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STATUTORY INSTRUMENTS

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**2001 No. 3649**

**The Financial Services and Markets Act 2000  
(Consequential Amendments and Repeals) Order 2001**

**PART 7**

**ENACTMENTS RELATING TO SCOTLAND**

**CHAPTER I**

primary legislation

*Agricultural Credits (Scotland) Act 1929 (19&20 Geo. V c. 13)*

**Repeal of redundant provision**

**216.** Section 8 of the Agricultural Credits (Scotland) Act 1929 (registration of agricultural charges) is repealed.

**Definition of “Bank”**

**217.** In section 9 of the Agricultural Credits (Scotland) Act 1929 (interpretation) for the definition of “Bank”(1) substitute—

““Bank” means—

- (a) the Bank of England,
- (b) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits,
- (c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits, or
- (d) the Post Office in the exercise of its powers to provide banking services,

and the expressions used in paragraphs (b) and (c) of this definition must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act;”.

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(1) The definition of “Bank” in section 9 was amended by the Banking Act 1987 (c. 22, S.I.F 10), section 108(1), Schedule 6 and modified by S.I. 1992/3218, regulation 82(1), Schedule 10, Pt. 1, paragraph 4.

*Local Government (Scotland) Act 1973 (c. 65)*

**Meaning of “securities”**

**218.** For subsection (1) of section 42(2) of the Local Government (Scotland) Act 1973 (interpretation of sections 39 and 41) substitute—

“(1) In sections 39 and 41 of this Act “securities” has the meaning given by section 92.”

**Contracts deemed to be insurance policies**

**219.** In section 86(3) of the Local Government (Scotland) Act 1973 (insurance by local authorities against accidents to members) for the words “the Insurance Companies Act 1982”(3) substitute “the Financial Services and Markets Act 2000”.

**Meaning of “securities”**

**220.**—(1) Section 92 of the Local Government (Scotland) Act 1973 (transfer of securities on alteration of area etc.) is amended as follows.

(2) In subsection (2), the definition of “securities”(4) is repealed.

(3) After that subsection insert—

“(3) “Securities” means—

- (a) shares;
- (b) instruments creating or acknowledging indebtedness;
- (c) government and public securities;
- (d) instruments giving entitlements to investments;
- (e) certificates representing securities;
- (f) units in a collective investment scheme;
- (g) rights to, or interests in, any security of the kind mentioned in paragraphs (a) to (f);
- (h) rights (whether actual or contingent) to money lent to, or deposited with—
  - (i) a society registered under the Industrial and Provident Societies Act 1965, or
  - (ii) a building society within the meaning of the Building Societies Act 1986.

(4) Subsection (3) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”

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(2) Subsection (1) of section 42 was substituted by the Financial Services Act 1986 (c. 60, S.I.F 69) section 212(2), Schedule 16, paragraph 9.

(3) The words being substituted were substituted by the Insurance Companies Act 1982 (c. 50), Schedule 4, paragraph 22.

(4) The definition of “securities” was substituted by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 92(22).

*National Health Service (Scotland) Act 1978 (c. 29)*

**Financial Services and Markets Act 2000 disappplied to certain health service schemes**

**221.** In section 85B(5)(5) of the National Health Service (Scotland) Act 1978 (schemes for meeting losses and liabilities etc. of certain health service bodies), for the words “carrying on insurance business for the purposes of the Insurance Companies Act 1982” substitute “effecting or carrying out contracts of insurance for the purposes of the Financial Services and Markets Act 2000”.

*Solicitors (Scotland) Act 1980 (c. 46)*

**Specification of banks where solicitors may keep accounts**

**222.**—(1) Section 35 of the Solicitors (Scotland) Act 1980 (accounts rules) is amended as follows.

(2) In subsection (2), for paragraph (e)(6) substitute—

- “(e) a person (other than a building society) who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
- (ea) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to the Financial Services and Markets Act 2000 which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits;”.

(3) After subsection (2) of section 35 insert—

- “(2A) Paragraphs (e) and (ea) of subsection (2) must be read with—
  - (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.”.

**Meaning of “authorised insurer”**

**223.**—(1) Section 44 of the Solicitors (Scotland) Act 1980 (professional indemnity) is amended as follows.

(2) In subsection (5), for the words “authorised insurer” to the end of paragraph (b) substitute—

“an “authorised insurer” is—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of general liability insurance;
- (b) a person who has permission under Part 4 of that Act to effect or carry out contracts of insurance relating to accident, sickness, credit, suretyship, miscellaneous financial loss and legal expenses;
- (c) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of general liability insurance; or
- (d) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation

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(5) Section 85B was inserted by the National Health Service and Community Care Act 1990 (c. 19, S.I.F 113:2), section 41.

(6) Section 35(2)(e) was substituted by the Banking Act 1987 (c. 22, S.I.F 10), section 108(1), Schedule 6, paragraph 9.

under paragraph 12 of that Schedule) to effect or carry out contracts relating to accident, sickness, credit, suretyship, miscellaneous financial loss and legal expenses;”.

(3) After subsection (5) of section 44 insert—

“(6) The definition of “authorised insurer” in subsection (5) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

*Bankruptcy (Scotland) Act 1985 (c. 66)*

**Petitions for sequestration under Financial Services and Markets Act 2000**

**224.** In section 10(1)(c)(7) of the Bankruptcy (Scotland) Act 1985 (concurrent proceedings for sequestