 1, **2(5)**

Providing pensions guidance under Part 20A of the Act

52C.—(1) A person does not carry on an activity of the kind specified in article 52B by reason of providing pensions guidance under arrangements made with the Treasury pursuant to section 333B of the Act.

(2) For the purposes of paragraph (1), pensions guidance given by a designated guidance provider is given under arrangements made with the Treasury.**]**

CHAPTER XII

ADVISING ON INVESTMENTS

The activity

Advising on investments

53.—**[**[F346](1)**]** Advising a person is a specified kind of activity if the advice is—

(a) given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and

(b) advice on the merits of his doing any of the following (whether as principal or agent)—

(i) buying, selling, subscribing for**[**[F347], exchanging, redeeming, holding**]** or underwriting a particular investment which is a security**[**[F348], structured deposit**]** or a **[**[F349]relevant investment**]**, or

(ii) exercising **[**[F350]or not exercising**]** any right conferred by such an investment to buy, sell, subscribe for**[**[F351], exchange or redeem**]** such an investment.

[[F352](1A) Paragraph (1) does not apply to a person who is appropriately authorised except to the extent that they are providing a personal recommendation.

(1B) A person is appropriately authorised when they are authorised for the purposes of the Act to carry on an activity of a kind specified by a provision of this Order which is not the activity specified by paragraph (1) and is not the activity of agreeing to carry on the activity specified by paragraph (1).

(1C) Subject to paragraph (1D), a personal recommendation is a recommendation–

(a) made to a person in their capacity as an investor or potential investor, or in their capacity as agent for an investor or a potential investor;

(b) which constitutes a recommendation to them to do any of the following (whether as principal or agent)–

(i) buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular investment which is a security**[**[F353], structured deposit**]** or a relevant investment; or

(ii) exercise or not exercise any right conferred by such an investment to buy, sell, subscribe for, exchange or redeem such an investment; and

(c) that is–

(i) presented as suitable for the person to whom it is made; or

(ii) based on a consideration of the circumstances of that person.

(1D) A recommendation is not a personal recommendation if it is issued exclusively to the public.**]**

[[F354](2) Advising a person is a specified kind of activity if the advice is—

(a) given to the person in that person's capacity as a lender or potential lender under a relevant article 36H agreement, or in that person's capacity as an agent for a lender or potential lender under such an agreement; and

(b) advice on the merits of that person doing any of the following (whether as principal or agent)—

(i) entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law,

(ii) providing instructions to an operator with a view to entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law, where the instructions involve—

(aa) accepting particular parameters for the terms of the agreement presented by an operator,

(bb) choosing between options governing the parameters of the terms of the agreement presented by an operator, or

(cc) specifying the parameters of the terms of the agreement by other means,

(iii) enforcing or exercising the lender's rights under a relevant article 36H agreement, or

(iv) assigning rights under a relevant article 36H agreement.

(3) Paragraph (2) does not apply in so far as—

(a) the advice is given in relation to a relevant article 36H agreement which has been facilitated by the person giving the advice, in the course of carrying on an activity of a kind specified by article 36H and is given by—

(i) an authorised person with permission to carry on a regulated activity of the kind specified by article 36H(1) (operating an electronic system in relation to lending),

(ii) an appointed representative in relation to that activity,

(iii) an exempt person in relation to that activity, or

(iv) a person to whom, as a result of Part 20 of the Act, the general prohibition does not apply in relation to that activity;

(b) the advice is given in the course of carrying on an activity of a kind specified by article 39F (debt-collecting) by a person carrying on that activity not in contravention of the general prohibition; or

(c) the advice is given in the course of carrying on an activity of a kind specified by article 39G (debt administration) by a person carrying on that activity not in contravention of the general prohibition.

(4) In this article—

"operator" means a person carrying on an activity of the kind specified by article 36H(1) or (2D), and

"relevant article 36H agreement" means an article 36H agreement (within the meaning of article 36H (operating an electronic system in relation to lending)) which has been, or may be, entered into with the facilitation of a person carrying on an activity of the kind specified by article 36H(1) or (2D).

(5) For the purposes of the application of section 22(1) of the Act (regulated activities) to an activity of a kind specified by paragraph (2) of this article, article 88D (credit agreement), and article 73 (investments: general) in so far as it relates to that article, have effect as if the reference to a credit agreement in article 88D includes a reference to a relevant article 36H agreement.**]**

Textual Amendments

F346 Art. 53(1): art. 53 renumbered as art. 53(1) (17.3.2016 for specified purposes, 6.4.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(d), **2(6)(a)** (with Pt. 5)

F347 Words in art. 53(1)(b)(i) inserted (3.1.2018) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 (S.I. 2017/500), arts. 1(1), **2(2)**

F348 Words in art. 53(1)(b)(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), **4(4)**

F349 Words in art. 53(b)(i) substituted (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), **9(1)**

F350 Words in art. 53(1)(b)(ii) inserted (3.1.2018) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 (S.I. 2017/500), arts. 1(1), **2(3)(a)**

F351 Words in art. 53(1)(b)(ii) substituted (3.1.2018) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 (S.I. 2017/500), arts. 1(1), **2(3)(b)**

F352 Art. 53(1A)-(1D) inserted (3.1.2018) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 (S.I. 2017/500), arts. 1(1), **2(4)**

F353 Words in art. 53(1C)(b)(i) inserted (3.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(6), **Sch. 3 para. 2** (with reg. 7)

F354 Art. 53(2)-(5) inserted (17.3.2016 for specified purposes, 6.4.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(d), **2(6)(b)** (with Pt. 5)

[[F355]Advising on regulated mortgage contracts

53A.—(1) Advising a person is a specified kind of activity if the advice—

(a) is given to the person in his capacity as a borrower or potential borrower; and

(b) is advice on the merits of his doing any of the following—

(i) entering into a particular regulated mortgage contract, or

(ii) varying the terms of a regulated mortgage contract **[**[F356]falling within paragraph (1A)**]** entered into by him [F357]... in such a way as to vary his obligations under that contract.

[

[F358](1A) A regulated mortgage contract falls within this paragraph if—

(a) the contract was entered into on or after 31st October 2004; or

(b) the contract—

(i) was entered into before 31st October 2004; and

(ii) was a regulated credit agreement immediately before 21st March 2016.**]**

(2) In this article, "borrower" has the meaning given by article 61(3)(a)(i).**]**

Textual Amendments

F355 Art. 53A inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **13**

F356 Words in art. 53A(1)(b)(ii) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(7)(a)(i)** (with Pt. 5)

F357 Words in art. 53A(1)(b)(ii) omitted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(7)(a)(ii)** (with Pt. 5)

F358 Art. 53A(1A) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(7)(b)** (with Pt. 5)

[[F359]Advising on regulated home reversion plans

53B. Advising a person is a specified kind of activity if the advice—

(a) is given to the person in his capacity as—

(i) a reversion seller or potential reversion seller, or

(ii) a plan provider or potential plan provider; and

(b) is advice on the merits of his doing either of the following—

(i) entering into a particular regulated home reversion plan, or

(ii) varying the terms of a regulated home reversion plan, entered into on or after 6th April 2007 by him, in such a way as to vary his obligations under that plan.**]**

Textual Amendments

F359 Arts. 53B, 53C 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), **13**

[F359 Advising on regulated home purchase plans

53C. Advising a person is a specified kind of activity if the advice—

(a) is given to the person in his capacity as a home purchaser or potential home purchaser; and

(b) is advice on the merits of his doing either of the following—

(i) entering into a particular regulated home purchase plan, or

(ii) varying the terms of a regulated home purchase plan, entered into on or after 6th April 2007 by him, in such a way as to vary his obligations under that plan.**]**

Textual Amendments

F359 Arts. 53B, 53C 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), **13**

[F360 Advising on regulated sale and rent back agreements

53D. Advising a person is a specified kind of activity if the advice—

(a) is given to the person ("A") in A's capacity as—

(i) an agreement seller or potential agreement seller, or

(ii) an agreement provider or potential agreement provider; and

(b) is advice on the merits of A doing either of the following—

(i) entering into a particular regulated sale and rent back agreement; or

(ii) varying the terms of a regulated sale and rent back agreement entered into on or after 1st July 2009 by A as agreement seller or agreement provider, in such a way so as to vary A's obligations under that agreement.**]**

Textual Amendments

F360 Art. 53D 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), **13**

[F361 Advising on regulated credit agreements for the acquisition of land

53DA.—(1) Advising a person ("P") is a specified kind of activity if—

(a) the advice is given to P in P's capacity as a recipient of credit, or potential recipient of credit, under a regulated credit agreement;

(b) P intends to use the credit to acquire or retain property rights in land or in an existing or projected building; and

(c) the advice consists of the provision of personal recommendations to P in respect of one or more transactions relating to regulated credit agreements **[**[F362]entered into, or to be entered into, on or after 21st March 2016**]**.

(2) In this article "regulated credit agreement" has the meaning given by article 60B(3).**]**

Textual Amendments

F361 Art. 53DA inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(9)** (with Pt. 4)

F362 Words in art. 53DA(1)(c) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(8)** (with Pt. 5)

[[F363]**Advising on conversion or transfer of pension benefits**

53E.—(1) Advising a person ("P") is a specified kind of activity if—

(a) the advice is given to P in P's capacity as—

(i) a member of a pension scheme; or

(ii) a survivor of a member of a pension scheme;

(b) P has subsisting rights in respect of any safeguarded benefits; and

(c) the advice is advice on the merits of P requiring the trustee or manager of the pension scheme to—

(i) convert any of the safeguarded benefits into different benefits that are flexible benefits under the scheme;

(ii) make a transfer payment in respect of any of the safeguarded benefits with a view to acquiring a right or entitlement to flexible benefits for P under another pension scheme; or

(iii) pay a lump sum that would be an uncrystallised funds pension lump sum in respect of any of the safeguarded benefits.

(2) In this article—

"flexible benefit" means—

(a) a money purchase benefit;

(b) a cash balance benefit; or

(c) a benefit, other than a money purchase benefit or cash balance benefit, calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made by the member or any other person in respect of the member or any other factor);

"pension scheme" has the meaning given by section 1(5) of the Pension Schemes Act 1993 or section 1(5) of the Pension Schemes (Northern Ireland) Act 1993;

"safeguarded benefits" means benefits other than—

(a) money purchase benefits; and

(b) cash balance benefits;

"subsisting right"—

(a) in relation to a member of a pension scheme, means—

(i) any right which has accrued to or in respect of the member to future benefits under the scheme; or

(ii) any entitlement to benefits under the scheme; and

(b) in relation to a survivor of a member of a pension scheme means any right to future benefits, or entitlement to benefits, which the survivor has under the scheme in respect of the member;

"survivor", in relation to a member of a pension scheme, means a person who has survived the member and has a right to future benefits, or is entitled to benefits, under the scheme in respect of the member;

"trustees or managers" means—

(a) in relation to a scheme established under a trust, the trustees; and

(b) in relation to any other scheme, the managers; and

"uncrystallised funds pension lump sum" has the meaning given by paragraph 4A of Schedule 29 to the Finance Act 2004.

(3) Paragraphs (4) to (9) apply for the interpretation of "flexible benefit" and "safeguarded benefits".

(4) "Cash balance benefit", in relation to a member of a pension scheme or a survivor of a member, means a benefit calculated by reference to an amount available for the provision of benefits to or in respect of the member ("the available amount") where there is a promise about that amount.

(5) But a benefit is not a "cash balance benefit" if, under the scheme—

(a) a pension may be provided from the available amount to or in respect of the member; and

(b) there is a promise about the rate of that pension.

(6) The promise mentioned in paragraph (4) includes, in particular, a promise about the change in the value of, or the return from, payments made by the member or any other person in respect of the member.

(7) The promise mentioned in paragraph (5)(b) includes a promise that—

(a) the available amount will be sufficient to provide a pension of a particular rate;

(b) the rate of a pension will represent a particular proportion of the available amount.

(8) A benefit is not excluded from the definition of "cash balance benefit" by paragraph (5) merely because under the scheme there is a promise that—

(a) the rate or amount of the benefit payable in respect of a deceased member will be a particular proportion of the rate or amount of the benefit which was (or would have been) payable to the member; or

(b) the amount of a lump sum payable to a member, or in respect of a deceased member, will represent a particular proportion of the available amount.

(9) "Money purchase benefits"—

(a) in relation to a pension scheme governed by the law of England and Wales or Scotland, has the meaning given by section 181 of the Pension Schemes Act 1993; and

(b) in relation to a pensions scheme governed by the law of Northern Ireland, has the meaning given by section 176 of the Pension Schemes (Northern Ireland) Act 1993.**]**

Textual Amendments

F363 Art. 53E 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(2)**

Exclusions

Advice given in newspapers etc.

54.—(1) There is excluded from **[**[F364]articles 53, 53A, 53B **[**[F365], 53C **[**[F366], 53D **[**[F367], 53DA**]** and 53E**]]** the giving of advice in writing or other legible form if the advice is contained in a newspaper, journal, magazine, or other periodical publication, or is given by way of a service comprising regularly updated news or information, if the principal purpose of the publication or service, taken as a whole and including any advertisements or other promotional material contained in it, is neither—

(a) that of giving advice of a kind mentioned in article 53 **[**[F368], 53A, 53B **[**[F369], 53C **[**[F370], 53D **[**[F367], 53DA**]** or 53E**],]** as the case may be**]**; nor

[[F371](b) that of leading or enabling persons—

(i) to buy, sell, subscribe for or underwrite securities **[**[F372], structured deposits,**]** or **[**[F373]relevant investments**]**, or (as the case may be),

[[F374](ia) to enter into a relevant article 36H agreement (within the meaning of that article) as a lender, to assume the rights of a lender under such an agreement by assignment or operation of law, or to assign rights under such an agreement,**]**

(ii) to enter as borrower into regulated mortgage contracts, or vary the terms of regulated mortgage contracts entered into by them as borrower**[**[F375];

(iii) to enter as reversion seller or plan provider into regulated home reversion plans, or vary the terms of regulated home reversion plans entered into by them as reversion seller or plan provider,

(iv) to enter as home purchaser into regulated home purchase plans, or vary the terms of regulated home purchase plans entered into by them as home purchaser**][**[F376];

(v) to enter as agreement seller or agreement provider into regulated sale and rent back agreements, or vary the terms of regulated sale and rent back agreements entered into by them as agreement seller or agreement provider**]**;**]**

[[F377](va) to enter as a recipient of credit into a regulated credit agreement the purpose of which is to acquire or retain property rights in land or in an existing or projected building,**]**

[[F378](vi) to require the trustee or manager of a pension scheme to take any of the actions referred to in article 53E(1)(c).**]**

(2) There is also excluded from **[**[F379]articles 53, 53A, 53B **[**[F380], 53C **[**[F381], 53D **[**[F367], 53DA**]** and 53E**]]** the giving of advice in any service consisting of the broadcast or transmission of television or radio programmes, if the principal purpose of the service, taken as a whole and including any advertisements or other promotional material contained in it, is neither of those mentioned in paragraph (1)(a) and (b).

[[F382](2A) Paragraphs (1) and (2) do not apply to advice which is a personal recommendation falling within article 53(1A).**]**

(3) **[**[F383]The FCA**]** may, on the application of the proprietor of any such publication or service as is mentioned in paragraph (1) or (2), certify that it is of the nature described in that paragraph, and may revoke any such certificate if it considers that it is no longer justified.

(4) A certificate given under paragraph (3) and not revoked is conclusive evidence of the matters certified.

Textual Amendments

F364 Words in art. 54(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), **14(a)(i)**

F365 Words in art. 54(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), **14(a)**

F366 Words in art. 54(1) substituted (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(3)(a)(i)**

F367 Word in art. 54 inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(10)(a)** (with Pt. 4)

F368 Words in art. 54(1)(a) 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), **14(a)(ii)**

F369 Words in art. 54(1)(a) 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), **14(b)**

F370 Words in art. 54(1)(a) substituted (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(3)(a)(ii)**

F371 Art. 54(1)(b) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **14(4)**

F372 Words in art. 54(1)(b)(i) inserted (3.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(b), **4(2)**

F373 Words in art. 54(1)(b) substituted (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), **9(2)**

F374 Art. 54(1)(b)(ia) inserted (17.3.2016 for specified purposes, 6.4.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(d), **2(9)** (with Pt. 5)

F375 Art. 54(1)(b)(iii)(iv) 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), **14(a)(iii)**

F376 Art. 54(1)(b)(v) 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), **14(c)**

F377 Art. 54(1)(b)(va) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(10)(b)** (with Pt. 4)

F378 Art. 54(1)(b)(vi) 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(3)(a)(iii)**

F379 Words in art. 54(2) 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), **14(b)**

F380 Words in art. 54(2) 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), **14(d)**

F381 Words in art. 54(2) substituted (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(3)(b)**

F382 Art. 54(2A) inserted (3.1.2018) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 (S.I. 2017/500), arts. 1(1), **3(2)**

F383 Words in art. 54(3) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

[F384Advice given in the course of administration by authorised person

54A.—[

F385(1)**]** A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 53A by reason of—

(a) anything done by an authorised person ("B") in relation to a regulated mortgage contract which B is administering pursuant to arrangements of the kind mentioned in article 62(a); or

(b) anything A does in connection with the administration of a regulated mortgage contract in circumstances falling within article 62(b).

[

F386(2) A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 53B by reason of—

(a) anything done by an authorised person ("B") in relation to a regulated home reversion plan which B is administering pursuant to arrangements of the kind mentioned in article 63C(a); or

(b) anything A does in connection with the administration of a regulated home reversion plan in circumstances falling within article 63C(b).

(3) A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 53C by reason of—

(a) anything done by an authorised person ("B") in relation to a regulated home purchase plan which B is administering pursuant to arrangements of the kind mentioned in article 63G(a); or

(b) anything A does in connection with the administration of a regulated home purchase plan in circumstances falling within article 63G(b).**]**

[

F387(4) A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 53D by reason of

(a) anything done by an authorised person ("B") in relation to a regulated sale and rent back agreement which B is administering pursuant to arrangements of the kind mentioned in article 63K(a); or

(b) anything A does in connection with the administration of a regulated sale and rent back agreement in circumstances falling within article 63K(b).**]**

[

F388(5) A person who is not an authorised person ("A") does not carry on an activity of the kind specified by article 53DA by reason of—

(a) anything done by an authorised person ("B") in relation to a regulated credit agreement which B is administering pursuant to arrangements of the kind mentioned in article 60I(a) (arranging administration by authorised person); or

(b) anything A does in connection with the administration of a regulated credit agreement in circumstances falling within article 60I(b).**]]**

Textual Amendments

F384 Art. 54A inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **15**

F385 Art. 54A(1): art. 54A renumbered as art. 54A(1) (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **15(a)**

F386 Art. 54A(2)(3) 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), **15(b)**

F387 Art. 54A(4) 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), **15**

F388 Art. 54A(5) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(11)** (with Pt. 4)

[[F389]Advice given by reason of providing pensions guidance under Part 20A of the Act

54B.—(1) A person does not carry on an activity of the kind specified in article 53, 53A, 53B, 53C or 53D by reason of providing pensions guidance under arrangements made with the Treasury pursuant to section 333B of the Act.

(2) For the purposes of paragraph (1), pensions guidance given by a designated guidance provider is given under arrangements made with the Treasury.**]**

Textual Amendments

F389 Art. 54B inserted (26.3.2015) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (Pensions Guidance Exclusions) Order 2015 (S.I. 2015/489), arts. 1, **2(6)**

Other exclusions

55.—**[**[F390](1)**]** Article 53 is also subject to the exclusions in articles 66 (trustees etc.), 67, (profession or non-investment business), 68 (sale of goods and supply of services), 69 (groups and joint enterprises), 70 (sale of body corporate)**[**[F391], 72 (overseas persons)**][**[F392], 72A (information society services), 72B (activities carried on by a provider of relevant goods or services)**[**[F393], 72AA (managers of UCITS and AIFs)**[**[F394], 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)**]]]**.

[[F395](2) **[**[F396]Articles 53A, 53B**[**[F397], **[**[F398]53C, 53D and 53DA**]]** are**]** also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business)**[**[F399], 72A (information society services)**[**[F400], 72AA (managers of UCITS and AIFs)**[**[F401], 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms)**]]]**.**]**

Textual Amendments

F390 Art. 55(1): art. 55 renumbered as art. 55(1) (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **16(a)**

F391 Words in art. 55 substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(12)**

F392 Words in art. 55(1) substituted (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), **9(3)**

F393 Words in art. 55(1) substituted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(7)**

F394 Words in art. 55(1) substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(23)(a)**

F395 Art. 55(2) inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **16(b)**

F396 Words in art. 55(2) 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), **16**

F397 Words in art. 55(2) 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), **16**

F398 Words in art. 55(2) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(12)(a)** (with Pt. 4)

F399 Words in art. 55(2) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(6)**

F400 Words in art. 55(2) substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(23)(b)**

F401 Words in art. 55(2) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(12)(b)** (with Pt. 4)

CHAPTER XIII

LLOYD'S

The activities

Advice on syndicate participation at Lloyd's

56. Advising a person to become, or continue or cease to be, a member of a particular Lloyd's syndicate is a specified kind of activity.

Managing the underwriting capacity of a Lloyd's syndicate

57. Managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's is a specified kind of activity.

Arranging deals in contracts of insurance written at Lloyd's

58. The arranging, by the society incorporated by Lloyd's Act 1871 [M19] by the name of Lloyd's, of deals in contracts of insurance written at Lloyd's, is a specified kind of activity.

Marginal Citations

M19 1871 c. 21.

[F402 Exclusion

Textual Amendments

F402 Art. 58A and cross-heading inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(13)**

Information society services [F403 and managers of UCITS and AIFs]

58A. Articles 56 to 58 are subject to the **[**F404 exclusions**]** in article 72A (information society services) **[**F405 and article 72AA (managers of UCITS and AIFs).**]]**

Textual Amendments

F403 Words in art. 58A heading inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(4)(a)**

F404 Word in art. 58A substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(4)(b)**

F405 Words in art. 58A inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(4)(c)**

CHAPTER XIV

FUNERAL PLAN CONTRACTS

The activity

Funeral plan contracts

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

(2) A "funeral plan contract" is a contract (other than one excluded by article 60) under which—

(a) a person ("the customer") makes one or more payments to another person ("the provider"); and

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

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

Commencement Information

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

[F406 Exclusions]

Textual Amendments

F406 Art. 60 cross-heading substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(14)**

Plans covered by insurance or trust arrangements

60.—(1) There is excluded from article 59 any contract under which—

(a) the provider undertakes to secure that sums paid by the customer under the contract will be applied towards a contract of whole life insurance on the life of the customer (or other person for whom the funeral is to be provided), effected and carried out by an authorised person who has permission to effect and carry out such contracts of insurance, for the purpose of providing the funeral; or

(b) the provider undertakes to secure that sums paid by the customer under the contract will be held on trust for the purpose of providing the funeral, and that the following requirements are or will be met with respect to the trust—

(i) the trust must be established by a written instrument;

(ii) more than half of the trustees must be unconnected with the provider;

(iii) the trustees must appoint, or have appointed, an independent fund manager who is an authorised person who has permission to carry on an activity of the kind specified by article 37, and who is a person who is unconnected with the provider, to manage the assets of the trust;

(iv) annual accounts must be prepared, and audited by a person who is eligible for appointment as a **[**F407statutory auditor under Part 42 of the Companies Act 2006**]**, with respect to the assets and liabilities of the trust; and

(v) the assets and liabilities of the trust must, at least once every three years, be determined, calculated and verified by an actuary who is a Fellow of the Institute of Actuaries or of the Faculty of Actuaries.

(2) For the purposes of paragraph (1)(b)(ii) and (iii), a person is unconnected with the provider if he is a person other than—

(a) the provider;

(b) a member of the same group as the provider;

(c) a director, other officer or employee of the provider, or of any member of the same group as the provider;

(d) a partner of the provider;

(e) a close relative of a person falling within sub-paragraph (a), (c) or (d); or

(f) an agent of any person falling within sub-paragraphs (a) to (e).

Textual Amendments

F407 Words in art. 60(1)(b)(iv) substituted (6.4.2008) by virtue of The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 1(tt)** (with arts. 6, 11, 12)

Commencement Information

I2 Art. 60 in force at 1.1.2002, see art. 2(2)(a)

[[F408]Information society services [[F409]and managers of UCITS and AIFs]

60A. Article 59 is subject to the **[**[F410]exclusions**]** in article 72A (information society services) **[**[F411]and article 72AA (managers of UCITS and AIFs).**]]**

Textual Amendments

F408 Art. 60A inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(15)**

F409 Words in art. 60A heading inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(4)(a)**

F410 Word in art. 60A substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(4)(b)**

F411 Words in art. 60A inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(4)(c)**

[[F412]CHAPTER 14A

REGULATED CREDIT AGREEMENTS

Textual Amendments

F412 Pt. II Ch. 14A, 14B 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), **6**

The activities

Regulated credit agreements

60B.—(1) Entering into a regulated credit agreement as lender is a specified kind of activity.

(2) It is a specified kind of activity for the lender or another person to exercise, or to have the right to exercise, the lender's rights and duties under a regulated credit agreement.

(3) In this article—

[[F413]"credit agreement" means an agreement between an individual or relevant recipient of credit ("A") and any other person ("B") under which B provides A with credit of any amount;**]**

[[F413]"credit agreement"—

(a) in relation to an agreement other than a green deal plan, means an agreement between an individual or relevant recipient of credit ("A") and any other person ("B") under which B provides A with credit of any amount;

(b) in relation to a green deal plan, has the meaning given by article 60LB;**]**

[[F414]"exempt agreement" means a credit agreement which is an exempt agreement under articles 60C to 60H, but where only part of a credit agreement falls within a provision of articles 60C to 60H, only that part is an exempt agreement under those articles;**]**

[[F415]"regulated credit agreement" means—

(a) in the case of an agreement entered into on or after 1st April 2014, any credit agreement which is not an exempt agreement; or

(b) in the case of an agreement entered into before 1st April 2014, a credit agreement which—

(i) was a regulated agreement within the meaning of section 189(1) of the Consumer Credit Act 1974 when the agreement was entered into; or

(ii) became such a regulated agreement after being varied or supplemented by another agreement before **[**[F416]1st April 2014,

and would not be an exempt agreement pursuant to article 60C(2) on 21st March 2016 if the agreement were entered into on that date.**]]**

Textual Amendments

F413 Words in art. 60B(3) substituted (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), **5** (with art. 1(3))

F414 Words in art. 60B(3) substituted (24.3.2015) by The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2015 (S.I. 2015/853), arts. 1(2), **3(4)**

F415 Words in art. 60B(3) substituted (17.3.2016 for specified purposes, 20.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(b), **2(10)(a)** (with Pt. 5)

F416 Words in art. 60B(3) substituted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(10)(b)** (with Pt. 5)

Exempt agreements: exemptions relating to the nature of the agreement

60C.—(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

[

[F417](2) A credit agreement is an exempt agreement if—

(a) by entering into the agreement as lender, a person is or was carrying on an activity of a kind specified by article 61(1) (entering into regulated mortgage contracts); [F418]...

(b) by entering into the agreement as home purchase provider, a person is or was carrying on an activity of a kind specified by article 63F(1) (entering into regulated home purchase plans) **[**[F419]; or

(c) [F420]... by administering the agreement on 21st March 2016 a person is carrying on an activity of a kind specified by article 61(2) (administering regulated mortgage contracts).**]]**

(3) A credit agreement is an exempt agreement if—

(a) the lender provides the borrower with credit exceeding £25,000, and

(b) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(4) A credit agreement is an exempt agreement if—

(a) the lender provides the borrower with credit of £25,000 or less,

(b) the agreement is entered into by the borrower wholly for the purposes of a business carried on, or intended to be carried on, by the borrower, and

[F421(c) the agreement is a green deal plan made in relation to a property that is not a domestic property (as defined by article 60LB).]

(5) For the purposes of paragraph (3), if an agreement includes a declaration which—

(a) is made by the borrower,

(b) provides that the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower, and

(c) complies with rules made by the FCA for the purpose of this article,

the agreement is to be presumed to have been entered into by the borrower wholly or predominantly for the purposes specified in sub-paragraph (b) unless paragraph (6) applies.

(6) This paragraph applies if, when the agreement is entered into—

(a) the lender (or, if there is more than one lender, any of the lenders), or

(b) any person who has acted on behalf of the lender (or, if there is more than one lender, any of the lenders) in connection with the entering into of the agreement,

knows or has reasonable cause to suspect that the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(7) Paragraphs (5) and (6) also apply for the purposes of paragraph (4) but with the omission of the words "or predominantly".

(8) A credit agreement is an exempt agreement if it is made in connection with trade in goods or services—

(a) between the United Kingdom and a country outside the United Kingdom,

(b) within a country [F422outside the United Kingdom], or

(c) between countries outside the United Kingdom, and

the credit is provided to the borrower in the course of a business carried on by the borrower.

Textual Amendments

F417 Art. 60C(2) substituted (5.11.2015 for specified purposes, 1.1.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2015 (S.I. 2015/1863), art. 1(2)(b)(3), **2(2)**

F418 Word in art. 60C(2) omitted (5.11.2015 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2015 (S.I. 2015/1863), art. 1(2)(b)(4), **2(3)(a)**

F419 Art. 60C(2)(c) and word inserted (5.11.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2015 (S.I. 2015/1863), art. 1(2)(b)(4), **2(3)(b)**

F420 Words in art. 60C(2)(c) omitted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(11)** (with Pt. 5)

F421 Art. 60C(4)(c) substituted (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), **6** (with art. 1(3))

F422 Words in art. 60C(8)(b) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(24)**

Modifications etc. (not altering text)

C18 Art. 60C(2)(c) applied (with modifications) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), **art. 31A(3)** (as inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by S.I. 2016/392, art. 1(2)(3)(c), **8(6)** (with Pt. 5))

C19 Art. 60C(5)(6) applied by S.I. 2005/1529, Sch. 1 para. 4C(7) (as 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), **17(6)(a)**)

C20 Art. 60C(5)(6) applied by 1974 c. 39, **s. 55C(5)** (as substituted (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), arts. 1(2), **20(23)**)

C21 Art. 60C(5)(6) applied by 1974 c. 39, s. 60(6) (as substituted (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), **20(24)**)

C22 Art. 60C(5)(6) applied by 1974 c. 39, s. 61A(7) (as substituted (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), **20(25)**)

C23 Art. 60C(5)(6) applied by 1974 c. 39, **s. 75A(7)** (as substituted (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), arts. 1(2), **20(28)**)

C24 Art. 60C(5)(6) applied by 1974 c. 39, **s. 77B(10)** (as substituted (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), arts. 1(2), **20(29)**)

C25 Art. 60C(5)(6) applied by S.I. 1983/1553, reg. 8(1B) (as substituted (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), **23(4)**)

C26 Art. 60C(5)(6) applied by S.I. 2010/1013, reg. 2(6) (as substituted (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), **26(4)**)

C27 Art. 60C(5)(6) applied by S.I. 2010/1013, reg. 6(3) (as substituted (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), **26(6)**)

C28 Art. 60C(5)(6) applied by S.I. 2010/1014, reg. 2(6) (as substituted (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), **27(4)**)

Exempt agreements: exemption relating to the purchase of land for non-residential purposes

60D.—(1) A credit agreement is an exempt agreement for the purposes of this Chapter if, at the time it is entered into, any sums due under it are secured by a legal **[**[F423]or equitable**]** mortgage on land and the condition in paragraph (2) is satisfied.

(2) The condition is that less than 40% of the land is used, or is intended to be used, as or in connection with a dwelling—

(a) by the borrower or a related person of the borrower, or

(b) in the case of credit provided to trustees, by an individual who is a beneficiary of the trust or a related person of a beneficiary.

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

(a) the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those stories;

(b) "related person" in relation to a person ("B") who is the borrower or (in the case of credit provided to trustees) a beneficiary of the trust, means—

(i) B's spouse or civil partner,

(ii) a person (whether or not of the opposite sex) whose relationship with B has the characteristics of the relationship between husband and wife, or

(iii) B's parent, brother, sister, child, grandparent or grandchild.

[

[F424](4) This article does not apply to an agreement of the type described in Article 3(1)(b) of the mortgages directive **[**[F425]that is entered into on or after 21st March 2016 and does not meet the conditions in paragraphs (i) to (iii) of article 61(3)(a) (regulated mortgage contracts)**].]**

Textual Amendments

F423 Words in art. 60D(1) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(25)**

F424 Art. 60D(4) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(14)** (with Pt. 4)

F425 Words in art. 60D(4) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(12)** (with Pt. 5)

Exempt agreements: exemptions relating to the nature of the lender

60E.—(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

(2) **[**[F426]Subject to article 60HA, a relevant credit agreement**]** relating to the purchase of land is an exempt agreement if the lender is—

(a) specified, or of a description specified, in rules made by the FCA under paragraph (3), or

(b) a local authority.

(3) The FCA may make rules specifying any of the following for the purpose of paragraph (2)—

(a) an authorised person with permission to effect or carry out contracts of insurance;

(b) a friendly society;

(c) an organisation of employers or organisation of workers;

(d) a charity;

(e) an improvement company (within the meaning given by section 7 of the Improvement of Land Act 1899);

(f) a body corporate named or specifically referred to in any public general Act;

(g) a body corporate named or specifically referred to in, or in an order made under, a relevant housing provision;

(h) a building society (within the meaning of the Building Societies Act 1986);

(i) an authorised person with permission to accept deposits.

(4) Rules under paragraph (3) may—

(a) specify a particular person or class of persons;

(b) be limited so as to apply only to agreements or classes of agreement specified in the rules.

(5) **[**[F427]Subject to article 60HA, a relevant credit agreement**]** is an exempt agreement if it is—

(a) secured by a legal **[**[F428]or equitable**]** mortgage on land,

(b) that land is used or is intended to be used as or in connection with a dwelling, and

(c) the lender is a housing authority.

(6) A credit agreement is an exempt agreement if—

(a) the lender is an investment firm or a credit institution, and

(b) the agreement is entered into for the purpose of allowing the borrower to carry out a transaction relating to one or more financial instruments.

(7) In this article—

"housing authority" means—

(a) in England and Wales, the Homes and Communities Agency, the Welsh Ministers**[**[F429], a company which is a wholly-owned subsidiary of the Welsh Ministers, **[**[F430]a registered social landlord within the meaning of Part 1 of the Housing Act 1996,**]]** or a private registered provider (within the meaning of Part 2 of the Housing and Regeneration Act 2008);

(b) in Scotland, the Scottish Ministers or a registered social landlord (within the meaning of the Housing (Scotland) Act 2010;

(c) in Northern Ireland, the Northern Ireland Housing Executive **[**[F431]or a housing association within the meaning of Part 2 of the Housing (Northern Ireland) Order 1992**]**;

"relevant credit agreement relating to the purchase of land" means—

(a) a borrower-lender-supplier agreement financing—

(i) the purchase of land, or

(ii) provision of dwellings on land,

and secured by a legal **[**[F432]or equitable**]** mortgage on that land,

(b) a borrower-lender agreement secured by a legal **[**[F432]or equitable**]** mortgage on land, or

(c) a borrower-lender-supplier agreement financing a transaction which is a linked transaction in relation to—

(i) an agreement falling within sub-paragraph (a), or

(ii) an agreement falling within sub-paragraph (b) financing—

(aa) the purchase of land,

(bb) the provision of dwellings on land,

and secured by a legal **[**[F432]or equitable**]** mortgage on the land referred to in sub-paragraph (a) or the land referred to in paragraph (ii);

"relevant housing provision" means any of the following—

(a) section 156(4) or 447(2)(a) of the Housing Act 1985,

(b) section 156(4) of that Act as it has effect by virtue of section 17 of the Housing Act 1996 (the right to acquire), or

(c) article 154(1)(a) of the Housing (Northern Ireland) Order 1981.

[

[F433](7A) In paragraph (7), in the definition of "housing authority", in paragraph (a), "wholly-owned subsidiary" has the same meaning as in section 1159 (meaning of "subsidiary" etc.) of the Companies Act 2006.

(7B) For the purpose of paragraph (7A), the Welsh Ministers are to be treated as a body corporate.**]**

(8) For the purposes of the definition of "relevant credit agreement relating to the purchase of land", a transaction is, unless paragraph (9) applies, a "linked transaction" in relation to a credit agreement ("the principal agreement") if—

(a) it is (or will be) entered into by the borrower under the principal agreement or by a relative of the borrower,

(b) it does not relate to the provision of security,

(c) it does not form part of the principal agreement, and

(d) one of the following conditions is satisfied—

(i) the transaction is entered into in compliance with a term of the principal agreement;

(ii) the principal agreement is a borrower-lender-supplier agreement and the transaction is financed, or to be financed, by the principal agreement;

(iii) the following conditions are met—

(aa) the other party is a person to whom paragraph (10) applies,

(bb) the other party initiated the transaction by suggesting it to the borrower or the relative of the borrower, and

(cc) the borrower or the relative of the borrower enters into the transaction to induce the lender to enter into the principal agreement or for another purpose related to the principal agreement or to a transaction financed or to be financed by the principal agreement.

(9) This paragraph applies if the transaction is—

(a) a contract of insurance,

(b) a contract which contains a guarantee of goods, or

(c) a transaction which comprises, or is effected under—

(i) an agreement for the operation of an account (including any savings account) for the deposit of money, or

(ii) an agreement for the operation of a current account, under which the customer ("C") may, by means of cheques or similar orders payable to C or to any other person, obtain or have the use of money held or made available by the person with whom the account is kept.

(10) The persons to whom this paragraph applies are—

(a) the lender;

(b) the lender's associate;

(c) a person who, in the negotiation of the transaction, is represented by a person who carries on an activity of the kind specified by article 36A (credit broking) by way of business who is or was also a negotiator in negotiations for the principal agreement;

(d) a person who, at the time the transaction is initiated, knows that the principal agreement has been made or contemplates that it might be made.

Textual Amendments

F426 Words in art. 60E(2) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(15)(a)** (with Pt. 4)

F427 Words in art. 60E(5) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(15)(b)** (with Pt. 4)

F428 Words in art. 60E(5)(a) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(26)**

F429 Words in art. 60E(7) inserted (28.7.2014) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2014 (S.I. 2014/1740), arts. 1(2), **2(a)**

F430 Words in art. 60E(7) inserted (17.3.2016 for specified purposes, 20.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(b), **2(13)(a)** (with Pt. 5)

F431 Words in art. 60E(7) inserted (17.3.2016 for specified purposes, 20.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(b), **2(13)(b)** (with Pt. 5)

F432 Words in art. 60E(7) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(26)**

F433 Art. 60E(7A)(7B) inserted (28.7.2014) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2014 (S.I. 2014/1740), arts. 1(2), **2(b)**

Exempt agreements: exemptions relating to number of repayments to be made

60F.—(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

(2) A credit agreement is an exempt agreement if—

(a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit**[**[F434], other than a green deal plan**]**,

(b) the number of payments to be made by the borrower is not more than **[**[F435]twelve**]**,

(c) those payments are required to be made within a period of 12 months or less (beginning on the date of the agreement),

(d) the credit is—

(i) secured on land, or

(ii) provided without interest or other [F436]... charges, and

(e) paragraph (7) does not apply to the agreement.

(3) A credit agreement is an exempt agreement if—

(a) the agreement is a borrower-lender-supplier agreement for running-account credit,

(b) the borrower is to make payments in relation to specified periods which must be, unless the agreement is secured on land, of 3 months or less,

(c) the number of payments to be made by the borrower in repayment of the whole amount of credit provided in each such period is not more than one,

(d) the credit is—

(i) secured on land, or

(ii) provided without interest or other significant charges, and

(e) paragraph (7) does not apply to the agreement.

(4) **[**[F437]Subject to article 60HA, a credit agreement**]** is an exempt agreement if—

(a) the agreement is a borrower-lender-supplier agreement financing the purchase of land,

(b) the number of payments to be made by the borrower is not more than four, and

(c) the credit is—

(i) secured on land, or

(ii) provided without interest or other charges.

(5) A credit agreement is an exempt agreement if—

(a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit,

(b) the credit is to finance a premium under a contract of insurance relating to land or anything on land,

(c) the lender is the lender under a credit agreement secured by a legal **[**[F438]or equitable**]** mortgage on that land,

(d) the credit is to be repaid within the period (which must be 12 months or less) to which the premium relates,

(e) in the case of an agreement secured on land, there is no charge forming part of the total charge for credit under the agreement other than interest at a rate not exceeding the rate of interest from time to time payable under the agreement mentioned at sub-paragraph (c),

(f) in the case of an agreement which is not secured on land, the credit is provided without interest or other charges, and

(g) the number of payments to be made by the borrower is not more than twelve.

(6) A credit agreement is an exempt agreement if—

(a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit,

(b) the lender is the lender under a credit agreement secured by a legal **[**[F439]or equitable**]** mortgage on land,

(c) the agreement is to finance a premium under a contract of whole life insurance which provides, in the event of the death of the person on whose life the contract is effected before the credit referred to in sub-paragraph (b) has been repaid, for payment of a sum not exceeding the amount sufficient to meet the amount which, immediately after that credit has been advanced, would be payable to the lender in respect of that credit (including interest from time to time payable under that agreement),

(d) in the case of an agreement secured on land, there is no charge forming part of the total charge for credit under the agreement other than interest at a rate not exceeding the rate of interest from time to time payable under the agreement mentioned at sub-paragraph (b),

(e) in the case of an agreement which is not secured on land, the credit is provided without interest or other charges, and

(f) the number of payments to be made by the borrower is not more than twelve.

(7) This paragraph applies to—

(a) agreements financing the purchase of land;

(b) agreements which are conditional sale agreements or hire-purchase agreements;

(c) agreements secured by a pledge (other than a pledge of documents of title or of bearer bonds).

[[F440](8) In this article, "payment" means any payment which comprises or includes—

(a) the repayment of capital, or

(b) the payment of interest or any other charge which forms part of the total charge for credit.**]**

Textual Amendments

F434 Words in art. 60F(2)(a) 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), **7** (with art. 1(3))

F435 Word in art. 60F(2)(b) substituted (18.3.2015) by The Financial Services and Markets Act 2000 (Miscellaneous Provisions) (No. 2) Order 2015 (S.I. 2015/352), arts. 1, **2(a)**

F436 Word in art. 60F(2) omitted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(27)(a)**

F437 Words in art. 60F(4) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(16)** (with Pt. 4)

F438 Words in art. 60F(5)(c) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(27)(b)**

F439 Words in art. 60F(6)(b) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(27)(b)**

F440 Art. 60F(8) substituted (24.3.2015) by The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2015 (S.I. 2015/853), arts. 1(2), **3(5)**

Exempt agreements: exemptions relating to the total charge for credit

60G.—(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

(2) A credit agreement is an exempt agreement if—

(a) it is a borrower-lender agreement, [F441]...

(b) the lender is a credit union and the rate of the total charge for credit does not exceed 42.6 per cent**[**[F442], and

(c) paragraph (2A) applies to the agreement.**]**

[

[F443](2A) This paragraph applies to the agreement if—

(a) the agreement is not of a type described in Article 3(1) of the mortgages directive; [F444]...

(b) the agreement is of such a type and—

(i) the agreement is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive,

(ii) the agreement is a bridging loan within the meaning of Article 4(23) of the mortgages directive, or

(iii) in relation to the agreement—

(aa) the borrower receives timely information on the main features, risks and costs of the agreement at the pre-contractual stage, and

(bb) any advertising of the agreement is fair, clear and not misleading**[**[F445]; or

(c) the agreement was entered into before 21st March 2016.**]]**

(3) **[**[F446]Subject to paragraph (8), a credit agreement**]** is an exempt agreement if—

(a) it is a borrower-lender agreement,

(b) it is an agreement of a kind offered to a particular class of individual or relevant recipient of credit and not offered to the public generally,

(c) it provides that the only charge included in the total charge for credit is interest,

(d) interest under the agreement may not at any time be more than the sum of one per cent and the highest of the base rates published by the banks specified in paragraph (7) on the date 28 days before the date on which the interest is charged, and

(e) paragraph (5) does not apply to the agreement.

(4) **[**[F447]Subject to paragraph (8), a credit agreement**]** is an exempt agreement if—

(a) it is a borrower-lender agreement,

(b) it is an agreement of a kind offered to a particular class of individual or relevant recipient of credit and not offered to the public generally,

(c) it does not provide for or permit an increase in the rate or amount of any item which is included in the total charge for credit,

(d) the total charge for credit under the agreement is not more than the sum of one per cent and the highest of the base rates published by the banks specified in paragraph (7) on the date 28 days before the date on which the charge is imposed, and

(e) paragraph (5) does not apply to the agreement.

(5) This paragraph applies to an agreement if—

(a) the total amount to be repaid by the borrower to discharge the borrower's indebtedness may vary according to a formula which is specified in the agreement and which has effect by reference to movements in the level of any index or other factor, or

[[F448](b) the agreement—

(i) is not—

(aa) secured on land, or

[[F449](bb) offered by a lender to a borrower as an incident of the borrower's employment with the lender or with an undertaking in the same group as the lender;**]**

(ii) does not meet the general interest test.**]**

(6) For the purposes of **[**[F450]paragraphs (5) and (8)**]**, an agreement meets the general interest test if—

(a) the agreement is offered under an enactment with a general interest purpose, and

(b) the terms on which the credit is provided are more favourable to the borrower than those prevailing on the market, either because the rate of interest is lower than that prevailing on the market, or because the rate of interest is no higher than that prevailing on the market but the other terms on which credit is provided are more favourable to the borrower.

(7) The banks specified in this paragraph are—

(a) the Bank of England;

(b) Bank of Scotland;

(c) Barclays Bank plc;

(d) Clydesdale Bank plc;

(e) Co-operative Bank Public Limited Company;

(f) Coutts & Co;

(g) National Westminster Bank Public Limited Company;

(h) the Royal Bank of Scotland plc.

[

[F451](8) A credit agreement of a type described in Article 3(1) of the mortgages directive **[**[F452]which is entered into on or after 21st March 2016**]** is an exempt agreement pursuant to paragraph (3) or (4) only if—

(a) the agreement meets the general interest test;

(b) the borrower receives timely information on the main features, risks and costs of the agreement at the pre-contractual stage; and

(c) any advertising of the agreement is fair, clear and not misleading.**]**

Textual Amendments

F441 Word in art. 60G(2) omitted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(17)(a)(i)** (with Pt. 4)

F442 Art. 60G(2)(c) and word inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(17)(a)(ii)** (with Pt. 4)

F443 Art. 60G(2A) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(17)(b)** (with Pt. 4)

F444 Word in art. 60G(2A) omitted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(14)(a)(i)** (with Pt. 5)

F445 Art. 60G(2A)(c) and word inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(14)(a)(ii)** (with Pt. 5)

F446 Words in art. 60G(3) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(17)(c)** (with Pt. 4)

F447 Words in art. 60G(4) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(17)(d)** (with Pt. 4)

F448 Art. 60G(5)(b) substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(28)**

F449 Art. 60G(5)(b)(i)(bb) substituted (18.3.2015) by The Financial Services and Markets Act 2000 (Miscellaneous Provisions) (No. 2) Order 2015 (S.I. 2015/352), arts. 1, **2(b)**

F450 Words in art. 60G(6) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(17)(e)** (with Pt. 4)

F451 Art. 60G(8) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(17)(f)** (with Pt. 4)

F452 Words in art. 60G(8) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(14)(b)** (with Pt. 5)

Exempt agreements: exemptions relating to the nature of the borrower

60H.—[

[F453](1)**]** **[**[F454]Subject to article 60HA, a credit agreement**]** is an exempt agreement for the purposes of this Chapter if—

(a) the borrower is an individual,

(b) the agreement is either—

(i) secured on land, or

[for credit which exceeds £60,260 and **[**[F456], if entered into on or after 21st March [F455](ii) 2016,**]** is for a purpose other than—

(aa) the renovation of residential property, or

(bb) to acquire or retain property rights in land or in an existing or projected building,**]**

(c) the agreement includes a declaration made by the borrower which provides that the borrower agrees to forgo the protection and remedies that would be available to the borrower if the agreement were a regulated credit agreement and which complies with rules made by the FCA for the purposes of this paragraph,

(d) a statement has been made in relation to the income or assets of the borrower which complies with rules made by the FCA for the purposes of this paragraph,

(e) the connection between the statement and the agreement complies with any rules made by the FCA for the purposes of this paragraph (including as to the period of time between the making of the statement and the agreement being entered into), and

(f) a copy of the statement was provided to the lender before the agreement was entered into.

[

[F457](2) Where a credit agreement would be an exempt agreement pursuant to this article but for paragraph (1)(b)(ii)(bb) or article 60HA, the FCA may treat the agreement as an exempt agreement except for the purpose of the application of the requirements of the mortgages directive.**]**

Textual Amendments

F453 Art. 60H(1): art. 60H renumbered as art. 60H(1) (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(18)(a)** (with Pt. 4)

F454 Words in art. 60H(1) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(18)(b)(i)** (with Pt. 4)

F455 Art. 60H(1)(b)(ii) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(18)(b)(ii)** (with Pt. 4)

F456 Words in art. 60H(1)(b)(ii) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(15)** (with Pt. 5)

F457 Art. 60H(2) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(18)(c)** (with Pt. 4)

[[F458]**Exempt agreements: exemptions not permitted under the mortgages directive**

60HA.—(1) A credit agreement **[**[F459]entered into on or after 21st March 2016**]** is not an exempt agreement pursuant to article 60E(2) or (5), 60F(4) or 60H(1) if—

(a) the agreement is of a type described in Article 3(1) of the mortgages directive, and

(b) paragraph (2) does not apply.

(2) This paragraph applies if—

(a) the agreement is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;

(b) the agreement is a bridging loan within the meaning of Article 4(23) of that directive; or

(c) the agreement is a restricted public loan in respect of which—

(i) the borrower receives timely information on the main features, risks and costs at the pre-contractual stage; and

(ii) any advertising is fair, clear and not misleading.

(3) In paragraph (2)(c) "restricted public loan" means a credit agreement that is—

(a) offered to a particular class of borrower and not offered to the public generally;

(b) offered under an enactment with a general interest purpose; and

(c) provided on terms which are more favourable to the borrower than those prevailing on the market, because it meets one of the following conditions—

(i) it is interest free;

(ii) the rate of interest is lower than that prevailing on the market; or

(iii) the rate of interest is no higher than that prevailing on the market but the other terms on which credit is provided are more favourable to the borrower.**]**

Textual Amendments

F458 Art. 60HA inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(19)** (with Pt. 4)

F459 Words in art. 60HA(1) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(16)** (with Pt. 5)

Exclusions

Arranging administration by authorised person

60I. A person ("A") who is not an authorised person does not carry on an activity of the kind specified by article 60B(2) in relation to a regulated credit agreement where A—

(a) arranges for another person, who is an authorised person with permission to carry on an activity of that kind, to exercise or to have the right to exercise the lender's rights and duties under the agreement, or

(b) exercises or has the right to exercise the lender's rights and duties under the agreement during a period of not more than one month beginning with the day on which any such arrangement comes to an end.

Administration pursuant to agreement with authorised person

60J. A person who is not an authorised person does not carry on an activity of the kind specified by article 60B(2) in relation to regulated credit agreement if that person exercises or has the right

to exercise the lender's rights and duties under the agreement pursuant to an agreement with an authorised person who has permission to carry on an activity of the kind specified by article 60B(2).

[F460Payment institutions

60JA.—(1) There are excluded from article 60B activities carried on by a person who is an EEA authorised payment institution exercising passport rights in the United Kingdom in accordance with Article **[**F461 18(4)**]** of the payment services directive.

(2) Terms used in this article have the meanings given in Payment Services Regulations **[**F462 2017**]**.

Textual Amendments

F460 Arts. 60JA, 60JB inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(29)**

F461 Word in art. 60JA(1) substituted (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), **Sch. 8 para. 8(b)(i)** (with reg. 3)

F462 Word in art. 60JA(2) substituted (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), **Sch. 8 para. 8(b)(ii)** (with reg. 3)

Modifications etc. (not altering text)

C29 Art. 60JA excluded (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), **Sch. 5 para. 1(13)** (with reg. 3)

Electronic money institutions

60JB.—(1) There are excluded from article 60B activities carried on by a person who is an EEA authorised electronic money institution exercising passport rights in the United Kingdom in accordance with Article **[**F463 18(4)**]** of the payment services directive as applied by Article 6 of the electronic money directive.

(2) Terms used in this article have the meanings given in the Electronic Money Regulations 2011.**]**

Textual Amendments

F460 Arts. 60JA, 60JB inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(29)**

F463 Word in art. 60JB(1) substituted (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), **Sch. 8 para. 8(c)** (with reg. 3)

Modifications etc. (not altering text)

C30 Art. 60JB excluded by S.I. 2011/99, Sch. 2A para. 1(13) (as inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **18(3)**)

[F464Other exclusions]

60K. Article 60B is also subject to **[**F465 the exclusions in articles 72A (information society services), 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms)**]**.

Textual Amendments

F464 Art. 60K heading substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(30)**

F465 Words in art. 60K substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(20)** (with Pt. 4)

Supplemental

Interpretation of Chapter 14A etc.

60L.—(1) In this Chapter—

"assignment", in relation to Scotland, means assignation;

"associate" means, in relation to a person ("P")—

(a) where P is an individual, any person who is or who has been—

(i) P's spouse or P's civil partner;

(ii) a relative of P, of P's spouse or of P's civil partner;

(iii) the spouse or civil partner of a relative of P or P's spouse or civil partner;

(iv) if P is a member of a partnership, any of P's partners and the spouse or civil partner of any such person;

(b) where P is a body corporate—

(i) any person who is a controller ("C") of P, and

(ii) any other person for whom C is a controller;

"borrower" means **[**[F466](except in relation to green deal plans: see instead article 60LB)**]** a person who receives credit under a credit agreement or a person to whom the rights and duties of a borrower under a credit agreement have passed by assignment or operation of law;

"borrower-lender agreement" means—

(a) a credit agreement—

(i) to finance a transaction between the borrower and a person ("the supplier") other than the lender, and

(ii) which is not made by the lender under pre-existing arrangements, or in contemplation of future arrangements, between the lender and the supplier,

(b) a credit agreement to refinance any existing indebtedness of the borrower, whether to the lender or another person, or

(c) a credit agreement which is—

(i) an unrestricted-use credit agreement, and

(ii) not made by the lender—

(aa) under pre-existing arrangements between the lender and a person other than the borrower ("the supplier"), and

(bb) in the knowledge that the credit is to be used to finance a transaction between the borrower and the supplier;

"borrower-lender-supplier agreement" means—

(a) a credit agreement to finance a transaction between the borrower and the lender, whether forming part of that agreement or not;

(b) a credit agreement—

(i) to finance a transaction between the borrower and a person ("the supplier") other than the lender, and

(ii) which is made by the lender under pre-existing arrangements, or in contemplation of future arrangements, between the lender and the supplier, or

(c) a credit agreement which is—

(i) an unrestricted-use credit agreement, and

(ii) made by the lender under pre-existing arrangements between the lender and a person ("the supplier") other than the borrower in the knowledge that the credit is to be used to finance a transaction between the borrower and the supplier;

"conditional sale agreement" means an agreement for the sale of goods or land under which the purchase price or part of it is payable by instalments, and the property in the goods or land is to remain with the seller (notwithstanding that the buyer is to be in possession of the goods or land) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

"credit" includes a cash loan and any other form of financial accommodation;

[[F467]"credit agreement" has the meaning given by article 60B;**]**

[[F467]"credit agreement"—

(a) in relation to an agreement other than a green deal plan, has the meaning given by article 60B;

(b) in relation to a green deal plan, has the meaning given by article 60LB;**]**

"credit union" means a credit union within the meaning of—

(a) the Credit Unions Act 1979;

(b) the Credit Unions (Northern Ireland) Order 1985;

"deposit" (except where specified otherwise) means any sum payable by a borrower by way of deposit or down-payment, or credited or to be credited to the borrower on account of any deposit or down-payment, whether the sum is to be or has been paid to the lender or any other person, or is to be or has been discharged by a payment of money or a transfer or delivery of goods or other means;

"exempt agreement" has the meaning given by article 60B;

"finance" includes financing in whole or in part, and "refinance" is to be read accordingly;

"fixed-sum credit" means a facility under a credit agreement whereby the borrower is enabled to receive credit (whether in one amount or by instalments) but which is not running-account credit;

"hire-purchase agreement" means an agreement—

(a) which is not a conditional sale agreement,

(b) under which goods are bailed or (in Scotland) hired to a person ("P") in return for periodical payments by P, and

(c) the property in the goods will pass to P if the terms of the agreement are complied with and one or more of the following occurs—

(i) the exercise by P of an option to purchase the goods;

(ii) the doing by any party to the agreement of any other act specified in the agreement;

(iii) the happening of any event specified in the agreement;

"legal **[**[F468]or equitable**]** mortgage" includes **[**[F469]a legal or equitable**]** charge and, in Scotland, a heritable security;

"lender" means **[**[F470](except in relation to green deal plans: see instead article 60LB)**]**—

(a) the person providing credit under a credit agreement, or

(b) a person who exercises or has the right to exercise the rights and duties of a person who provided credit under such an agreement;

"payment" (except in article 60F) means a payment comprising or including an amount in respect of credit;

"regulated credit agreement" has the meaning given by article 60B;

"relative" means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendent;

"relevant recipient of credit" means—

(a) a partnership consisting of two or three persons not all of whom are bodies corporate, or

(b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership;

"restricted-use credit agreement" means a credit agreement—

(a) to finance a transaction between the borrower and the lender, whether forming part of that agreement or not,

(b) to finance a transaction between the borrower and a person ("the supplier") other than the lender, or

(c) to refinance any existing indebtedness of the borrower's, whether to the lender or another person;

"running-account credit" means a facility under a credit agreement under which the borrower or another person is enabled to receive from time to time from the lender or a third party cash, goods or services to an amount or value such that, taking into account payments made by or to the credit of the borrower, the credit limit (if any) is not at any time exceeded;

"security" in relation to a credit agreement, means a mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right provided by the borrower or at the implied or express request of the borrower to secure the carrying out of the obligations of the borrower under the agreement;

"total charge for credit" has the meaning given in rules made by the FCA under article 60M;

"total price" means the total sum payable by the debtor under a hire-purchase agreement, including any sum payable on the exercise of an option to purchase but excluding any sum payable as a penalty or as compensation or damages for a breach of the agreement;

"unrestricted-use credit agreement" means a credit agreement which is not a restricted-use credit agreement.

[

[F471](1A) For the purposes of this Chapter, a credit agreement that is a green deal plan is to be treated as—

(a) a borrower-lender-supplier agreement falling within paragraph (a) of the definition of "borrower-lender-supplier agreement";

(b) a restricted-use credit agreement falling within paragraph (a) of the definition of "restricted-use credit agreement".**]**

(2) For the purposes of the definition of "restricted-use credit agreement"—

(a) a credit agreement does not fall within the definition if the credit is in fact provided in such a way as to leave the borrower free to use it as the borrower chooses, even though certain uses would contravene that or any other agreement; and

(b) an agreement may fall within paragraph (b) of the definition even though the identity of the supplier is unknown at the time the agreement is made.

(3) For the purposes of the definition of "borrower-lender agreement" **[**[F472]and the definition of "borrower-lender-supplier agreement"**]**, a credit agreement is, subject to paragraph (6), entered into under pre-existing arrangements between a lender and a supplier if it is entered into in accordance with, or in connection with, arrangements previously made between the lender (or the lender's associate) and the supplier (or the supplier's associate) unless the arrangements fall within paragraph (5).

(4) For the purposes of the definition of "borrower-lender agreement" **[**[F473]and the definition of "borrower-lender-supplier agreement"**]**, a credit agreement is entered into in contemplation of future arrangements between a lender and a supplier if it is entered into in the expectation that arrangements will subsequently be made between the lender (or the lender's associate) and the supplier (or the supplier's associate) for the supply of cash, goods or services to be financed by the credit agreement unless the arrangements fall within paragraph (5).

(5) Arrangements fall within this paragraph if they are—

(a) for the making, in circumstances specified in the credit agreement, of payments to the supplier by the lender ("L") and L indicates that L is willing to make, in such circumstances, payments of the kind to suppliers generally, or

(b) for the electronic transfer of funds from a current account held with an authorised person with permission to accept deposits (within the meaning given by article 3).

(6) If a lender is an associate of the supplier's, the credit agreement is to be treated as entered into under pre-existing arrangements between the lender and the supplier unless the lender can show that this is not the case.

(7) For the purposes of the definition of "running-account credit", "credit limit" means, as respects any period, the maximum debit balance which, under a credit agreement, is allowed to stand on the account during that period, disregarding any term of the agreement allowing that maximum to be exceeded on a temporary basis.

(8) For the purposes of this Chapter, a person by whom goods are bailed or (in Scotland) hired to an individual or relevant recipient of credit under a hire-purchase agreement is to be taken to be providing that individual or person with fixed-sum credit to finance the transaction of an amount equal to the total price of the goods less the aggregate of the deposit (if any) and the total charge for credit.

(9) For the purposes of this Chapter, where credit is provided otherwise than in sterling, it is to be treated as provided in sterling of an equivalent amount.

[

[F474](10) For the purposes of this Chapter, where a provision specifies an amount of credit, running-account credit shall be taken not to exceed the amount specified in that provision ("the specified amount") if—

(a) the credit limit does not exceed the specified amount; or

(b) the credit limit exceeds the specified amount, or there is no credit limit, and—

(i) the borrower is not enabled to draw at any one time an amount which, so far as it represents credit, exceeds the specified amount; or

(ii) the agreement provides that, if the debit balance rises above a given amount (not exceeding the specified amount), the rate of the total charge for credit increases

or any other condition favouring the lender or the lender's associate comes into operation; or

(iii) at the time the agreement is made it is probable, having regard to the terms of the agreement and any other relevant considerations, that the debit balance will not at any time rise above the specified amount.

(11) For the purposes of this Chapter, an item entering into the total charge for credit is not to be treated as credit even though time is allowed for its payment.**]**

Textual Amendments

F466 Words in art. 60L(1) 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), **8(2)(a)** (with art. 1(3))

F467 Words in art. 60L(1) substituted (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), **8(2)(b)** (with art. 1(3))

F468 Words in art. 60L(1) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(32)(a)(i)**

F469 Words in art. 60L(1) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(32)(a)(ii)**

F470 Words in art. 60L(1) 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), **8(2)(c)** (with art. 1(3))

F471 Art. 60L(1A) 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), **8(3)** (with art. 1(3))

F472 Words in art. 60L(3) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(32)(b)**

F473 Words in art. 60L(4) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(32)(b)**

F474 Art. 60L(10)(11) added (24.3.2015) by The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2015 (S.I. 2015/853), arts. 1(2), **3(6)**

[[F475]Meaning of consumer etc.

60LA.—(1) For the purposes of sections 1G, 404E and 425A of the Act (meaning of "consumer"), in so far as those provisions relate to a person ("A") carrying on a regulated activity of the kind specified by—

(a) article 60B (regulated credit agreements), or

(b) article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 60B,

a person who is treated by A as a person who is or has been the borrower under a regulated credit agreement is to be treated as a "consumer".

(2) For the purposes of section 328(8) of the Act (meaning of "clients") in so far as that provision relates to a person ("A") carrying on a regulated activity of the kind specified by—

(a) article 60B (regulated credit agreements), or

(b) article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 60B,

a person who is treated by A as a person who is or has been the borrower under a regulated credit agreement is to be treated as a "client".

(3) In this article, "borrower" includes (in addition to those persons included in the definition in article 60L **[**[F476]or, where the credit agreement is a green deal plan, article 60LB**]**)—

(a) any person providing a guarantee or indemnity under a regulated credit agreement, and

(b) a person to whom the rights and duties of a person falling within sub-paragraph (a) have passed by assignment or operation of law.**]**

Textual Amendments

F475 Art. 60LA inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(33)**

F476 Words in art. 60LA(3) 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), **9** (with art. 1(3))

[[F477]**Green deal plans**

60LB.—(1) A green deal plan is to be treated as a credit agreement for the purposes of this Order if (and only if)—

(a) the property in relation to the plan is a domestic property at the time when the plan is commenced, or

(b) if sub-paragraph (a) does not apply, the occupier or owner of the property who makes the arrangement for the plan is an individual or relevant recipient of credit.

(2) In the application of this Order to a green deal credit agreement—

(a) the lender is to be treated as being—

(i) the green deal provider (within the meaning of Chapter 1 of Part 1 of the Energy Act 2011) for the plan, or

(ii) a person who exercises or has the right to exercise the rights and duties of the green deal provider under the plan,

(b) credit is to be treated as advanced under the agreement of an amount equal to the amount of the improvement costs, and

(c) the advance of credit is to be treated as made on the completion of the installation of the energy efficiency improvements to the property (but this sub-paragraph is subject to any term of the green deal plan providing that part of the advance is to be treated as made on completion of any part of the installation).

(3) A reference in a provision of this Order listed in the first column of the table in Schedule 4A to the borrower is, in the application of the provision in relation to a green deal credit agreement, to be read as a reference to—

(a) a person who at the relevant time falls (or fell) within the description or descriptions specified in the corresponding entry in the second column of the table, or

(b) if more than one description is specified and at the relevant time different persons fall (or fell) within the descriptions, each of those persons,

and except as provided by this paragraph, a person is not and is not to be treated as the borrower in relation to the agreement.

(4) References in Schedule 4A to the "improver", "first bill payer", "current bill payer" and "previous bill payer" are to be read as follows—

(a) a person is the "improver" if the person—

(i) is the owner or occupier of the property, and

(ii) is the person who makes (or has made or proposes to make) the arrangement for the green deal plan;

(b) a person is the "first bill payer" if the person is liable to pay the energy bills for the property at the time when the green deal plan is commenced;

(c) a person is the "current bill payer" if the person is liable by virtue of section 1(6)(a) of the Energy Act 2011 to pay instalments under the plan as a result of being for the time being liable to pay the energy bills for the property;

(d) a person is a "previous bill payer" if, as a result of previously falling within sub-paragraph (c) for an earlier period, the person has an outstanding payment liability under the plan in respect of that period.

(5) In this article—

"domestic property" means a building or part of a building that is occupied as a dwelling or (if not occupied) is intended to be occupied as a dwelling;

"energy bill" has the same meaning as in section 1 of the Energy Act 2011;

"energy efficiency improvements" has the meaning given by section 2(4) of the Energy Act 2011;

"green deal credit agreement" means a green deal plan that is to be treated as a credit agreement for the purposes of this Order by virtue of paragraph (1);

"improvement costs", in relation to a green deal plan, are the costs of the energy efficiency improvements to the property which are to be paid by instalments under the plan after the time when credit is to be treated as being advanced by virtue of paragraph (2) (but ignoring any interest or other charges for credit in determining those costs);

"occupier" and "owner" have the same meanings as in Chapter 1 of Part 1 of the Energy Act 2011;

"property", in relation to a green deal plan, means the property to which the energy efficiency improvements under the plan are or are intended to be made.

(6) For the purposes of this article—

(a) a green deal plan is commenced when—

(i) the occupier or owner of the property signs in the prescribed manner a document in relation to the plan in accordance with section 61(1) of the Consumer Credit Act 1974 (requirements as to form and content of regulated agreements), or

(ii) if the occupier or owner of the property does not sign such a document, the green deal plan is made;

(b) a person is liable to pay the energy bills for a property at any time if the person would be treated as the bill payer for the property at that time for the purposes of Chapter 1 of Part 1 of the Energy Act 2011 (see section 2(3) and (10)).]

Textual Amendments

F477 Art. 60LB 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), **10** (with art. 1(3))

Total charge for credit

60M.—(1) The FCA may make rules specifying how the total charge for credit to the borrower under a credit agreement is to be determined for the purposes of this Chapter.

(2) Rules made under paragraph (1) may in particular—

(a) specify how the total charge for credit to a person who is, or is to become, the borrower under a credit agreement is to be determined;

(b) specify what items are to be included in determining the total charge for credit and how the value of those items is to be determined;

(c) specify the method of calculating the rate of the total charge for credit;

(d) provide for the whole or part of the amount payable by the borrower or a relative of the borrower under a linked transaction (within the meaning given by article 60E(8)) to be included in the total charge for credit, whether or not the lender is a party to the transaction or derives a benefit from it.

CHAPTER 14B

REGULATED CONSUMER HIRE AGREEMENTS

The activities

Regulated consumer hire agreements

60N.—(1) Entering into a regulated consumer hire agreement as owner is a specified kind of activity.

(2) It is a specified kind of activity for the owner or another person to exercise, or to have the right to exercise, the owner's rights and duties under a regulated consumer hire agreement.

(3) In this Chapter—

"consumer hire agreement" means an agreement between a person ("the owner") and an individual or relevant recipient of credit ("the hirer") for the bailment or, in Scotland, the hiring, of goods to the hirer which—

(a) is not a hire-purchase agreement, and

(b) is capable of subsisting for more than three months;

"exempt agreement" means a consumer hire agreement which is an exempt agreement under articles 60O to 60Q;

"owner" means—

(a) the person who bails or, in Scotland, hires, goods under a [F478]... consumer hire agreement, or

(b) a person who exercises or has the right to exercise the rights and duties of a person who bailed or, in Scotland, hired, goods under such an agreement;

[[F479]"regulated consumer hire agreement" means—

(a) in the case of an agreement entered into on or after 1st April 2014, any consumer hire agreement which is not an exempt agreement; or

(b) in the case of an agreement entered into before 1st April 2014, a consumer hire agreement which—

(i) was a regulated agreement within the meaning of section 189(1) of the Consumer Credit Act 1974 when the agreement was entered into; or

(ii) became such a regulated agreement after being varied or supplemented by another agreement before 1st April 2014.**]**

Textual Amendments

F478 Word in art. 60N(3) omitted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(34)**

F479 Words in art. 60N(3) substituted (17.3.2016 for specified purposes, 20.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(b), **2(17)** (with Pt. 5)

Exempt agreements: exemptions relating to nature of agreement

60O.—(1) An agreement is an exempt agreement for the purposes of this Chapter if—

(a) the hirer is required by the agreement to make payments exceeding £25,000, and

(b) the agreement is entered into by the hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the hirer.

(2) For the purposes of paragraph (1), if an agreement includes a declaration which—

(a) is made by the hirer,

(b) provides that the agreement is entered into by the hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the hirer, and

(c) complies with rules made by the FCA for the purposes of this article,

the agreement is to be presumed to have been entered into by the hirer wholly or predominantly for the purpose in sub-paragraph (b) unless paragraph (3) applies.

(3) This paragraph applies if, when the agreement is entered into—

(a) the owner (or, if there is more than one owner, any of the owners), or

(b) any person who has acted on behalf of the owner (or, if there is more than one owner, any of the owners), in connection with the entering into of the agreement,

knows or has reasonable cause to suspect that the agreement is not entered into by the hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the hirer.

(4) For the purposes of this article, where credit is provided otherwise than in sterling, it is to be treated as provided in sterling of an equivalent amount.

Exempt agreements: exemptions relating to supply of essential services

60P. An agreement is an exempt agreement for the purposes of this Chapter if—

(a) the owner is a body corporate which is authorised by or under an enactment to supply gas, electricity or water, and

(b) the subject of the agreement is a meter or metering equipment which is used (or is to be used) in connection with the supply of gas, electricity or water.

Exempt agreements: exemptions relating to the nature of the hirer

60Q. An agreement is an exempt agreement for the purposes of this Chapter if—

(a) the hirer is an individual,

(b) the agreement includes a declaration made by the hirer which provides that the hirer agrees to forgo the protection and remedies that would be available to the hirer if the agreement were a regulated consumer hire agreement and which complies with rules made by the FCA for the purposes of this paragraph,

(c) a statement has been made in relation to the income or assets of the hirer which complies with rules made by the FCA for the purposes of this paragraph,

(d) the connection between the statement and the agreement complies with any rules made by the FCA for the purposes of this paragraph (including as to the period of time between the making of the statement and the agreement being entered into), and

(e) a copy of the statement was provided to the owner before the agreement was entered into.

Exclusion

[F480Other exclusions]

60R. Article 60N is subject to the exclusion in article 72A (information society services) **[**F481and the exclusion in article 72G (local authorities)**]**.

Textual Amendments

F480 Art. 60R heading substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(35)**

F481 Words in art. 60R inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(36)**

[F482Supplemental

Textual Amendments

F482 Art. 60S and cross-heading inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(37)**

Meaning of consumer etc.

60S.—(1) For the purposes of sections 1G, 404E and 425A of the Act (meaning of "consumer"), in so far as those provisions relate to a person ("A") carrying on a regulated activity of the kind specified by—

(a) article 60N (regulated consumer hire agreements), or

(b) article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 60N,

a person who is treated by A as a person who is or has been the hirer under a regulated consumer hire agreement is to be treated as a "consumer".

(2) For the purposes of section 328(8) of the Act (meaning of "clients") in so far as that provision relates to a person ("A") carrying on a regulated activity of the kind specified by—

(a) article 60N (regulated consumer hire agreements), or

(b) article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 60N,

a person who is treated by A as a person who is or has been the hirer under a regulated consumer hire agreement is to be treated as a "client".

(3) In this article, "hirer" includes (in addition to those persons defined as "the hirer" in the definition of "consumer hire agreement" in article 60N(3))—

(a) any person providing a guarantee or indemnity under a consumer hire agreement, and

(b) a person to whom the rights and duties of a person falling within sub-paragraph (a) have passed by assignment or operation of law.**]]**

CHAPTER XV

REGULATED MORTGAGE CONTRACTS

The activities

Regulated mortgage contracts

61.—(1) Entering into a regulated mortgage contract as lender is a specified kind of activity.

(2) Administering a regulated mortgage contract is also a specified kind of activity, **[**[F483]where—

(a) the contract was entered into by way of business on or after 31st October 2004; or

(b) the contract—

(i) was entered into by way of business before 31st October 2004, and

(ii) was a regulated credit agreement immediately before 21st March 2016.**]**

(3) In this Chapter—

[[F484](a) **[**[F485]subject to paragraph (5),**]** a contract is a "regulated mortgage contract" if, at the time it is entered into, the following conditions are met—

[[F486](i) the contract is one under which a person ("the lender") provides credit to an individual or to trustees ("the borrower");

(ii) the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land in the EEA;

(iii) at least 40% of that land is used, or is intended to be used—

(aa) in the case of credit provided to an individual, as or in connection with a dwelling; or

(bb) in the case of credit provided to a trustee which is not an individual, as or in connection with a dwelling by an individual who is a beneficiary of the trust, or by a related person;**]**

[[F487]but such a contract is not a regulated mortgage contract if it **[**[F488]falls within article 61A(1) or (2)**]**;**]]**

(b) "administering" a regulated mortgage contract means either or both of—

(i) notifying the borrower of changes in interest rates or payments due under the contract, or of other matters of which the contract requires him to be notified; and

(ii) taking any necessary steps for the purposes of collecting or recovering payments due under the contract from the borrower;

but a person is not to be treated as administering a regulated mortgage contract merely because he has, or exercises, a right to take action for the purposes of enforcing the contract (or to require that such action is or is not taken);

(c) "credit" includes a cash loan, and any other form of financial accommodation.

(4) For the purposes of **[**[F489]paragraph 3(a)**]**—

[[F490](a) "mortgage" includes a charge and (in Scotland) a heritable security;**]**

(b) the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys;

(c) "related person", in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust, means—

(i) that person's spouse **[**[F491]or civil partner**]**;

(ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or

(iii) that person's parent, brother, sister, child, grandparent or grandchild; [F492]...

[F493](d) . . . . . .

[[F494](5) In this Chapter, a contract entered into before 21st March 2016 is a "regulated mortgage contract" only if—

(a) at the time it was entered into, entering into the contract was an activity of the kind specified by paragraph (1), or

(b) the contract is a consumer credit back book mortgage contract within the meaning of article 2 of the Mortgage Credit Directive Order 2015.**]**

Textual Amendments

F483 Words in art. 61(2) substituted (5.11.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2015 (S.I. 2015/1863), art. 1(2)(b)(4), **2(4)**

F484 Art. 61(3)(a) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(1)(b), **8(b)**

F485 Words in art. 61(3)(a) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(18)(a)** (with Pt. 5)

F486 Art. 61(3)(a)(i)-(iii) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(21)(a)(i)** (with Pt. 4)

F487 Words in art. 61(3)(a) 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), **17**

F488 Words in art. 61(3)(a) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(21)(a)(ii)** (with Pt. 4)

F489 Words in art. 61(4) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(1)(b), **8(c)**

F490 Art. 61(4)(a) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(21)(b)** (with Pt. 4)

F491 Words in art. 61(4)(c)(i) 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(3)**

F492 Word in art. 61(4) omitted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(21)(c)(i)** (with Pt. 4)

F493 Art. 61(4)(d) omitted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(21)(c)(ii)** (with Pt. 4)

F494 Art. 61(5) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(18)(b)** (with Pt. 5)

Commencement Information

I3 Art. 61 in force at 31.10.2004, see art. 1(2)(b) (as read with Treasury notice dated 9.7.2003)

[F495Mortgage contracts which are not regulated mortgage contracts

61A.—(1) A contract falls within this paragraph if it is—

(a) a regulated home purchase plan;

(b) a limited payment second charge bridging loan;

(c) a second charge business loan;

(d) an investment property loan; F496...

(e) an exempt consumer buy-to-let mortgage contract**[**F497; F498...

(f) an exempt equitable mortgage bridging loan**][**F499; or

(g) an exempt housing authority loan.**]**

(2) A contract falls within this paragraph if—

(a) it is a limited interest second charge credit union loan;

(b) the borrower receives timely information on the main features, risks and costs of the contract at the pre-contractual stage; and

(c) any advertising of the contract is fair, clear and not misleading.

(3) For the purposes of this article, if an agreement includes a declaration which—

(a) is made by the borrower, and

(b) includes—

(i) a statement that the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower,

(ii) a statement that the borrower understands that the borrower will not have the benefit of the protection and remedies that would be available to the borrower under the Act if the agreement were a regulated mortgage contract under the Act, and

(iii) a statement that the borrower is aware that if the borrower is in any doubt as to the consequences of the agreement not being regulated by the Act, then the borrower should seek independent legal advice,

the agreement is to be presumed to have been entered into by the borrower wholly or predominantly for the purposes specified in sub-paragraph (b)(i) unless paragraph (4) applies.

(4) This paragraph applies if, when the agreement is entered into—

(a) the lender (or, if there is more than one lender, any of the lenders), or

(b) any person who has acted on behalf of the lender (or, if there is more than one lender, any of the lenders) in connection with the entering into of the agreement,

knows or has reasonable cause to suspect that the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(5) For the purposes of this article a borrower is to be regarded as entering into an agreement for the purposes of a business carried on, or intended to be carried on, by the borrower if the agreement is a buy-to-let mortgage contract and—

(a) (i) the borrower previously purchased, or is entering into the contract in order to finance the purchase by the borrower of, the land subject to the mortgage;

(ii) at the time of the purchase the borrower intended that the land would be occupied as a dwelling on the basis of a rental agreement and would not at any time be occupied as a dwelling by the borrower or by a related person, or where the borrower has not yet purchased the land the borrower has such an intention at the time of entering into the contract; and

(iii) where the borrower has purchased the land, since the time of the purchase the land has not at any time been occupied as a dwelling by the borrower or by a related person; or

(b) the borrower is the owner of land, other than the land subject to the mortgage, which is—

(i) occupied as a dwelling on the basis of a rental agreement and is not occupied as a dwelling by the borrower or by a related person; or

(ii) secured by a mortgage under a buy-to-let mortgage contract.

(6) For the purposes of this article—

"borrower" and "lender" have the meaning set out in article 61(3) (regulated mortgage contracts);

"borrower-lender agreement", "borrower-lender-supplier agreement", "credit union" and "total charge for credit" have the meanings set out in article 60L (interpretation of Chapter 14A);

"bridging loan" has the meaning given by Article 4(23) of the mortgages directive;

"buy-to-let mortgage contract" has the meaning given in article 4 of the Mortgage Credit Directive Order 2015 (interpretation of Part 3);

"exempt consumer buy-to-let mortgage contract" is a contract that, at the time it is entered into, is a consumer buy-to-let mortgage contract within the meaning of article 4 of the Mortgage Credit Directive Order 2015 and—

(a) is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive; or

(b) is a bridging loan;

[F500"exempt equitable mortgage bridging loan" is a contract that—

(a) is a bridging loan;

(b) is secured by an equitable mortgage on land; and

(c) is an exempt agreement within the meaning of article 60B(3) (regulated credit agreements) by virtue of article 60E(2) (exempt agreements: exemptions relating to the nature of the lender);**]**

[[F501]"exempt housing authority loan" is a contract that—

(a) provides for credit to be granted by a housing authority within the meaning of article 60E (exempt agreements: exemptions relating to the nature of the lender); and

(b) if it is entered into on or after 21st March 2016—

  (i) is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive,

  (ii) is a bridging loan, or

  (iii) is a restricted public loan within the meaning of article 60HA (exempt agreements: exemptions not permitted under the mortgages directive), in respect of which the borrower receives timely information on the main features, risks and costs at the pre-contractual stage, and any advertising is fair, clear and not misleading.**]**

"investment property loan" is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—

(a) less than 40% of the land subject to the mortgage is used, or intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a related person; and

(b) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower;

"limited payment second charge bridging loan" is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—

(a) it is a borrower-lender-supplier agreement financing the purchase of land;

(b) it is used by the borrower as a temporary financing solution while transitioning to another financial arrangement for the land subject to the mortgage;

(c) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and

(d) the number of payments to be made by the borrower under the contract is not more than four;

"limited interest second charge credit union loan" is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—

(a) it is a borrower-lender agreement;

(b) the mortgage ranks in priority behind one or more other mortgages affecting the land in question;

(c) the lender is a credit union; and

(d) the rate of the total charge for credit does not exceed 42.6 per cent;

"payment" has the meaning set out in article 60F(8) (exempt agreement: exemptions relating to number of repayments to be made);

"regulated home purchase plan" has the meaning set out in article 63F(3)(a) (entering into and administering regulated home purchase plans);

"related person" in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust, means—

(a) that person's spouse or civil partner;

(b) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or

(c) that person's parent, brother, sister, child, grandparent or grandchild;

"second charge business loan" is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—

(a) the lender provides the borrower with credit exceeding £25,000;

(b) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and

(c) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.**]**

Textual Amendments

F495 Art. 61A inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(22)** (with Pt. 4)

F496 Word in art. 61A(1) omitted (5.11.2015 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2015 (S.I. 2015/1863), art. 1(2)(b)(4), **2(5)(a)(i)**

F497 Art. 61A(1)(f) and preceding word inserted (5.11.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2015 (S.I. 2015/1863), art. 1(2)(b)(4), **2(5)(a)(ii)**

F498 Word in art. 61A(1) omitted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(19)(a)(i)** (with Pt. 5)

F499 Art. 61A(1)(g) and preceding word inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(19)(a)(ii)** (with Pt. 5)

F500 Words in art. 61A(6) inserted (5.11.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2015 (S.I. 2015/1863), art. 1(2)(b)(4), **2(5)(b)**

F501 Words in art. 61A(6) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(19)(b)** (with Pt. 5)

Exclusions

Arranging administration by authorised person

62. A person who is not an authorised person does not carry on an activity of the kind specified by article 61(2) in relation to a regulated mortgage contract where he—

(a) arranges for another person, being an authorised person with permission to carry on an activity of that kind, to administer the contract; or

(b) administers the contract himself during a period of not more than one month beginning with the day on which any such arrangement comes to an end.

Commencement Information

I4 Art. 62 in force at 31.10.2004, see art. 1(2)(b) (as read with Treasury notice dated 9.7.2003)

Administration pursuant to agreement with authorised person

63. A person who is not an authorised person does not carry on an activity of the kind specified by article 61(2) in relation to a regulated mortgage contract where he administers the contract pursuant to an agreement with an authorised person who has permission to carry on an activity of that kind.

Commencement Information

I5 Art. 63 in force at 31.10.2004, see art. 1(2)(b) (as read with Treasury notice dated 9.7.2003)

[[F502]**Other exclusions**

63A. Article 61 is also subject to the exclusions in articles 66 (trustees etc.), 72 (overseas persons)**[**[F503], 72A (information society services)**[**[F504], 72AA (managers of UCITS and AIFs)**[**[F505], 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms)**]]].]**

Textual Amendments

F502 Art. 63A substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **17**

F503 Words in art. 63A substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(6)**

F504 Words in art. 63A substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(38)**

F505 Words in art. 63A substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(23)** (with Pt. 4)

[[F506]Chapter XVA

Regulated Home Reversion Plans

Textual Amendments

F506 Pt. 2 Chs. 15A, 15B 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), **18**

The activities

Entering into and administering regulated home reversion plans

63B.—(1) Entering into a regulated home reversion plan as plan provider is a specified kind of activity.

(2) Administering a regulated home reversion plan is also a specified kind of activity where the plan was entered into on or after 6th April 2007.

(3) In this Chapter—

(a) a "regulated home reversion plan" is an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into—

(i) the arrangement is one under which a person (the "plan provider") buys all or part of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the "reversion seller");

(ii) the reversion seller (if he is an individual) or an individual who is a beneficiary of the trust (if the reversion seller is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so; and

(iii) the arrangement specifies one or more qualifying termination events, on the occurrence of which that entitlement will end;

(b) "administering" a regulated home reversion plan means any of—

(i) notifying the reversion seller of changes in payments due under the plan, or of other matters of which the plan requires him to be notified;

(ii) taking any necessary steps for the purposes of making payments to the reversion seller under the plan; and

(iii) taking any necessary steps for the purposes of collecting or recovering payments due under the plan from the reversion seller,

but a person is not to be treated as administering a regulated home reversion plan merely because he has, or exercises, a right to take action for the purposes of enforcing the plan (or to require that such action is or is not taken).

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

(a) the reference to a "qualifying interest" in land—

(i) in relation to land in England or Wales, is to an estate in fee simple absolute or a term of years absolute, whether subsisting at law or in equity;

(ii) in relation to land in Scotland, is to the interest of an owner in land or the tenant's right over or interest in a property subject to a lease;

(iii) in relation to land in Northern Ireland, is to any freehold estate or any leasehold estate, whether subsisting at law or in equity;

(b) "timeshare accommodation" has the meaning given by section 1 of the Timeshare Act 1992;

(c) "related person" in relation to the reversion seller or, where the reversion seller is a trustee, a beneficiary of the trust, means—

(i) that person's spouse or civil partner;

(ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or

(iii) that person's parent, brother, sister, child, grandparent or grandchild; and

(d) "qualifying termination event", in relation to a person's entitlement to occupy land, means—

(i) the person becomes a resident of a care home;

(ii) the person dies;

(iii) the end of a specified period of at least twenty years beginning with the day on which the reversion seller entered into the arrangement.

(5) For the purposes of paragraph (3)(a)(ii), the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys.

(6) For the purposes of the definition of "qualifying termination event" in paragraph (4), "care home"—

(a) in relation to England [F507]..., has the meaning given by section 3 of the Care Standards Act 2000;

[F508](aa) **[** in relation to Wales, means a place at which a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016, is provided wholly or mainly to persons aged 18 or over;**]**

(b) in relation to Scotland, means accommodation provided by a **[**[F509]"care home service" within the meaning of paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010**]**;

(c) in relation to Northern Ireland, means—

(i) a residential care home within the meaning of article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003; or

(ii) a nursing home within the meaning of article 11 of that Order.

(7) In this Order—

(a) references to entering into a regulated home reversion plan as plan provider include acquiring any obligations or rights (including his interest in land) of the plan provider, under such a plan; but

(b) in relation to a person who acquires any such obligations or rights, an activity is a specified kind of activity for the purposes of articles 25B(1)(b) and 53B(b)(ii) and paragraph (2) only if the plan was entered into by the plan provider (rather than the obligations or rights acquired) on or after 6th April 2007.

(8) Accordingly, references in this Order to a plan provider, other than in paragraph (7), include a person who acquires any such obligations or rights.

Textual Amendments

F507 Words in art. 63B(6)(a) omitted (2.4.2018) by virtue of The Alternative Investment Fund Managers (Amendment) Regulations 2018 (S.I. 2018/134), regs. 1(3), **4(a)**

F508 Art. 63B(6)(aa) inserted (2.4.2018) by The Alternative Investment Fund Managers (Amendment) Regulations 2018 (S.I. 2018/134), regs. 1(3), **4(b)**

F509 Words in art. 63B(6)(b) substituted (28.10.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 (S.I. 2011/2581), art. 1(2)(b), **Sch. 2 para. 32**

Exclusions

Arranging administration by authorised person

63C. A person who is not an authorised person does not carry on an activity of the kind specified by article 63B(2) in relation to a regulated home reversion plan where he—

(a) arranges for another person, being an authorised person with permission to carry on an activity of that kind, to administer the plan; or

(b) administers the plan himself during a period of not more than one month beginning with the day on which any such arrangement comes to an end.

Administration pursuant to agreement with authorised person

63D. A person who is not an authorised person does not carry on an activity of the kind specified by article 63B(2) in relation to a regulated home reversion plan where he administers the plan pursuant to an agreement with an authorised person who has permission to carry on an activity of that kind.

Other exclusions

63E. Article 63B is also subject to the exclusions in articles 66 (trustees etc.), 72 (overseas persons) **[**[F510], 72A (information society services)**[**[F511], 72AA (managers of UCITS and AIFs) and 72G (local authorities)**]].]**

Textual Amendments

F510 Words in art. 63E substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(6)**

F511 Words in art. 63E substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(39)**

[[F506]Chapter XVB

Regulated Home Purchase Plans

The activities

Entering into and administering regulated home purchase plans

63F.—(1) Entering into a regulated home purchase plan as home purchase provider is a specified kind of activity.

(2) Administering a regulated home purchase plan is also a specified kind of activity where the plan was entered into by way of business on or after 6th April 2007.

(3) In this Chapter—

(a) a "regulated home purchase plan" is an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into—

(i) the arrangement is one under which a person (the "home purchase provider") buys a qualifying interest or an undivided share of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom;

(ii) where an undivided share of a qualifying interest in land is bought, the interest is held on trust for the home purchase provider and the individual or trustees mentioned in paragraph (iii) as beneficial tenants in common;

(iii) the arrangement provides for the obligation of an individual or trustees (the "home purchaser") to buy the interest bought by the home purchase provider over the course of or at the end of a specified period; and

(iv) the home purchaser (if he is an individual) or an individual who is a beneficiary of the trust (if the home purchaser is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling during that period, and intends to do so;

(b) "administering" a regulated home purchase plan means either or both of—

(i) notifying the home purchaser of changes in payments due under the plan, or of other matters of which the plan requires him to be notified; and

(ii) taking any necessary steps for the purposes of collecting or recovering payments due under the plan from the home purchaser;

but a person is not to be treated as administering a regulated home purchase plan merely because he has, or exercises, a right to take action for the purposes of enforcing the plan or to require that such action is or is not taken.

(4) Article 63B(4)(a) to (c) applies for the purposes of paragraph (3)(a) with references to the "reversion seller" being read as references to the "home purchaser".

(5) Article 63B(5) applies for the purposes of paragraph (3)(a)(iv) with the reference to "paragraph (3)(a)(ii)" being read as a reference to "paragraph (3)(a)(iv)".

Exclusions

Arranging administration by authorised person

63G. A person who is not an authorised person does not carry on an activity of the kind specified by article 63F(2) in relation to a regulated home purchase plan where he—

(a) arranges for another person, being an authorised person with permission to carry on an activity of that kind, to administer the plan; or

(b) administers the plan himself during a period of not more than one month beginning with the day on which any such arrangement comes to an end.

Administration pursuant to agreement with authorised person

63H. A person who is not an authorised person does not carry on an activity of the kind specified by article 63F(2) in relation to a regulated home purchase plan where he administers the plan pursuant to an agreement with an authorised person who has permission to carry on an activity of that kind.

Other exclusions

63I. Article 63F is also subject to the exclusions in articles 66 (trustees etc.), 72 (overseas persons) **[**[F512], 72A (information society services)**[**[F513], 72AA (managers of UCITS and AIFs) and 72G (local authorities)**]**.**]**

Textual Amendments

F512 Words in art. 63I substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(6)**

F513 Words in art. 63I substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(40)**

[F514 CHAPTER XVC

REGULATED SALE AND RENT BACK AGREEMENTS

Textual Amendments

F514 Pt. 2 Ch. 15C 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), **17**

The activities

Entering into and administering regulated sale and rent back agreements

63J.—(1) Entering into a regulated sale and rent back agreement as an agreement provider is a specified kind of activity.

(2) Administering a regulated sale and rent back agreement is also a specified kind of activity when the agreement was entered into on or after 1st July 2009.

(3) In this Chapter—

(a) a "regulated sale and rent back agreement" is an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into—

(i) the arrangement is one under which a person (the "agreement provider") buys all or part of the qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the "agreement seller "); and

(ii) the agreement seller (if the agreement seller is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so;

but such an arrangement is not a regulated sale and rent back agreement if it is a regulated home reversion plan;

(b) "administering" a regulated sale and rent back agreement means any of—

(i) notifying the agreement seller of changes in payments due under the agreement, or of other matters of which the agreement requires the agreement seller to be notified;

(ii) taking any necessary steps for the purpose of making payments to the agreement seller under the agreement; and

(iii) taking any necessary steps for the purposes of collecting or recovering payments due under the agreement from the agreement seller,

but a person is not to be treated as administering a regulated sale and rent back agreement because that person has, or exercises, a right to take action for the purposes of enforcing the agreement (or to require that such action is or is not taken).

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

(a) the reference to a "qualifying interest" in land—

(i) in relation to land in England and Wales, is to an estate in fee simple absolute or a term of years absolute, whether subsisting at law or in equity;

(ii) in relation to land in Scotland, is to the interest of an owner in land or the tenant's right over or interest in a property subject to a lease;

(iii) in relation to land in Northern Ireland, is to any freehold estate or any leasehold estate, whether subsisting at law or in equity;

[[F515](b) "timeshare accommodation" means overnight accommodation which is the subject of a timeshare contract within the meaning of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010; and**]**

(c) "related person" in relation to the agreement seller or, where the agreement seller is a trustee, a beneficiary of the trust, means—

(i) that person's spouse or civil partner;

(ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristic of the relationship between husband and wife;

(iii) that person's parent, brother, sister, child, grandparent or grandchild.

(5) For the purposes of paragraph (3)(a)(ii), the area of any land which compromises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys.

(6) In this Order—

(a) references to entering into a regulated sale and rent back agreement as agreement provider include acquiring any obligations or rights of the agreement provider, including the agreement provider's interest in land or interests under one or more of the instruments or agreements referred to in paragraph (3)(a); but

(b) in relation to a person who acquires any such obligations or rights, an activity is a specified kind of activity for the purposes of articles 25E(1)(b) and 53D(b)(ii) and paragraph (2) only if the agreement was entered into by the agreement provider (rather than the obligations or rights acquired) on or after 1st July 2009.

(7) Accordingly, references in this Order to an agreement provider, other than in paragraph (6), include a person who acquires any such obligations or rights.

Textual Amendments

F515 Art. 63J(4)(b) substituted (23.2.2011) by The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (S.I. 2010/2960), reg. 1(2), **Sch. 6 para. 7(3)** (with Sch. 7 para. 4)

Exclusions

Arranging administration by authorised person

63K. A person who is not an authorised person does not carry on an activity of the kind specified by article 63J(2) in relation to a regulated sale and rent back agreement where that person—

(a) arranges for another person, being an authorised person with permission to carry on an activity of that kind, to administer the agreement; or

(b) administers the agreement during a period of not more than one month beginning with the day on which any such arrangement comes to an end.

Administration pursuant to agreement with authorised person

63L. A person who is not an authorised person does not carry on an activity of the kind specified by article 63J(2) in relation to a regulated sale and rent back agreement where that person administers the agreement pursuant to an agreement with an authorised person who has permission to carry on activity of that kind.

Other exclusions

63M. Article 63J is also subject to the exclusions in article 66 (trustees etc.), 72 (overseas persons) **[**[F516], 72A (information society services)**[**[F517], 72AA (managers of UCITS and AIFs) and 72G (local authorities)**]]**.**]**

Textual Amendments

F516 Words in art. 63M substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(6)**

F517 Words in art. 63M substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(41)**

[[F518]CHAPTER 15D

ACTIVITIES OF RECLAIM FUNDS

Textual Amendments

F518 Pt. 2 Ch. 15D inserted (13.7.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2009 (S.I. 2009/1389), arts. 1, **4**

The activities

Dormant account funds

63N.—(1) The following are specified kinds of activity—

(a) the meeting of repayment claims by a reclaim fund;

(b) the management of dormant account funds (including the investment of such funds) by a reclaim fund.

(2) In this article—

"account", "balance", "dormant" and "reclaim fund" have the same meaning as in Part 1 of the Dormant Bank and Building Society Accounts Act 2008 (transfer of balances in dormant accounts) (see section 6 of that Act);

"dormant account funds" and "repayment claims" have the same meaning as in section 5 of that Act;

"management of dormant account funds" means the acceptance of a transfer from a bank or building society of the balance of a dormant account, or a proportion of such a balance, and the management of those funds in such a way as to enable the reclaim fund to meet whatever repayment claims it is prudent to anticipate.**]**

[F519 CHAPTER 15E

SPECIFIED BENCHMARKS

Textual Amendments

F519 Pt. 2 Ch. 15E inserted (2.4.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (S.I. 2013/655), arts. 1, **5**

The activities

Specified benchmarks

63O.—(1) The following are specified kinds of activity—

(a) providing information in relation to a specified benchmark;

(b) administering a specified benchmark.

(2) In this Chapter—

(a) "providing information" in relation to a specified benchmark means providing any information or expression of opinion that is—

(i) provided to, or for the purpose of passing to, a person who has permission to carry on the activity specified in paragraph (1)(b) in relation to that specified benchmark;

(ii) required in connection with the determination of the specified benchmark; and

(iii) provided for the purpose of determining the specified benchmark;

(b) "administering" a specified benchmark means—

(i) administering the arrangements for determining a specified benchmark;

(ii) collecting, analysing or processing information or expressions of opinion provided for the purpose of determining a specified benchmark;

(iii) determining a specified benchmark through the application of a formula or other method of calculation to the information or expressions of opinion provided for that purpose.

Publicly available factual data and subscription services

63P. A person does not carry on an activity of the kind specified by article 63O(1)(a) in relation to a specified benchmark where the information provided—

(a) consists solely of factual data obtained from a publicly available source; or

(b) is—

(i) compiled by a subscription service for purposes other than in connection with the determination of a specified benchmark;

(ii) provided to a person who has permission to carry on an activity of the kind specified by article 63O(1)(b) and who is a subscriber to the service; and

(iii) provided to such a person only in that person's capacity as a subscriber.

Administration of a specified benchmark by the FCA

63Q.—(1) The FCA does not carry on the activity of the kind specified by article 63O(1)(b) in relation to a specified benchmark where the FCA administers the specified benchmark itself.

(2) Where a specified benchmark is administered by the FCA, the reference in article 63O(2)(a)(i) to a person who has permission to carry on the activity specified in 63O(1)(b) in relation to that specified benchmark is to be read as referring to the FCA.

Schedule

63R. Schedule 5 specifies benchmarks for the purposes of section 22(1A)(b) of the Act.**]**

[[F520]Administering a benchmark

63S.—(1) Administering a benchmark is a specified kind of activity.

(2) In paragraph (1) "administering a benchmark" means acting as an administrator of a benchmark within the meaning of Article 3 of Regulation EU 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 .

Textual Amendments

F520 Arts. 63S, 63T inserted (27.2.2018) by The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), regs. 1(2), **51** (with Pt. 7)

Administration of a benchmark by the FCA

63T. The FCA does not carry on the activity of the kind specified by article 63S(1) in relation to a benchmark where the FCA administers the benchmark itself.**]**

Textual Amendments

F520 Arts. 63S, 63T inserted (27.2.2018) by The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), regs. 1(2), **51** (with Pt. 7)

CHAPTER XVI

AGREEING TO CARRY ON ACTIVITIES

The activity

Agreeing to carry on specified kinds of activity

64. Agreeing to carry on an activity of the kind specified by any other provision of this Part**[**[F521], Part 3A or Part 3B**]** (other than article 5, **[**[F522]9B,**]** 10, **[**[F523]25D,**][**[F524]25DA,**][**[F525]**[**[F526]51ZA, 51ZB, 51ZC, 51ZD, 51ZE**]**, 52 **[**[F527],**]** 63N**][**[F528]and 63S**]**) is a specified kind of activity.

Textual Amendments

F521 Words in art. 64 substituted (E.W.S.) (29.11.2018 for specified purposes, 1.4.2019 in so far as not already in force) by The Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 (S.I. 2018/1253), art. 1(2)(3), **5**

F522 Word in art. 64 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), **5**

F523 Word in art. 64 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), **18**

F524 Word in art. 64 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), **12(7)**

F525 Words in art. 64 substituted (13.7.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2009 (S.I. 2009/1389), arts. 1, **5**

F526 Words in art. 64 substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(14)**

F527 Comma in art. 64 substituted (27.2.2018) by virtue of The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), regs. 1(2), **52(a)** (with Pt. 7)

F528 Words in art. 64 inserted (27.2.2018) by The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), regs. 1(2), **52(b)** (with Pt. 7)

[[F529]*Exclusions*

Textual Amendments

F529 Art. 65 and cross-heading substituted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(17)**

Overseas persons etc

65. Article 64 is subject to the exclusions in articles 72 (overseas persons)**[**[F530], 72A (information society services), 72G (local authorities) and 72H (insolvency practitioners)**].]**

Textual Amendments

F530 Words in art. 65 substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(42)**

CHAPTER XVII

EXCLUSIONS APPLYING TO SEVERAL SPECIFIED KINDS OF ACTIVITY

Trustees, nominees and personal representatives

66.—(1) A person (“X") does not carry on an activity of the kind specified by article 14 where he enters into a transaction as bare trustee or, in Scotland, as nominee for another person (“Y") and—

(a) X is acting on Y’s instructions; and

(b) X does not hold himself out as providing a service of buying and selling securities or contractually based investments.

(2) Subject to paragraph (7), there are excluded from **[**[F531]articles 25(1) and (2)**][**[F532], **[**[F533]25A(1), (2) and (2A)**]**, 25B(1) and (2) **[**[F534], 25C(1) and (2) and 25E (1) and (2)**]]** arrangements made by a person acting as trustee or personal representative for or with a view to a transaction which is or is to be entered into—

(a) by that person and a fellow trustee or personal representative (acting in their capacity as such); or

(b) by a beneficiary under the trust, will or intestacy.

(3) Subject to paragraph (7), there is excluded from article 37 any activity carried on by a person acting as trustee or personal representative, unless—

(a) he holds himself out as providing a service comprising an activity of the kind specified by article 37; or

(b) the assets in question are held for the purposes of an occupational pension scheme, and, by virtue of article 4 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 [M20], he is to be treated as carrying on that activity by way of business.

[[F535](3A) Subject to paragraph (7), there is excluded from article 39A any activity carried on by a person acting as trustee or personal representative, unless he holds himself out as providing a service comprising an activity of the kind specified by article 39A.**]**

(4) Subject to paragraph (7), there is excluded from article 40 any activity carried on by a person acting as trustee or personal representative, unless he holds himself out as providing a service comprising an activity of the kind specified by article 40.

[[F536](4A) There is excluded from article 40 any activity carried on by a person acting as trustee which consists of arranging for one or more other persons to safeguard and administer trust assets where—

(a) that other person is a qualifying custodian; or

(b) that safeguarding and administration is also arranged by a qualifying custodian.

In this paragraph, "qualifying custodian" has the meaning given by article 41(2).**]**

(5) A person does not, by sending or causing to be sent a dematerialised instruction (within the meaning of article 45), carry on an activity of the kind specified by that article if the instruction relates to an investment which that person holds as trustee or personal representative.

(6) Subject to paragraph (7), there is excluded from **[**[F537]articles 53**][**[F538], 53A, 53B, **[**[F539]53C, 53D and 53DA**]]** the giving of advice by a person acting as trustee or personal representative where he gives the advice to—

(a) a fellow trustee or personal representative for the purposes of the trust or the estate; or

(b) a beneficiary under the trust, will or intestacy concerning his interest in the trust fund or estate.

[[F540](6A) Subject to paragraph (7), a person acting as trustee or personal representative does not carry on an activity of the kind specified by article 61(1) or (2) where the borrower under the regulated mortgage contract in question is a beneficiary under the trust, will or intestacy.**]**

[[F541](6B) Subject to paragraph (7), a person acting as trustee or personal representative does not carry on an activity of the kind specified by article 63B(1) or (2) where the reversion seller under the regulated home reversion plan in question is a beneficiary under the trust, will or intestacy.

(6C) Subject to paragraph (7), a person acting as trustee or personal representative does not carry on an activity of the kind specified by article 63F(1) or (2) where the home purchaser under the regulated home purchase plan in question is a beneficiary under the trust, will or intestacy.**]**

[[F542](6D) Subject to paragraph (7), a person acting as a trustee or personal representative does not carry on an activity of the kind specified by article 63J(1) or (2) where the agreement seller under the regulated sale and rent back agreement is a beneficiary under the trust, will or intestacy.**]**

(7) Paragraphs (2), (3) **[**[F543], (3A)**]**, **[**[F544](4), (6)**][**[F545], (6A), (6B) **[**[F546], (6C) and (6D)**]]** do not apply if the person carrying on the activity is remunerated for what he does in addition to any remuneration he receives as trustee or personal representative, and for these purposes a person is not to be regarded as receiving additional remuneration merely because his remuneration is calculated by reference to time spent.

[[F547](8) This article is subject to article 4(4A) **[**[F548]and (4B)**].]**

Textual Amendments

F531 Words in art. 66(2) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **18(a)**

F532 Words in art. 66(2) 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), **19(a)**

F533 Words in art. 66(2) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(24)(a)** (with Pt. 4)

F534 Words in art. 66(2) 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), **18(a)**

F535 Art. 66(3A) 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), **10(1)(a)**

F536 Art. 66(4A) inserted (6.4.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2005 (S.I. 2005/593), arts. 1, **2(4)**

F537 Words in art. 66(6) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **18(b)**

F538 Words in art. 66(6) 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), **19(b)**

F539 Words in art. 66(6) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(24)(b)** (with Pt. 4)

F540 Art. 66(6A) inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **18(c)**

F541 Art. 66(6B)(6C) 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), **19(c)**

F542 Art. 66(6D) 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), **18(c)**

F543 Word in art. 66(7) 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), **10(1)(b)**

F544 Words in art. 66(7) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **18(d)**

F545 Words in art. 66(7) 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), **19(d)**

F546 Words in art. 66(7) 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), **18(d)**

F547 Art. 66(8) 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), **19**

F548 Words in art. 66(8) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(24)(c)** (with Pt. 4)

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Activities carried on in the course of a profession or non-investment business

67.—(1) There is excluded from articles 21, 25(1) and (2) **[**[F549], 25A**]**, **[**[F550]25B, 25C,**][**[F551]25E,**][**[F552]39A, 40**][**[F553]53**][**[F554], 53A, 53B, **[**[F555]53C, 53D and 53DA**]]** any activity which—

(a) is carried on in the course of carrying on any profession or business which does not otherwise consist of **[**[F556]the carrying on of regulated activities in the United Kingdom**]**; and

(b) may reasonably be regarded as a necessary part of other services provided in the course of that profession or business.

(2) But the exclusion in paragraph (1) does not apply if the activity in question is remunerated separately from the other services.

[[F557](3) This article is subject to article **[**[F558]4(4), (4A) and (4B)**].]**

Textual Amendments

F549 Word in art. 67(1) inserted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **19(a)**

F550 Words in art. 67(1) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 (S.I. 2006/2383), arts. 1(2), **20(a)**

F551 Word in art. 67(1) 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), **19(a)**

F552 Words in art. 67 substituted (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), **10(2)**

F553 Words in art. 67(1) substituted (31.10.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475), arts. 1(3), **19(b)**

F554 Words in art. 67(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), **20(b)**

F555 Words in art. 67(1) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(25)(a)** (with Pt. 4)

F556 Words in art. 67(1)(a) substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **9**

F557 Art. 67(3) 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), **20**

F558 Words in art. 67(3) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(25)(b)** (with Pt. 4)

Activities carried on in connection with the sale of goods or supply of services

68.—(1) Subject to paragraphs (9), (10) and (11), this article concerns certain activities carried on for the purposes of or in connection with the sale of goods or supply of services by a supplier to a customer, where—

"supplier" means a person whose main business is to sell goods or supply services and not to carry on any activities of the kind specified by any of articles 14, 21, 25, 37 **[**[F559], 39A**]**, 40, 45, **[**[F560]51ZA, 51ZB, 51ZC, 51ZD, 51ZE**]**, 52 and 53 and, where the supplier is a member of a group, also means any other member of that group; and

"customer" means a person, other than an individual, to whom a supplier sells goods or supplies services, or agrees to do so, and, where the customer is a member of a group, also means any other member of that group;

and in this article "related sale or supply" means a sale of goods or supply of services to the customer otherwise than by the supplier, but for or in connection with the same purpose as the sale or supply mentioned above.

(2) There is excluded from article 14 any transaction entered into by a supplier with a customer, if the transaction is entered into for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply.

(3) There is excluded from article 21 any transaction entered into **[**[F561]by a supplier as agent for a customer**]**, if the transaction is entered into for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply, and provided that—

(a) where the investment to which the transaction relates is a security, the supplier does not hold himself out (other than to the customer) as engaging in the business of buying securities of the kind to which the transaction relates with a view to selling them, and does not regularly solicit members of the public for the purpose of inducing them (as principals or agents) to buy, sell, subscribe for or underwrite securities;

(b) where the investment to which the transaction relates is a contractually based investment, the supplier enters into the transaction—

(i) with or through an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or

(ii) through an office outside the United Kingdom maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in carrying on activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, **[**[F562]51ZA, 51ZB, 51ZC, 51ZD, 51ZE**]**, 52 and 53 or, so far as relevant to any of those articles, article 64, or would do so apart from any exclusion from any of those articles made by this Order.

(4) In paragraph (3)(a), "members of the public" has the meaning given by article 15(2), references to "A" being read as references to the supplier.

(5) There are excluded from article 25(1) and (2) arrangements made by a supplier for, or with a view to, a transaction which is or is to be entered into by a customer for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply.

(6) There is excluded from article 37 any activity carried on by a supplier where the assets in question—

(a) are those of a customer; and

(b) are managed for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply.

(7) There is excluded from article 40 any activity carried on by a supplier where the assets in question are or are to be safeguarded and administered for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply.

(8) There is excluded from article 53 the giving of advice by a supplier to a customer for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply, or to a person with whom the customer proposes to enter into a transaction for the purposes of or in connection with such a sale or supply or related sale or supply.

(9) Paragraphs (2), (3) and (5) do not apply in the case of a transaction for the sale or purchase of a **[**[F563]contract of insurance**]**, an investment of the kind specified by article 81, or an investment of the kind specified by article 89 so far as relevant to such a contract or such an investment.

(10) Paragraph (6) does not apply where the assets managed consist of qualifying contracts of insurance, investments of the kind specified by article 81, or investments of the kind specified by article 89 so far as relevant to such contracts or such investments.

(11) Paragraph (8) does not apply in the case of advice in relation to an investment which is a **[**[F564]contract of insurance**]**, is of the kind specified by article 81, or is of the kind specified by article 89 so far as relevant to such a contract or such an investment.

[[F565](12) This article is subject to article 4(4).**]**

Textual Amendments

F559 Word in art. 68(1) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **10(3)(a)**

F560 Words in art. 68(1) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(14)**

F561 Words in art. 68(3) substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **10**

F562 Words in art. 68(3)(b)(ii) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(14)**

F563 Words in art. 68(9) substituted (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), **10(3)(b)**

F564 Words in art. 68(11) substituted (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), **10(3)(c)**

F565 Art. 68(12) 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), **21**

Groups and joint enterprises

69.—(1) There is excluded from article 14 any transaction into which a person enters as principal with another person if that other person is also acting as principal and—

(a) they are members of the same group; or

(b) they are, or propose to become, participators in a joint enterprise and the transaction is entered into for the purposes of or in connection with that enterprise.

(2) There is excluded from article 21 any transaction into which a person enters as agent for another person if that other person is acting as principal, and the condition in paragraph (1)(a) or (b) is met, provided that—

(a) where the investment to which the transaction relates is a security, the agent does not hold himself out (other than to members of the same group or persons who are or propose to become participators with him in a joint enterprise) as engaging in the business of buying securities of the kind to which the transaction relates with a view to selling them, and does not regularly solicit members of the public for the purpose of inducing them (as principals or agents) to buy, sell, subscribe for or underwrite securities;

(b) where the investment to which the transaction relates is a contractually based investment, the agent enters into the transaction—

(i) with or through an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or

(ii) through an office outside the United Kingdom maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in carrying on activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, **[**[F566]51ZA, 51ZB, 51ZC, 51ZD, 51ZE**]**, 52 and 53 or, so far as relevant to any of those articles, article 64, or would do so apart from any exclusion from any of those articles made by this Order.

(3) In paragraph (2)(a), “members of the public" has the meaning given by article 15(2), references to “A" being read as references to the agent.

(4) There are excluded from article 25(1) and (2) arrangements made by a person if—

(a) he is a member of a group and the arrangements in question are for, or with a view to, a transaction which is or is to be entered into, as principal, by another member of the same group; or

(b) he is or proposes to become a participator in a joint enterprise, and the arrangements in question are for, or with a view to, a transaction which is or is to be entered into, as principal, by another person who is or proposes to become a participator in that enterprise, for the purposes of or in connection with that enterprise.

(5) There is excluded from article 37 any activity carried on by a person if—

(a) he is a member of a group and the assets in question belong to another member of the same group; or

(b) he is or proposes to become a participator in a joint enterprise with the person to whom the assets belong, and the assets are managed for the purposes of or in connection with that enterprise.

(6) There is excluded from article 40 any activity carried on by a person if—

(a) he is a member of a group and the assets in question belong to another member of the same group; or

(b) he is or proposes to become a participator in a joint enterprise, and the assets in question—

(i) belong to another person who is or proposes to become a participator in that joint enterprise; and

(ii) are or are to be safeguarded and administered for the purposes of or in connection with that enterprise.

(7) A person who is a member of a group does not carry on an activity of the kind specified by article 45 where he sends a dematerialised instruction, or causes one to be sent, on behalf of another member of the same group, if the investment to which the instruction relates is one in respect of

which a member of the same group is registered as holder in the appropriate register of securities, or will be so registered as a result of the instruction.

(8) In paragraph (7), "dematerialised instruction" and "register of securities" have the meaning given by regulation 3 of the Uncertificated Securities Regulations **[**[F567]2001**]**.

(9) There is excluded from article 53 the giving of advice by a person if—

(a) he is a member of a group and gives the advice in question to another member of the same group; or

(b) he is, or proposes to become, a participator in a joint enterprise and the advice in question is given to another person who is, or proposes to become, a participator in that enterprise for the purposes of or in connection with that enterprise.

[[F568](10) Paragraph (2) does not apply to a transaction for the sale or purchase of a contract of insurance.

(11) Paragraph (4) does not apply to arrangements for, or with a view to, a transaction for the sale or purchase of a contract of insurance.

(12) Paragraph (9) does not apply where the advice relates to a transaction for the sale or purchase of a contract of insurance.**]**

[[F569](13) This article is subject to article 4(4).**]**

Textual Amendments

F566 Words in art. 69(2)(b)(ii) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(14)**

F567 Word in art. 69(8) substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **13(4)**

F568 Art. 69(10)-(12) 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), **10(4)**

F569 Art. 69(13) 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), **22**

Activities carried on in connection with the sale of a body corporate

70.—(1) A person does not carry on an activity of the kind specified by article 14 by entering as principal into a transaction if—

(a) the transaction is one to acquire or dispose of shares in a body corporate other than an open-ended investment company, or is entered into for the purposes of such an acquisition or disposal; and

(b) either—

(i) the conditions set out in paragraph (2) are met; or

(ii) those conditions are not met, but the object of the transaction may nevertheless reasonably be regarded as being the acquisition of day to day control of the affairs of the body corporate.

(2) The conditions mentioned in paragraph (1)(b) are that—

(a) the shares consist of or include 50 per cent or more of the voting shares in the body corporate; or

(b) the shares, together with any already held by the person acquiring them, consist of or include at least that percentage of such shares; and

(c) in either case, the acquisition or disposal is between parties each of whom is a body corporate, a partnership, a single individual or a group of connected individuals.

(3) In paragraph (2)(c), "a group of connected individuals" means—

(a) in relation to a party disposing of shares in a body corporate, a single group of persons each of whom is—

(i) a director or manager of the body corporate;

(ii) a close relative of any such director or manager;

(iii) a person acting as trustee for any person falling within paragraph (i) or (ii); and

(b) in relation to a party acquiring shares in a body corporate, a single group of persons each of whom is—

(i) a person who is or is to be a director or manager of the body corporate;

(ii) a close relative of any such person; or

(iii) a person acting as trustee for any person falling within paragraph (i) or (ii).

(4) A person does not carry on an activity of the kind specified by article 21 by entering as agent into a transaction of the kind described in paragraph (1).

(5) There are excluded from article 25(1) and (2) arrangements made for, or with a view to, a transaction of the kind described in paragraph (1).

(6) There is excluded from article 53 the giving of advice in connection with a transaction (or proposed transaction) of the kind described in paragraph (1).

[[F570](7) Paragraphs (4), (5) and (6) do not apply in the case of a transaction for the sale or purchase of a contract of insurance.**]**

[[F571](8) This article is subject to article 4(4).**]**

Textual Amendments

F570 Art. 70(7) 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), **10(5)**

F571 Art. 70(8) 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), **23**

Activities carried on in connection with employee share schemes

71.—(1) A person ("C"), a member of the same group as C or a relevant trustee does not carry on an activity of the kind specified by article 14 by entering as principal into a transaction the purpose of which is to enable or facilitate—

(a) transactions in shares in, or debentures issued by, C between, or for the benefit of, any of the persons mentioned in paragraph (2); or

(b) the holding of such shares or debentures by, or for the benefit of, such persons.

(2) The persons referred to in paragraph (1) are—

(a) the bona fide employees or former employees of C or of another member of the same group as C;

(b) the wives, husbands, widows, widowers, **[**[F572]civil partners, surviving civil partners,**]** or children or step-children under the age of eighteen of such employees or former employees.

(3) C, a member of the same group as C or a relevant trustee does not carry on an activity of the kind specified by article 21 by entering as agent into a transaction of the kind described in paragraph (1).

(4) There are excluded from article 25(1) or (2) arrangements made by C, a member of the same group as C or a relevant trustee if the arrangements in question are for, or with a view to, a transaction of the kind described in paragraph (1).

(5) There is excluded from article 40 any activity if the assets in question are, or are to be, safeguarded and administered by C, a member of the same group as C or a relevant trustee for the purpose of enabling or facilitating transactions of the kind described in paragraph (1).

(6) In this article—

(a) "shares" and "debentures" include—

(i) any investment of the kind specified by article 76 **[**[F573], 77 or 77A**]**;

(ii) any investment of the kind specified by article 79 or 80 so far as relevant to articles 76 **[**[F574], 77 and 77A**]**; and

(iii) any investment of the kind specified by article 89 so far as relevant to investments of the kind mentioned in paragraph (i) or (ii);

(b) "relevant trustee" means a person who, in pursuance of the arrangements made for the purpose mentioned in paragraph (1), holds, as trustee, shares in or debentures issued by C.

Textual Amendments

F572 Words in art. 71(2)(b) 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(4)**

F573 Words in art. 71(6)(a)(i) substituted (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(c)**

F574 Words in art. 71(6)(a)(ii) substituted (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(d)**

Overseas persons

72.—(1) An overseas person does not carry on an activity of the kind specified by article 14**[**[F575], 25D or 25DA**]** by—

(a) entering into a transaction as principal with or though an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or

(b) entering into a transaction as principal with a person in the United Kingdom, if the transaction is the result of a legitimate approach.

(2) An overseas person does not carry on an activity of the kind specified by article 21**[**[F576], 25D or 25DA**]** by—

(a) entering into a transaction as agent for any person with or through an authorised person or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or

(b) entering into a transaction with another party ("X") as agent for any person ("Y"), other than with or through an authorised person or such an exempt person, unless—

(i) either X or Y is in the United Kingdom; and

(ii) the transaction is the result of an approach (other than a legitimate approach) made by or on behalf of, or to, whichever of X or Y is in the United Kingdom.

(3) There are excluded from article 25(1)**[**[F577], 25D or 25DA**]** arrangements made by an overseas person with an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt.

(4) There are excluded from article 25(2)**[**[F578], 25D or 25DA**]** arrangements made by an overseas person with a view to transactions which are, as respects transactions in the United Kingdom, confined to—

(a) transactions entered into by authorised persons as principal or agent; and

(b) transactions entered into by exempt persons, as principal or agent, in the course of business comprising regulated activities in relation to which they are exempt.

(5) There is excluded from article 53 the giving of advice by an overseas person as a result of a legitimate approach.

[[F579](5A) An overseas person does not carry on an activity of the kind specified by article 25A(1)(a), **[**[F580]25A(2A),**]** 25B(1)(a)**[**[F581], 25C(1)(a) or 25E(1)(a)**]** if each person who may be contemplating entering into the relevant type of agreement in the relevant capacity is non-resident.

(5B) There are excluded from articles 25A(1)(b), 25B(1)(b) **[**[F582], 25C(1)(b) and 25E(1)(b)**]** arrangements made by an overseas person to vary the terms of a qualifying agreement.

(5C) There are excluded from articles 25A(2), 25B(2)**[**[F583], 25C(2) and 25E(2)**]**, arrangements made by an overseas person which are made solely with a view to non-resident persons who participate in those arrangements entering, in the relevant capacity, into the relevant type of agreement.

(5D) An overseas person does not carry on an activity of the kind specified in article 61(1), 63B(1)**[**[F584], 63F(1) or 63J(1)**]** by entering into a qualifying agreement.

(5E) An overseas person does not carry on an activity of the kind specified in article 61(2), 63B(2)**[**[F585], 63F(2) or 63J(2)**]** where he administers a qualifying agreement.

(5F) In paragraphs (5A) to (5E)—

(a) "non-resident" means not normally resident in the United Kingdom;

(b) "qualifying agreement" means—

(i) in relation to articles 25A and 61, a regulated mortgage contract where the borrower (or each borrower) is non-resident when he enters into it;

(ii) in relation to articles 25B and 63B, a regulated home reversion plan where the reversion seller (or each reversion seller) is non-resident when he enters into it;

(iii) in relation to articles 25C and 63F, a regulated home purchase plan where the home purchaser (or each home purchaser) is non-resident when he enters into it;

[[F586](iv) in relation to articles 25E and 63J, a regulated sale and rent back agreement where the agreement seller (or each agreement seller) is non-resident when the agreement seller enters into it;**]**

(c) "the relevant capacity" means—

(i) in the case of a regulated mortgage contract, as borrower;

(ii) in the case of a regulated home reversion plan, as reversion seller or plan provider;

(iii) in the case of a regulated home purchase plan, as home purchaser;

[[F587](iv) in the case of a regulated sale and rent back agreement, as agreement seller or agreement provider;**]**

(d) "the relevant type of agreement" means—

(i) in relation to article 25A, a regulated mortgage contract;

(ii) in relation to article 25B, a regulated home reversion plan;

(iii) in relation to article 25C, a regulated home purchase plan**[**[F588]**;**

(iv) in relation to article 25E, a regulated sale and rent back agreement**].]**

(6) There is excluded from article 64 any agreement made by an overseas person to carry on an activity of the kind specified by article 25(1) or (2), 37 **[**[F589], 39A**]**, 40 or 45 if the agreement is the result of a legitimate approach.

(7) In this article, "legitimate approach" means—

(a) an approach made to the overseas person which has not been solicited by him in any way, or has been solicited by him in a way which does not contravene section 21 of the Act; or

(b) an approach made by or on behalf of the overseas person in a way which does not contravene that section.

[[F590](8) Paragraphs (1) to (5) do not apply where the overseas person is an investment firm or credit institution—

(a) who is providing or performing investment services and activities on a professional basis; and

(b) whose home Member State is the United Kingdom.**]**

[[F591](9) Paragraphs (1) to (5) do not apply where the overseas person is providing clearing services as a central counterparty (within the meaning of section 313(1) of the Act).**]**

[[F592](9A) Paragraphs (1) to (5) do not apply—

(a) where the overseas person is a central securities depository which provides the services referred to in Article 23(2) or 25(2) of the CSD regulation in the United Kingdom (including through a branch in the United Kingdom); or

(b) where the overseas person is an EEA CSD which provides services in the United Kingdom for which it is not authorised under Article 16 of the CSD regulation.**]**

[[F593](10) Paragraphs (5A) and (5C) do not apply where the overseas person is a mortgage intermediary whose home Member State is the United Kingdom.**]**

[[F594](11) This Article does not apply where the overseas person is—

(a) a third-country firm, as defined by Article 4.1.57 ("definitions") of the markets in financial instruments directive ("third country firm");

(b) established in a country subject to an equivalence decision; and

(c) carrying on an activity a third country firm established in that third country may carry on by virtue of the equivalence decision under—

(i) Article 46.1 of the markets in financial instruments regulation (general provisions) if it is registered by ESMA in the register of third country firms established in accordance with Article 48 of that Regulation (register);

(ii) Article 47.3 of the markets in financial instruments regulation (equivalence decision) if it has a branch in an EEA State other than the United Kingdom and is authorised in that State in accordance with Article 39 of the markets in financial instruments directive (establishment of a branch); or

(iii) Article 46.5 of the markets in financial instruments regulation.

(12) For the purposes of paragraph (11)—

(a) "equivalence decision" means a decision adopted by the Commission in relation to a country under Article 47.1 of the markets in financial instruments regulation which has not been withdrawn by a subsequent decision adopted by the Commission under that Article; and

(b) a country is subject to an equivalence decision if a period of more than three years has elapsed since the adoption of the decision by the Commission, beginning on the day after the date of the adoption of the decision.**]**

Textual Amendments

F575 Words in art. 72(1) 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), **5(2)**

F576 Words in art. 72(2) 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), **5(2)**

F577 Words in art. 72(3) 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), **5(2)**

F578 Words in art. 72(4) 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), **5(2)**

F579 Art. 72(5A)-(5F) 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), **21**

F580 Word in art. 72(5A) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(26)(a)** (with Pt. 4)

F581 Words in art. 72(5A) 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), **20(a)**

F582 Words in art. 72(5B) 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), **20(b)**

F583 Words in art. 72(5C) 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), **20(c)**

F584 Words in art. 72(5D) 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), **20(d)**

F585 Words in art. 72(5E) 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), **20(e)**

F586 Art. 72(5F)(b)(iv) 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), **20(f)**

F587 Art. 72(5F)(c)(iv) 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), **20(g)**

F588 Art. 72(5F)(d)(iv) and semi-colon 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), **20(h)**

F589 Word in art. 72(6) 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), **10(6)**

F590 Art. 72(8) 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), **24(e)**

F591 Art. 72(9) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **33(5)** (with regs. 52-58)

F592 Art. 72(9A) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 23(3)** (with regs. 7(4), 8(4), 9(1))

F593 Art. 72(10) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(26)(b)** (with Pt. 4)

F594 Art. 72(11)(12) 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), **5(3)**

Modifications etc. (not altering text)

C31 Art. 72 modified in part (31.10.2001) by The Financial Services and Markets Act 2000 (Interim Permissions) Order 2001 (S.I. 2001/3374), art. 1, **Sch. para. 12** (with Sch. para. 4)

C32 Art. 72 modified in part (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), art. 1(2)(b), **Sch. para. 12** (with Sch. para. 4)

C33 Art. 72 modified in part (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), art. 1(2)(b), **Sch. para. 11** (with Sch. para. 4)

C34 Art. 72 modified in part (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), art. 1(3), **Sch. para. 13** (with Sch. para. 4)

[F595Information society services

72A.—(1) There is excluded from this Part any activity consisting of the provision of an information society service from an EEA State other than the United Kingdom.

[
F596(1A) For the purposes of paragraph (1), "activity" includes regulated claims management activities of a kind specified by articles 89G to 89M.**]**

(2) The exclusion in paragraph (1) does not apply to the activity of effecting or carrying out a contract of insurance as principal, where **[**F597the insurance falls within the scope of the Solvency 2 Directive.**]**

F598(a) . . . . . .

F598(b) . . . . . .

[
F599(3) The exclusion in paragraph (1) does not apply to an activity carried on by a person ("P") if—

(a) the FCA has given a final notice to P under section 390 of the Act, as applied by regulation 11C of the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002, in relation to that activity; and

(b) a determination made by that notice is in effect.**]]**

Textual Amendments

F595 Art. 72A inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **2**

F596 Art. 72A(1A) inserted (E.W.S.) (29.11.2018 for specified purposes, 1.4.2019 in so far as not already in force) by The Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 (S.I. 2018/1253), art. 1(2)(3), **6**

F597 Words in art. 72A(2) inserted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), **Sch. 2 para. 11(4)(b)**

F598 Art. 72A(2)(a)(b) omitted (1.1.2016) by virtue of The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), **Sch. 2 para. 11(4)(a)**

F599 Art. 72A(3) inserted (24.3.2015) by The Electronic Commerce Directive (Financial Services and Markets) (Amendment) Order 2015 (S.I. 2015/852), arts. 1(2), **3**

[[F600]Managers of UCITS and AIFs

72AA.—(1) This article applies to a person with a Part 4A permission to carry on the activity of the kind specified by article 51ZA or 51ZC.

(2) Activities carried on by the person in connection with or for the purposes of managing a UCITS or, as the case may be, managing an AIF, are excluded from the activities specified by this Part, other than the activities mentioned in paragraph (1).**]**

Textual Amendments

F600 Art. 72AA inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(16)**

Modifications etc. (not altering text)

C35 Art. 72AA excluded by S.I. 2013/1773, reg. 74(4) (as substituted (16.6.2014) by The Alternative Investment Fund Managers Order 2014 (S.I. 2014/1292), arts. 1(2), **4(6)(b)** (as amended by S.I. 2014/1313, arts. 1, 2(a)))

C36 Art. 72AA excluded by S.I. 2013/1773, reg. 75(2A) (as inserted (16.6.2014) by The Alternative Investment Fund Managers Order 2014 (S.I. 2014/1292), arts. 1(2), **4(7)(b)** (as amended by S.I. 2014/1313, arts. 1, 2(a)))

[[F601]Activities carried on by a provider of relevant goods or services

72B.—(1) In this article—

"connected contract of insurance" means a contract of insurance which—

(a) is not a contract of long-term insurance;

(b) [F602]. . . . . .

(c) **[**[F603]has a premium of—

(i) 600 euro or less (calculated on a pro rata annual basis), or

(ii) where the insurance is complementary to a service being provided by the provider and the duration of that service is equal to or less than three months, 200 euro or less,

or equivalent amounts of sterling or another currency;**]**

(d) covers the risk of—

(i) breakdown, loss of, or damage to, non-motor goods supplied by the provider; [F604]...

(ia) **[**[F605]the non-use of services supplied by the provider; or**]**

(ii) **[**[F606]damage to, or loss of, baggage and other risks linked to the travel booked with the provider ("travel risks") in circumstances where—

(aa) the travel booked with the provider relates to attendance at an event organised or managed by that provider and the party seeking insurance is not an individual (acting in his private capacity) or a small business; or

(bb) the travel booked with the provider is only the hire of an aircraft, vehicle or vessel which does not provide sleeping accommodation;**]**

(e) does not cover any liability risks (except, in the case of a contract which covers travel risks, where that cover is ancillary to the main cover provided by the contract); **[**[F607]and**]**

(f) is complementary to the non-motor goods being supplied or service being provided by the provider; [F608]...

(g) [F608]. . . . . .

"non-motor goods" means goods which are not mechanically propelled road vehicles;

"provider" means a person who supplies **[**[F609]non-motor goods or services**]** or provides services related to travel in the course of carrying on a profession or business which does not otherwise consist of the carrying on of regulated activities. **[**[F610]For these purposes, the transfer of possession of an aircraft, vehicle or vessel under an agreement for hire which is not—

(a) a hire-purchase agreement [F611]... , or

(b) any other agreement which contemplates that the property in those goods will also pass at some time in the future,

is the provision of a service related to travel, not a supply of goods;

"small business" means—

(a) subject to paragraph (b) a sole trader, body corporate, partnership or an unincorporated association which had a turnover in the last financial year of less than £1,000,000;

(b) where the business concerned is a member of a group within the meaning of **[**[F612]section 474(1) of the Companies Act 2006**]**, reference to its turnover means the combined turnover of the group;

"turnover" means the amounts derived from the provision of goods and services falling within the business's ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on the amounts so derived.**]**

(2) There is excluded from article 21 any transaction for the sale or purchase of a connected contract of insurance into which a provider enters as agent.

(3) There are excluded from article 25(1) and (2) any arrangements made by a provider for, or with a view to, a transaction for the sale or purchase of a connected contract of insurance.

(4) There is excluded from article 39A any activity carried on by a provider where the contract of insurance in question is a connected contract of insurance.

(5) There is excluded from article 53 the giving of advice by a provider in relation to a transaction for the sale or purchase of a connected contract of insurance.

(6) For the purposes of this article, a contract of insurance which covers travel risks is not to be treated as a contract of long-term insurance, notwithstanding the fact that it contains related and subsidiary provisions such that it might be regarded as a contract of long-term insurance, if the cover to which those provisions relate is ancillary to the main cover provided by the contract.

Textual Amendments

F601 Arts. 72B-72D 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), **11**

F602 Words in art. 72B(1) omitted (1.10.2018) by virtue of The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **6(a)(i)**

F603 Words in art. 72B(1) substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **6(a)(ii)**

F604 Word in art. 72B(1) omitted (1.10.2018) by virtue of The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **6(a)(iii)**

F605 Words in art. 72B(1) inserted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **6(a)(iv)**

F606 Words in art. 72B(1) substituted (30.6.2008 for specified purposes, 1.1.2009 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **2(2)** (with regs. 3-9)

F607 Word in art. 72B(1) added (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **6(a)(v)**

F608 Words in art. 72B(1) omitted (1.10.2018) by virtue of The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **6(a)(vi)**

F609 Words in art. 72B(1) substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **6(b)**

F610 Words in art. 72B(1) inserted (30.6.2008 for specified purposes, 1.1.2009 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **2(3)** (with regs. 3-9)

F611 Words in art. 72B(1) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **9(1)**

F612 Words in art. 72B(1) substituted (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), arts. 1(2), **13(5)**

Provision of information on an incidental basis

72C.—(1) There is excluded from articles 25(1) and (2) the making of arrangements for, or with a view to, a transaction for the sale or purchase of a contract of insurance or an investment of the kind specified by article 89, so far as relevant to such a contract, where that activity meets the conditions specified in paragraph (4).

(2) There is excluded from articles 37 and 40 any activity—

(a) where the assets in question are rights under a contract of insurance or an investment of the kind specified by article 89, so far as relevant to such a contract; and

(b) which meets the conditions specified in paragraph (4).

(3) There is excluded from article 39A any activity which meets the conditions specified in paragraph (4).

(4) The conditions specified in this paragraph are that the activity—

(a) consists of the provision of information to the policyholder or potential policyholder;

(b) is carried on by a person in the course of carrying on a profession or business which does not otherwise consist of the carrying on of regulated activities; and

(c) may reasonably be regarded as being incidental to that profession or business.

Textual Amendments

F601 Arts. 72B-72D 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), **11**

Large risks contracts where risk situated outside the EEA

72D.—(1) There is excluded from articles 21, 25(1) and (2), 39A and 53 any activity which is carried on in relation to a large risks contract of insurance, to the extent that the risk or commitment covered by the contract is not situated in an EEA State.

(2) In this article, a "large risks contract of insurance" is a contract of insurance the principal object of which is to cover—

(a) risks falling within paragraph 4 (railway rolling stock), 5 (aircraft), 6 (ships), 7 (goods in transit), 11 (aircraft liability) or 12 (liability of ships) of Part 1 of Schedule 1;

(b) risks falling within paragraph 14 (credit) or 15 (suretyship) of that Part provided that the risks relate to a business carried on by the policyholder; or

(c) risks falling within paragraph 3 (land vehicles), 8 (fire and natural forces), 9 (damage to property), 10 (motor vehicle liability), 13 (general liability) or 16 (miscellaneous financial loss) of that Part provided that the risks relate to a business carried on by the policyholder and that the condition specified in paragraph (3) is met in relation to that business.

(3) The condition specified in this paragraph is that at least two of the three following criteria were met in the most recent financial year for which information is available—

(a) the balance sheet total of the business **[**[F613](within the meaning of section 382(5) or 465(5) of the Companies Act 2006)**]** exceeded 6.2 million euro,

(b) the net turnover **[**[F614](within the meaning given to "turnover" by section 474(1) of the Companies Act 2006)**]** exceeded 12.8 million euro,

(c) the number of employees **[**[F615](within the meaning given by sections 382(6) and 465(6) of the Companies Act 2006)**]** exceeded 250,

and for a financial year which is a company's financial year but not in fact a year, the net turnover of the policyholder shall be proportionately adjusted.

(4) For the purposes of paragraph (3), where the policyholder is a member of a group for which consolidated accounts (within the meaning of the Seventh Company Law Directive) are drawn up, the question whether the condition specified by that paragraph is met is to be determined by reference to those accounts.**]**

Textual Amendments

F601 Arts. 72B-72D 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), **11**

F613 Words in art. 72D(3)(a) substituted (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), arts. 1(2), **13(6)(a)**

F614 Words in art. 72D(3)(b) substituted (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), arts. 1(2), **13(6)(b)**

F615 Words in art. 72D(3)(c) substituted (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), arts. 1(2), **13(6)(c)**

[F616Business Angel-led Enterprise Capital Funds

72E.—(1) A body corporate of a type specified in paragraph (7) does not carry on the activity of the kind specified by article 21 by entering as agent into a transaction on behalf of the participants of a Business Angel-led Enterprise Capital Fund.

(2) There are excluded from article 25(1) and (2) arrangements, made by a body corporate of a type specified in paragraph (7), for or with a view to a transaction which is or is to be entered into by or on behalf of the participants in a Business Angel-led Enterprise Capital Fund.

(3) There is excluded from article 37 any activity, carried on by a body corporate of a type specified in paragraph (7), which consists in the managing of assets belonging to the participants in a Business Angel-led Enterprise Capital Fund.

(4) There is excluded from article 40 any activity, carried on by a body corporate of a type specified in paragraph (7), in respect of assets belonging to the participants in a Business Angel-led Enterprise Capital Fund.

(5) A body corporate of a type specified in paragraph (7) does not carry on the activity of the kind specified in article **[**F617**]**51ZA, 51ZC or 51ZE**]** where it carries on the activity of establishing, operating or winding up a Business Angel-led Enterprise Capital Fund.

(6) A body corporate of a type specified in paragraph (7) does not carry on the activity of the kind specified in article 53 where it is advising the participants in a Business Angel-led Enterprise Capital Fund on investments to be made by or on behalf of the participants of that Business Angel-led Enterprise Capital Fund.

(7) The type of body corporate specified is a limited company—

(i) which operates a Business Angel-led Enterprise Capital Fund; and

(ii) the members of which are participants in the Business Angel-led Enterprise Capital Fund operated by that limited company and between them have invested at least 50 per cent of the total investment in that Business Angel-led Enterprise Capital Fund excluding any investment made by the Secretary of State.

(8) For the purposes of paragraph (7), "a limited company" means a body corporate with limited liability which is a company or firm formed in accordance with the law of an EEA State and having its registered office, central administration or principal place of business within the territory of an EEA State.

(9) Nothing in this article has the effect of excluding a body corporate from the application of **[**F618**]**the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017**]**, in so far as those Regulations would have applied to it but for this article.

(10) Nothing in this article has the effect of excluding a body corporate from the application of section 397 of the Act (misleading statements and practices), in so far as that section would have applied to it but for this article.

[
F619(11) This article is subject to article 4(4).**]]**

Textual Amendments

F616 Arts. 72E, 72F inserted (1.10.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2005 (S.I. 2005/1518), arts. 1, **2(3)**

F617 Words in art. 72E(5) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 1(15)**

F618 Words in art. 72E(9) substituted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), **Sch. 7 para. 17** (with regs. 8, 15)

F619 Art. 72E(11) 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), **25**

[F616Interpretation

72F.—(1) For the purposes of this article and of article 72E—

"Business Angel-led Enterprise Capital Fund" means a collective investment scheme which—

(a) is established for the purpose of enabling participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of investments falling within one or more of—

(i) article 76, being shares in an unlisted company;

(ii) article 77, being instruments creating or acknowledging indebtedness in respect of an unlisted company;

(iia) **[**F620article 77A, being rights under an alternative finance investment bond issued by an unlisted company;**]** and

(iii) article 79, being warrants or other instruments entitling the holder to subscribe for shares in an unlisted company;

(b) has only the following as its participants—

(i) the Secretary of State;

(ii) a body corporate of a type specified in article 72E(7); and

(iii) one or more persons each of whom at the time they became a participant was—

(aa) a sophisticated investor;

(bb) a high net worth individual;

(cc) a high net worth company;

(dd) a high net worth unincorporated association;

(ee) a trustee of a high value trust; or

(ff) a self-certified sophisticated investor;

(c) is prevented, by the arrangements by which it is established, from—

(i) acquiring investments, other than those falling within paragraphs (i) to (iii) of sub-paragraph (a); and

(ii) acquiring investments falling within paragraphs (i) to (iii) of sub-paragraph (a) in an unlisted company, where the aggregated cost of those investments exceeds £2 million, unless that acquisition is necessary to prevent or reduce the dilution of an existing share-holding in that unlisted company;

"high net worth company" means a body corporate which—

(a) falls within article 49(2)(a) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (high net worth companies, unincorporated associations etc.); and

(b) has executed a document **[**[F621](in a manner which binds the company)**]** in the following terms:

> "This company is a high net worth company and falls within article 49(2)(a) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001. We understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which this company participates, or any person who operates that Business Angel-led Enterprise Capital Fund, in which this company participates, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). We understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. We also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and are aware that it is open to us to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment."

"high net worth individual" means an individual who—

(a) is a "certified high net worth individual" within the meaning of article 48(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (certified high net worth individuals); and

(b) has signed a statement in the following terms:

> "I declare that I am a certified high net worth individual within the meaning of article 48(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 and that I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which I participate, or any person who operates that Business Angel-led Enterprise Capital Fund, in which I participate, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. I also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to me to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"high net worth unincorporated association" means an unincorporated association—

(a) which falls within article 49(2)(b) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001; and

(b) on behalf of which an officer of that association or a member of its governing body has signed a statement in the following terms:

> "This unincorporated association is a high net worth unincorporated association and falls within article 49(2)(b) of the Financial Services and Markets Act 2000

(Financial Promotion) Order 2001. I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which this association participates, or any person who operates that Business Angel-led Enterprise Capital Fund, in which this association participates, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. I also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to the association to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"high value trust" means a trust—

(a) where the aggregate value of the cash and investments which form a part of the trust's assets (before deducting the amount of its liabilities) is £10 million or more;

(b) on behalf of which a trustee has signed a statement in the following terms:

"This trust is a high value trust. I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which this trust participates, or any person who operates that Business Angel-led Enterprise Capital Fund, in which this trust participates, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. I also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to the trust to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"self-certified sophisticated investor" means an individual who—

(a) is a "self-certified sophisticated investor" within the meaning of article 50A of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001;

(b) has signed a statement in the following terms:

"I declare that I am a self-certified sophisticated investor within the meaning of article 50A of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 and that I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which I participate, or any person who operates that Business Angel-led Enterprise Capital Fund, in which I participate, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. I also understand the risks

associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to me to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"sophisticated investor" means an individual who—

(a) is a "certified sophisticated investor" within the meaning of article 50(1) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001; and

(b) has signed a statement in the following terms:

"I declare that I am a certified sophisticated investor within the meaning of article 50(1) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 and that I understand that any Business Angel-led Enterprise Capital Fund (within the meaning of article 72F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), in which I participate, or any person who operates that Business Angel-led Enterprise Capital Fund, in which I participate, will not be authorised under the Financial Services and Markets Act 2000 (and so will not have to satisfy the threshold conditions set out in Part I of Schedule 6 to that Act and will not be subject to Financial Services Authority rules such as those on holding client money). I understand that this means that redress through the Financial Services Authority, the Financial Ombudsman Scheme or the Financial Services Compensation Scheme will not be available. I also understand the risks associated in investing in a Business Angel-led Enterprise Capital Fund and am aware that it is open to me to seek advice from someone who is authorised under the Financial Services and Markets Act 2000 and who specialises in advising on this kind of investment.";

"unlisted company" has the meaning given by article 3 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001.

(2) References in this Article and in Article 72E to a participant in a Business Angel-led Enterprise Capital Fund, doing things on behalf of such a participant and property belonging to such a participant are, respectively, references to that participant in that capacity, to doing things on behalf of that participant in that capacity or to the property of that participant held in that capacity.**]**

Textual Amendments

F616 Arts. 72E, 72F inserted (1.10.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2005 (S.I. 2005/1518), arts. 1, **2(3)**

F620 Words in art. 72F(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(e)**

F621 Words in art. 72F(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), **22**

[F622Local authorities

72G.—(1) There is excluded from article 5 any activity which is carried on by a local authority.

(2) There is excluded from articles 21, 25(1) and (2), 39A and 53 any activity carried on by a local authority which relates to a contract of insurance which is not a qualifying contract of insurance.

(3) There is excluded from articles **[F623**25A(1)(b), 25A(2)**]**, 25B, 25C, 25E, 36A, 39D, 39E, 39F, 39G, F624... 53B, 53C, 53D, 60N, F624... 63B, 63F, 63J or 89A any activity which is carried on by a local authority.

[
F625(3A) There is excluded from article 25A(1)(b) and (2) any activity which is carried on by a company which is a wholly-owned subsidiary of a local authority.

(3B) There is excluded from articles 25A(1)(a) and (2A), 53A, 53DA and 61 any activity which is carried on by a local authority, or a company which is a wholly-owned subsidiary of a local authority, in so far as the contract F626...—

F627(a) **[** was entered into before 21st March 2016; or

(b) is entered into on or after 21st March 2016 and—

(i) is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;

(ii) is a bridging loan; or

(iii) is a restricted public loan in relation to which the requirements of paragraph (6) are met.**]]**

[
F628(4) There is excluded from article 60B—

F629(a) **[** any activity which is carried on by a local authority—

(i) in relation to a credit agreement which was entered into before 21st March 2016, or which is entered into on or after that date for a purpose other than acquiring or retaining property rights in land or in an existing or projected building; and

(ii) in so far as the activity is carried on in relation to a credit agreement of a kind to which the consumer credit directive does not apply by virtue of Article 2(2) of that directive;**]**

(b) any activity which is carried on by a local authority **[**F630in relation to a credit agreement entered into on or after 21st March 2016**]**, the purpose of which is to acquire or retain property rights in land or in an existing or projected building, in so far as the credit agreement meets one of the following conditions—

(i) it is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;

(ii) it is a bridging loan; or

(iii) it is a restricted public loan in relation to which the requirements of paragraph (6) are met.**]**

(5) There is excluded from article 64 any agreement made by a local authority to carry on an activity of the kind excluded by paragraphs (2) to (4).

[
F631(6) The requirements of this paragraph are that—

(a) the borrower receives timely information on the main features, risks and costs of the loan at the pre-contractual stage; and

(b) any advertising of the loan is fair, clear and not misleading.

(7) In this article—

"bridging loan" has the meaning given by Article 4(23) of the mortgages directive;

"borrower" means a person receiving credit;

"consumer credit directive" means Directive 2008/48/EC of the European Parliament and of the Council of 23rd April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EC;

"credit" includes a cash loan and any other form of financial accommodation;

"restricted public loan" means credit that is—

(a) offered to a particular class of borrower and not offered to the public generally;

(b) offered under an enactment with a general interest purpose; and

(c) provided on terms which are more favourable to the borrower than those prevailing on the market, because the credit meets one of the following conditions—

(i) it is interest free;

(ii) the rate of interest is lower than that prevailing on the market; or

(iii) the rate of interest is no higher than that prevailing on the market but the other terms on which the credit is provided are more favourable to the borrower; and

"wholly-owned subsidiary" has the same meaning as in section 1159 (meaning of "subsidiary" etc.) of the Companies Act 2006 and, for the purposes of this definition, a local authority is to be treated as a body corporate.**]**

Textual Amendments

F622 Arts. 72G, 72H inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(43)**

F623 Words in art. 72G(3) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(27)(a)(i)** (with Pt. 4)

F624 Words in art. 72G(3) omitted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(27)(a)(ii)** (with Pt. 4)

F625 Art. 72G(3A)(3B) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(27)(b)** (with Pt. 4)

F626 Word in art. 72G(3B) omitted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(20)(a)(i)** (with Pt. 5)

F627 Art. 72G(3B)(a)(b) substituted for arts. 72G(3B)(a)-(c) (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(20)(a)(ii)** (with Pt. 5)

F628 Art. 72G(4) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(27)(c)** (with Pt. 4)

F629 Art. 72G(4)(a) substituted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(20)(b)(i)** (with Pt. 5)

F630 Words in art. 72G(4)(b) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(20)(b)(ii)** (with Pt. 5)

F631 Art. 72G(6)(7) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(27)(d)** (with Pt. 4)

Insolvency practitioners

72H.—(1) There is excluded from the provisions listed in paragraph (2) any activity carried on by a person acting as an insolvency practitioner.

(2) The provisions are—

(a) article 14 (dealing in investments as principal);

(b) article 21 (dealing in investments as agent);

(c) article 25 (arranging deals in investments);

(d) article 25D (operating a multilateral trading facility);

F632 **[** (da) article 25DA (operating an organised trading facility);**]**

(e) article 37 (managing investments);

(f) article 39A (assisting in the administration and performance of a contract of insurance);

(g) article 39D (debt adjusting);

(h) article 39E (debt-counselling);

(i) article 39F (debt-collecting);

(j) article 39G (debt administration);

(k) article 40 (safeguarding and administering investments);

(l) article 45 (sending dematerialised instructions);

(m) article 51ZA (managing a UCITS);

(n) article 51ZB (acting as trustee or depositary of a UCITS);

(o) article 51ZC (managing an AIF);

(p) article 51ZD (acting as trustee or depositary of an AIF);

(q) article 51ZE (establishing etc. a collective investment scheme);

(r) article 52 (establishing etc. a pension scheme);

(s) article 53 (advising on investments);

(t) article 89A (providing credit information services).

(3) There is excluded from articles 39D, 39E and 89A any activity carried on by a person acting in reasonable contemplation of that person's appointment as an insolvency practitioner.

(4) There is excluded from article 64 any agreement made by a person acting as an insolvency practitioner to carry on an activity of the kind excluded by paragraph (1).

(5) There is excluded from article 64 any agreement made by a person acting in reasonable contemplation of that person's appointment as an insolvency practitioner to carry on an activity of the kind excluded by paragraph (3).**]**

Textual Amendments

F622 Arts. 72G, 72H inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(43)**

F632 Art. 72H(2)(da) 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), **12(8)**

[F633Registered consumer buy-to-let mortgage firms

72I.—(1) There is excluded from articles 25A, 36A, 53A, 53DA, 60B and 61 any consumer buy-to-let mortgage business **[**F634which relates to an agreement entered into on or after 21st March 2016 and is**]** carried on by a registered consumer buy-to-let mortgage firm.

(2) In this article "consumer buy-to-let mortgage business" and "registered consumer buy-to-let mortgage firm" have the meanings given in article 4 of the Mortgage Credit Directive Order 2015 (interpretation of Part 3).**]**

Textual Amendments

F633 Art. 72I inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(28)** (with Pt. 4)

F634 Words in art. 72I(1) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **2(21)** (with Pt. 5)

[F635Persons seeking to use the exemption under Article 2.1(j) of the markets in financial instruments directive

72J.—(1) An activity which falls within Article 2.1(j)(i) or (ii) (exemptions) of the markets in financial instruments directive ("an Article 2.1(j) activity") is excluded from the activities specified by articles 14, 21 and 25 if during a calendar year the person carrying on the activity—

(a) cannot perform the market threshold calculation to establish if the Article 2.1(j) activity falls within the exemption under Article 2.1(j) of the markets in financial instruments directive because the relevant data is not publicly available from an official source;

(b) carries on the Article 2.1(j) activity during a period of 8 weeks beginning with the day after the day on which the relevant data is made publicly available from an official source; or

(c) has made an application to the appropriate regulator for a Part 4A permission to carry on a regulated activity specified by articles 14, 21 and 25 which constitutes the Article 2.1(j) activity and the application has not been determined or withdrawn.

(2) The exclusion in paragraph (1) does not apply to an Article 2.1(j) activity carried on by a person who is an authorised person in relation to an activity which constitutes the Article 2.1(j) activity.

(3) In this paragraph—

"market threshold calculation" means the calculation of the size of trading activities referred to in Article 2 of the delegated regulation that must be carried out annually in the first quarter of a calendar year under the procedure set out in Article 4 (procedure for calculation) of that delegated regulation;

"official source" means an EU institution or a regulator;

"relevant data" means any data or other information that enables a calculation to be made of the overall market trading activity in an asset class under the procedure in Article 2.3 (overall market threshold) of the delegated regulation;

"the appropriate regulator" in relation to an application for a Part 4A permission means the appropriate regulator in relation to that application for the purposes of section 55A (application for permission) of the Act; and

"the delegated regulation" means Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and the

Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business .**]**

Textual Amendments

F635 Art. 72J inserted (3.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(b), **4(3)**

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.

[F636Electronic money

74A. Electronic money.**]**

Textual Amendments

F636 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 [M21][F637]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 **[**[F638]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.

(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 **[**[F639]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

F637 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**

F638 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**

F639 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

M21 1986 c. 53.

Instruments creating or acknowledging indebtedness

77.—(1) Subject to paragraph (2), such of the following as do not fall within **[**[F640]article [F641]... 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.

[F642](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.

Textual Amendments

F640 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)**

F641 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)

F642 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)

[F643Alternative finance investment bonds

77A.—(1) Rights under an alternative finance investment bond, to the extent that they do not fall within article **[**F644**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); F645...

(ii) trading on a regulated market (**[**F646as 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);

F647**[**(iii) trading on a multilateral trading facility (as defined by Article 4.1.22 of the markets 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;

(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

F643 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)**

F644 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)

F645 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)**

F646 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)**

F647 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

(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) **[**[F648]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 [M22] 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 [M23].

[[F649](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

F648 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)**

F649 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

M22 1968 c. 13.

M23 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 **[**[F650], 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

F650 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

(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).

[[F651]Rights under a pension scheme

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

(2) Rights under a personal pension scheme.

[[F652](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

F651 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)**

F652 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)**

[[F653]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

F653 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)**

[[F654]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;

(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

F654 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.—**[**[F655](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; [F656]...

(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)**[**[F657];

(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 **[**[F658]read with Articles 5, 6, 7 and 8 of the Commission Regulation**]** (**[**[F659]the texts of which are set out in Parts 1 and 2**]** of Schedule 2) applies**]**.

[[F660](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 **[**[F661](read with Articles 5 and 6 of the Commission Regulation)**]**, applies, or

(ii) which in accordance with Article **[**[F662]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 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 **[**[F663]Articles 7 and 8 of**]** the Commission Regulation) applies.

(4) Paragraphs (1)(e), (2) and (3) only apply to options 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 **[**[F664]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, [F665]...

(c) a market operator is providing the investment service specified in **[**[F666]paragraph 8 or 9**]** of Section A of Annex I to the markets in financial instruments directive**[**[F667], 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

F655 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)**

F656 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)**

F657 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)**

F658 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)**

F659 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)**

F660 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)**

F661 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)**

F662 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)**

F663 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)**

F664 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)**

F665 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)**

F666 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)**

F667 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.

[[F668](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 **[**[F669](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 **[**[F670]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 **[**[F671]Articles 7 and 8 of**]** the Commission Regulation) applies.

[
[F672](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)**[**[F673], (1C) and (1CA)**]** only apply to futures **[**[F674], 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 company is providing, in accordance with **[**[F675]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, [F676]...

(c) a market operator is providing the investment service specified in **[**[F677]paragraph 8 or 9**]** of Section A of Annex I to the markets in financial instruments directive**[**[F678], 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 **[**[F679](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

F668 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**

F669 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)**

F670 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)**

F671 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)**

F672 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)**

F673 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)**

F674 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)**

F675 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)**

F676 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)**

F677 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)**

F678 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)**

F679 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)

C37 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;

(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.

[[F680](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 **[**[F681]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, [F682]...

(c) a market operator is providing the investment service specified in **[**[F683]paragraph 8 or 9**]** of Section A of Annex I to the markets in financial instruments directive**[**[F684], 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.**]**

[

[F685](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,

(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

F680 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**

F681 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)**

F682 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)**

F683 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)**

F684 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)**

F685 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

I6 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

I7 Art. 88 in force at 31.10.2004, see art. 1(2)(b) (as read with Treasury notice dated 9.7.2003)

[F686 Regulated home reversion plans

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

Textual Amendments

F686 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**

[F686 Regulated home purchase plans

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

Textual Amendments

F686 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**

[F687 Regulated sale and rent back agreements

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

Textual Amendments

F687 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**

[F688 Credit agreement

88D. Rights under a credit agreement.

Textual Amendments

F688 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

F688 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**

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 **[**[F689]article 88, **[**[F690]88A, 88B or 88C**]]**).

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

[[F691](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

F689 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**

F690 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**

F691 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)**

[[F692]PART 3A

SPECIFIED ACTIVITIES IN RELATION TO INFORMATION

Textual Amendments

F692 Pt. 3A 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), **8(2)**

The activities

Providing credit information services

89A.—(1) Taking any of the steps in paragraph (3) on behalf of an individual or relevant recipient of credit is a specified kind of activity.

(2) Giving advice to an individual or relevant recipient of credit in relation to the taking of any of the steps specified in paragraph (3) is a specified kind of activity.

(3) Subject to paragraph (4), the steps specified in this paragraph are steps taken with a view to—

(a) ascertaining whether a credit information agency holds information relevant to the financial standing of an individual or relevant recipient of credit;

(b) ascertaining the contents of such information;

(c) securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information;

(d) securing that a credit information agency which holds such information—

(i) stops holding the information, or

(ii) does not provide it to any other person.

(4) Steps taken by a credit information agency in relation to information held by that agency are not steps specified in paragraph (3).

(5) Paragraphs (1) and (2) do not apply to an activity of the kind specified by article 36H (operating an electronic system in relation to lending).

(6) "Credit information agency" means a person who carries on by way of business an activity of the kind specified by any of the following—

(a) article 36A (credit broking);

(b) article 39D (debt adjusting);

(c) article 39E (debt-counselling);

(d) article 39F (debt-collecting);

(e) article 39G (debt administration);

(f) article 60B (regulated credit agreements) disregarding the effect of article 60F;

(g) article 60N (regulated consumer hire agreements) disregarding the effect of article 60P;

(h) article 89B (providing credit references).

Providing credit references

89B.—(1) Furnishing of persons with information relevant to the financial standing of individuals or relevant recipients of credit is a specified kind of activity if the person has collected the information for that purpose.

(2) There are excluded from paragraph (1) activities carried on in the course of a business which does not primarily consist of activities of the kind specified by paragraph (1).

(3) Paragraph (1) does not apply to an activity of the kind specified by article 36H (operating an electronic system in relation to lending).

Exclusions

[[F693]Activities carried on by members of the legal profession, etc

89C.—(1) There are excluded from articles 89A and 89B activities carried on by—

(a) a barrister or advocate acting in that capacity;

(b) a solicitor (within the meaning of the Solicitors Act 1974) in the course of providing advocacy services or litigation services;

(c) a solicitor (within the meaning of the Solicitors (Scotland) Act 1980) in the course of providing advocacy services or litigation services;

(d) a solicitor (within the meaning of the Solicitors (Northern Ireland) Order 1976) in the course of providing advocacy services or litigation services;

(e) a relevant person (other than a person falling within sub-paragraph (a) to (d)) in the course of providing advocacy services or litigation services.

(2) In paragraph (1)—

"advocacy services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings;

"litigation services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings;

"relevant person" means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).**]**

Textual Amendments

F693 Art. 89C substituted (24.3.2015) by The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2015 (S.I. 2015/853), arts. 1(2), **3(7)**

[F694Other exclusions]

89D.—[F695(1)] Articles 89A and 89B are subject to the exclusion in article 72A (information society services).

[F696(2) Article 89A is also subject to the exclusions in articles 72G (local authorities) and 72H (insolvency practitioners).**]**

Textual Amendments

F694 Art. 89D heading substituted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(44)**

F695 Art. 89D(1): art. 89D renumbered as art. 89D(1) (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(45)(a)**

F696 Art. 89D(2) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(45)(b)**

Supplemental

Meaning of "consumer" etc.

89E.—(1) For the purposes of sections 1G, 404E and 425A of the Act (meaning of "consumer") —

(a) an individual or a relevant recipient of credit who is, may be, has been or may have been the subject of the information referred to in article 89A, and

(b) an individual or a relevant recipient of credit who is, may be, has been or may have been the subject of information furnished in the course of a person carrying on an activity of the kind specified by article 89B, **[F697**or article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 89B,**]**

is to be treated as a "consumer".

(2) For the purposes of section 328(8) of the Act (meaning of "clients")—

(a) an individual or a relevant recipient of credit who is, may be, has been or may have been the subject of the information referred to in article 89A, and

(b) an individual or a relevant recipient of credit who is, may be, has been or may have been the subject of information furnished in the course of a person carrying on an activity of the kind specified by article 89B, **[**[F698]or article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 89B,**]**

is to be treated as a "client".**]**

Textual Amendments

F697 Words in art. 89E(1)(b) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(46)**

F698 Words in art. 89E(2)(b) inserted (14.2.2014 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) Order 2014 (S.I. 2014/366), art. 1(3)(4), **2(46)**

[[F699]PART 3B

CLAIMS MANAGEMENT ACTIVITIES IN GREAT BRITAIN

Textual Amendments

F699 Pt. 3B inserted (E.W.S.) (29.11.2018 for specified purposes, 1.4.2019 in so far as not already in force) by The Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 (S.I. 2018/1253), art. 1(2)(3), **7**

The activities

Specified kinds of claims management activity

(1) A claims management activity is a specified kind of activity when it is an activity specified in any of articles 89G to 89M.

(2) For the purposes of this Part—

(a) "claimant" includes, in civil proceedings in Scotland, a pursuer;

(b) "defendant" includes, in civil proceedings in Scotland, a defender;

(c) "personal injury claim" means a claim for personal injury within the meaning of the Civil Procedure Rules 1998 in England and Wales and an action for damages for, or arising from, personal injuries within the meaning set out in section 8(7) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 in Scotland;

(d) "financial services or financial product claim" includes a claim made under section 75 of the Consumer Credit Act 1974;

(e) "housing disrepair claim" means a claim under section 11 of the Landlord and Tenant Act 1985 or section 4 of the Defective Premises Act 1972 in England and Wales or an application in respect of the repairing standard under section 22 of the Housing (Scotland) Act 2006, or claims in relation to the disrepair of premises under a term of a tenancy

agreement or lease or under the common law relating to nuisance or negligence, but does not include claims for statutory nuisance under section 82 of the Environmental Protection Act 1990;

(f) "a claim for a specified benefit" means a claim for one of the following benefits—

(i) industrial injuries benefit, within the meaning given by section 94 of the Social Security Contributions and Benefits Act 1992;

(ii) any supplement or additional allowance, or increase of benefit or allowance to which a recipient of an industrial injuries benefit may be entitled under that Act or any other Act;

(iii) a benefit under a scheme referred to in paragraph 2 or 4 of Schedule 8 to that Act; or

(iv) a benefit under the Pneumoconiosis etc. (Workers' Compensation) Act 1979.

(g) "criminal injury claim" means a claim under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995;

(h) "employment related claim" includes a claim in relation to wages and salaries and other employment related payments and claims in relation to wrongful or unfair dismissal, redundancy, discrimination and harassment;

(i) "investigating" means carrying out an investigation into, or commissioning the investigation of, the circumstances, merits or foundation of a claim; and

(j) "representing" means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made.

(3) A person is to be treated as carrying on a regulated claims management activity in Great Britain when the activity is carried on—

(a) by a person who is—

(i) an individual who is ordinarily resident in Great Britain; or

(ii) a person, other than an individual, who is constituted under the law of England and Wales or Scotland; or

(b) in respect of a claimant or potential claimant who is—

(i) an individual who is ordinarily resident in Great Britain; or

(ii) a person, other than an individual, who is constituted under the law of England and Wales or Scotland.

(4) For the purposes of this article—

(a) a person is "ordinarily resident" in Great Britain if that person satisfies the requirements of the Statutory Residence Test as set out in Schedule 45 to the Finance Act 2013 either—

(i) at the time of the facts giving rise to the claim or potential claim; or

(ii) at the time when the regulated claims management activity is carried out in respect of that claimant or potential claimant;

(b) the references to the "UK" in the Statutory Residence Test in Schedule 45 are to be read as if they were expressed as references to "Great Britain".

Seeking out, referrals and identification of claims or potential claims

(1) Each of the following is a specified kind of activity when carried on in relation to a claim of a kind specified in paragraph (2)—

(a) seeking out persons who may have a claim, unless that activity constitutes the communication of an invitation or inducement to engagement in claims management activity within the meaning of section 21 (restrictions on financial promotion) of the Act;

(b) referring details of—

(i) a claim or potential claim; or

(ii) a claimant or potential claimant

to another person (including to a person having the right to conduct litigation); and

(c) identifying—

(i) a claim or potential claim; or

(ii) a claimant or potential claimant.

(2) The kinds of claim are—

(a) a personal injury claim;

(b) a financial services or financial product claim;

(c) a housing disrepair claim;

(d) a claim for a specified benefit;

(e) a criminal injury claim; and

(f) an employment related claim.

Advice, investigation or representation in relation to a personal injury claim

89H. Each of the following activities is a specified kind of activity when carried on in relation to a personal injury claim—

(a) advising a claimant or potential claimant;

(b) investigating a claim; and

(c) representing a claimant.

Advice, investigation or representation in relation to a financial services or financial product claim

89I. Each of the following activities is a specified kind of activity when carried on in relation to a financial services or financial product claim—

(a) advising a claimant or potential claimant;

(b) investigating a claim; and

(c) representing a claimant.

Advice, investigation or representation in relation to a housing disrepair claim

89J. Each of the following activities is a specified kind of activity when carried on in relation to a housing disrepair claim—

(a) advising a claimant or potential claimant;

(b) investigating a claim; and

(c) representing a claimant.

Advice, investigation or representation in relation to a claim for a specified benefit

89K. Each of the following activities is a specified kind of activity when carried on in relation to a claim for a specified benefit—

(a) advising a claimant or potential claimant;

(b) investigating a claim; and

(c) representing a claimant.

Advice, investigation or representation in relation to a criminal injury claim

89L. Each of the following activities is a specified kind of activity when carried on in relation to a criminal injury claim—

(a) advising a claimant or potential claimant;

(b) investigating a claim; and

(c) representing a claimant.

Advice, investigation or representation in relation to an employment related claim

89M. Each of the following activities is a specified kind of activity when carried on in relation to an employment related claim—

(a) advising a claimant or potential claimant;

(b) investigating a claim; and

(c) representing a claimant.

Exclusions

Claims management activity conducted by legal professionals

(1) There is excluded from articles 89G to 89M any activity which is carried on in England and Wales by—

(a) a legal practitioner;

(b) a firm, organisation or body corporate that carries on the claims management activity through a legal practitioner; or

(c) an individual who carries on the claims management activity at the direction of, and under the supervision of, a legal practitioner who is—

(i) that individual's employer or fellow employee; or

(ii) a director of a company, or a member of a limited liability partnership, that provides the service and is that individual's employer.

(2) For the purposes of paragraph (1) "legal practitioner" means—

(a) a solicitor or barrister of any part of England and Wales or Northern Ireland;

(b) a Fellow of the Chartered Institute of Legal Executives;

(c) a European lawyer, as defined in the European Communities (Services of Lawyers) Order 1978 or the European Communities (Lawyer's Practice) Regulations 2000;

(d) a registered foreign lawyer, as defined in section 89(9) of the Courts and Legal Services Act 1990;

(e) any other member of a legal profession, of a jurisdiction other than England and Wales, that is recognised by the Law Society of England and Wales or the General Council of the Bar as a regulated legal profession.

(3) There is excluded from articles 89G to 89M any activity which is carried on in Scotland by—

(a) a legal practitioner;

(b) a firm, organisation or body corporate that carries on the claims management activity through or under the supervision of a legal practitioner where that firm, organisation or body corporate is—

(i) a firm of solicitors;

(ii) an incorporated practice; or

(iii) a licensed legal services provider and the activity is a legal service as defined within section 3 of the Legal Services (Scotland) Act 2010.

(4) For the purposes of paragraph (3) "legal practitioner" means—

(a) a person who is qualified to practise as a solicitor under section 4 of the Solicitors (Scotland) Act 1980;

(b) an advocate who is a member of the Faculty of Advocates;

(c) a European lawyer as defined in the European Communities (Services of Lawyers) Order 1978 or the European Communities (Lawyer's Practice) (Scotland) Regulations 2000; or

(d) a registered foreign lawyer within the meaning of section 65 of the Solicitors (Scotland) Act 1980.

(5) But an activity mentioned in paragraph (1) or (3) is only excluded from articles 89G to 89M if the legal practitioner concerned carries on the claims management activity in the ordinary course of legal practice pursuant to the professional rules to which that legal practitioner is subject.

(6) The exclusions in this article are to be read as if they were expressed as exemptions for the purposes of the following provisions of the Financial Guidance and Claims Act 2018—

(a) section 32(5)(b) (PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to the FCA); and

(b) section 33(11) (legal services regulators' rules: charges for claims management services).

Claims management activity conducted by a charity or not-for-profit agency

(1) There is excluded from articles 89G to 89M any activity carried on by a charity or a not-for-profit agency.

(2) In this article "charity" means—

(a) a charity as defined by section 1(1) of the Charities Act 2011 or the Charities and Trustee Investment (Scotland) Act 2005; or

(b) a body registered in the Scottish Charity Register.

(3) In this article "not-for-profit agency" means a body that by or under its constitution—

(a) is required to apply the whole of its net income, and any expendable capital, after payment of outgoings for charitable or public purposes; and

(b) is prohibited from distributing, directly or indirectly, any part of its net income by way of profits or its assets among any of its members.

(4) But a body is not prevented from being a not-for-profit agency for the purposes of paragraph (3) if its constitution permits—

(a) the payment, out of the body's funds, of reasonable and proper remuneration for goods or services supplied to the body by a member; or

(b) in the case of a not-for-profit body that is a charity, the payment to a member to which the member is eligible because that member is a beneficiary of the charity; or

(c) the purchase, out of the body's funds, of indemnity insurance for trustees of the body.

Claims management activity conducted by a person appointed by a statutory or other public body

89P. There is excluded from articles 89G to 89M any activity carried on by—

(a) any person established or appointed by virtue of an enactment;

(b) an Independent Complaints Reviewer; or

(c) an Independent Case Examiner

in the course of carrying out that individual's duties.

Claims management activity conducted by the Motor Insurers' Bureau

89Q. There is excluded from articles 89G to 89M any activity carried on by the Motor Insurers' Bureau in the course of carrying on its functions (being the company limited by guarantee mentioned in section 95(2) (notification of refusal of insurance on grounds of health) of the Road Traffic Act 1988).

Claims management activity conducted by a medical defence union

89R. There is excluded from articles 89G to 89M any activity carried on by—

(a) the Medical Protection Society Limited for its members;

(b) the Medical Defence Union Limited for its members; or

(c) the Medical and Dental Defence Union of Scotland Limited for its members.

Claims management activity conducted an independent trade union

(1) There is excluded from articles 89G to 89M any activity carried on by an independent trade union for –

(a) a member (including a retired member or a student member) of an independent trade union;

(b) a member of the family of a member referred to in sub-paragraph (a); or

(c) a former member of the trade union to whom the trade union may, under its rules, provide claims management services, or a member of the family of such a former member.

(2) In paragraph (1), "independent trade union" has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992.

(3) For the purposes of paragraph (1) –

(a) subject to sub-paragraph (b), whether a person is or has been a member (including a retired member or a student member) of a trade union is to be decided in accordance with the rules of that trade union;

(b) "member" of a trade union does not include a person who, under those rules, is a member only for the purpose of pursuing a claim or claims; and

(c) whether a person is a member of the family of a member of a trade union is to be decided in accordance with the rules of that trade union.

(4) An exemption of a trade union under this article is subject to compliance by the trade union with the condition that the trade union, in carrying on a regulated claims management activity, must act in accordance with the code of practice for the provision of regulated claims management activities by trade unions issued by the Treasury.

Claims management activity conducted by a students' union

(1) There is excluded from articles 89G to 89M any activity carried on by a students' union for a member of that students' union or a member of a constituent or affiliated association or body.

(2) In this article "students' union" has the meaning given by section 20 (meaning of "students' union") of the Education Act 1994.

Claims management activity conducted by an insurance intermediary

89U. There is excluded from articles 89G to 89M any regulated activity of the kind specified in article 21, 25, 39A, 53 or 64 carried on by a person who has permission to carry on that activity in relation to a contract of insurance.

Certain providers of referrals

(1) There is excluded from article 89G the activity of referring details of a potential claim or potential claimant to another person if—

(a) the person who refers those details ("the introducer") carries on no other regulated claims management activity;

(b) the activity is incidental to the introducer's main business;

(c) the details are only referred to authorised persons, legal practitioners, or a firm, organisation or body corporate that provides the service through legal practitioners;

(d) of the claims that the introducer refers to such persons, that introducer is paid, in money or money's worth, for no more than 25 claims per calendar quarter; and

(e) the introducer, in obtaining and referring those details, has complied with the provisions of the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation (EU) of the European Parliament and of the Council 2016/679 and the Consumer Protection from Unfair Trading Regulations 2008.

(2) Paragraph (1)(e) does not apply in the case of a referral to a legal practitioner or firm, organisation or body corporate that carries on the activity through legal practitioners.

(3) In this article "legal practitioner" has the meaning given by article 89N(2) or (4).

Services in connection with counterclaims and claims against third parties

89W. There is excluded from articles 89G to 89M any activity carried on in circumstances where—

(a) a claim has been made by a person ("the claimant") against another person ("the defendant"); and

(b) the activity being carried on consists of the provision of a service to the defendant in connection with—

(i) the making of a counterclaim against the claimant arising out of the same set of facts as the claim referred to in sub-paragraph (a); or

(ii) the making of a claim against a third party (whether for contribution, as a subrogated claim, or otherwise) which is incidental to, or consequent on, the claim referred to in sub-paragraph (a).**]**

PART IV

CONSEQUENTIAL PROVISIONS

Regulated mortgage contracts: consequential provisions

Consequential amendments of the Consumer Credit Act 1974

[F700]90. . . . . . .

Textual Amendments

F700 Art. 90 omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **9(2)**

Consequential amendments of subordinate legislation under the Consumer Credit Act 1974

[F701]91. . . . . . .

Textual Amendments

F701 Art. 91 omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **9(3)**

[[F702]PART V

UNAUTHORISED PERSONS CARRYING ON INSURANCE [[F703]DISTRIBUTION] ACTIVITIES

Textual Amendments

F702 Pt. 5 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), **13**

F703 Word in Pt. V heading substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **7(2)**

Interpretation

92. In this Part—

"designated professional body" means a body which is for the time being designated by the Treasury under section 326 of the Act (designation of professional bodies);

"insurance [[F704]distribution] activity" means any regulated activity of the kind specified by article 21, 25(1) or (2), 39A or 53, or, so far as relevant to any of those articles, article 64, which is carried on in relation to a contract of insurance;

"the record" means the record maintained by **[**[F705]the FCA**]** under section 347 of the Act (public record of authorised persons etc.);

"recorded insurance intermediary" has the meaning given by article 93(4);

"a relevant member", in relation to a designated professional body, means a member (within the meaning of section 325(2) of the Act) of the profession in relation to which that designated professional body is established, or a person who is controlled or managed by one or more such members.

Textual Amendments

F704 Word in art. 92 substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **7(3)**

F705 Words in art. 92 substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

Duty to maintain a record of unauthorised persons carrying on insurance [[F706]distribution] activities

93.—(1) Subject to articles 95 and 96, **[**[F707]the FCA**]** must include in the record every person who—

(a) as a result of information obtained by virtue of its rules or by virtue of a direction given, or requirement imposed, under **[**[F708]section 55U(4)**]** of the Act (procedure for applications under Part IV), appears to **[**[F707]the FCA**]** to fall within paragraph (2); or

(b) as a result of information obtained by virtue of article 94, appears to **[**[F707]the FCA**]** to fall within paragraph (3).

(2) A person falls within this paragraph if he is, or has entered into a contract by virtue of which he will be, an appointed representative who carries on any insurance **[**[F706]distribution**]** activity.

(3) A person falls within this paragraph if—

(a) he is a relevant member of a designated professional body who carries on, or is proposing to carry on, any insurance **[**[F706]distribution**]** activity; and

(b) the general prohibition does not (or will not) apply to the carrying on of those activities by virtue of section 327 of the Act (exemption from the general prohibition).

[
[F709](3A) An application for inclusion in the record made by a person who falls within paragraph (2) or (3) must be determined by the FCA before the end of the period of 3 months beginning with the date on which it received the completed application.

(3B) A notification by a designated professional body in accordance with article 94 is to be treated as an application for inclusion in the record for the purposes of paragraph (3A).**]**

(4) In this Part, "recorded insurance intermediary" means a person who is included in the record by virtue of paragraph (1).

(5) The record must include—

(a) in the case of any recorded insurance intermediary, its address; and

(b) in the case of a recorded insurance intermediary which is not an individual, the name of the individuals who are responsible for the management of the business carried on by the intermediary, so far as it relates to insurance **[**[F706]distribution**]** activities.

Textual Amendments

F706 Word in art. 93 substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **7(4)(a)**

F707 Words in art. 93(1) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

F708 Words in art. 93(1)(a) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(h)**

F709 Art. 93(3A)(3B) inserted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **7(4)(b)**

Members of designated professional bodies

94.—(1) A designated professional body must, by notice in writing, inform **[**[F710]the FCA**]** of—

(a) the name,

(b) the address, and

(c) in the case of a relevant member which is not an individual, the name of the individuals who are responsible for the management of the business carried on by the member, so far as it relates to insurance **[**[F711]distribution**]** activities,

of any relevant member who falls within paragraph (2).

(2) A relevant member of a designated professional body falls within this paragraph if, in accordance with the rules of that body, he carries on, or proposes to carry on any insurance **[**[F711]distribution**]** activity but does not have, and does not propose to apply for, Part IV permission on the basis that the general prohibition does not (or will not) apply to the carrying on of that activity by virtue of section 327 of the Act.

(3) A designated professional body must also, by notice in writing, inform **[**[F712]the FCA**]** of any change in relation to the matters specified in sub-paragraphs (a) to (c) of paragraph (1).

(4) A designated professional body must inform **[**[F712]the FCA**]** when a relevant member to whom paragraph (2) applies ceases, for whatever reason, to carry on insurance **[**[F711]distribution**]** activities.

(5) **[**[F712]The FCA**]** may give directions to a designated professional body as to the manner in which the information referred to in paragraphs (1), (3) and (4) must be provided.

Textual Amendments

F710 Words in art. 94(1) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

F711 Word in art. 94 substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **7(5)**

F712 Words in art. 94(3)(4)(5) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

Exclusion from record where not fit and proper to carry on insurance [F713]distribution] activities

95.—(1) If it appears to **[**[F714]the FCA**]** that a person who falls within article 93(2) (appointed representatives) ("AR") is not a fit and proper person to carry on insurance **[**[F715]distribution**]**

activities, it may decide not to include him in the record or, if that person is already included in the record, to remove him from the record.

[[F716](1A) In making a determination as to whether a person is a fit and proper person for the purposes of paragraph (1), the FCA must consider whether the relevant registration conditions under Article 3 of the insurance distribution directive are met.**]**

(2) Where **[**[F714]the FCA**]** proposes to make a determination under paragraph (1), it must give AR a warning notice.

(3) If **[**[F714]the FCA**]** makes a determination under paragraph (1), it must give AR a decision notice.

(4) If **[**[F714]the FCA**]** gives AR a decision notice under paragraph (3), AR may refer the matter to the Tribunal.

(5) **[**[F714]The FCA**]** may, on the application of AR, revoke a determination under paragraph (1).

(6) If **[**[F714]the FCA**]** decides to grant the application, it must give AR written notice of its decision.

(7) If **[**[F714]the FCA**]** proposes to refuse the application, it must give AR a warning notice.

(8) If **[**[F714]the FCA**]** decides to refuse the application, it must give AR a decision notice.

(9) If **[**[F714]the FCA**]** gives AR a decision notice under paragraph (8), AR may refer the matter to the Tribunal.

(10) Sections 393 and 394 of the Act (third party rights and access to **[**[F717]FCA or PRA**]** material) apply to a warning notice given in accordance with paragraph (2) or (7) and to a decision notice given in accordance with paragraph (3) or (8).

Textual Amendments

F713 Word in art. 95(1) heading substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **7(6)(a)**

F714 Words in art. 95(1)-(9) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

F715 Word in art. 95(1) substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **7(6)(a)**

F716 Art. 95(1A) inserted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **7(6)(b)**

F717 Words in art. 95(10) substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(i)**

Exclusion from the record where [F718FCA] has exercised its powers under Part XX of the Act

96.—(1) If a person who appears to **[**[F719]the FCA**]** to fall within article 93(3) (member of a designated professional body) falls within paragraph (2) or (3), **[**[F719]the FCA**]** must not include him in the record or, if that person is already included in the record, must remove him from the record.

(2) A person falls within this paragraph if, by virtue of a direction given by **[**[F719]the FCA**]** under section 328(1) of the Act (directions in relation to the general prohibition), section 327(1) of the Act does not apply in relation to the carrying on by him of any insurance **[**[F720]distribution**]** activity.

(3) A person falls within this paragraph if **[**[F719]the FCA**]** has made an order under section 329(2) of the Act (orders in relation to the general prohibition) disapplying section 327(1) of the Act in relation to the carrying on by him of any insurance **[**[F721]distribution**]** activity.**]**

Textual Amendments

F718 Word in art. 96 heading substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(j)**

F719 Words in art. 96 substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), art. 1(1), **Sch. 2 para. 35(a)**

F720 Word in art. 96(2) substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **7(7)**

F721 Word in art. 96(3) substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), **7(7)**

[F722PART 6

MISCELLANEOUS

Textual Amendments

F722 Pt. 6 and heading inserted (15.7.2004) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2004 (S.I. 2004/1610), arts. 1(2), **3**

Disapplication of section 49(2) of the Act

97. In section 49 of the Act (persons connected with an applicant for Part 4 permission), after subsection (2) insert—

"(2A) But subsection (2) does not apply to the extent that the permission relates to—

(a) an insurance mediation activity (within the meaning given by paragraph 2(5) of Schedule 6); or

(b) a regulated activity involving a regulated mortgage contract.".**]**

Greg Pope
Jim Dowd
Two of the Lords Commissioners of Her Majesty's Treasury

Status:
Point in time view as at 01/04/2019.

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 24 June 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.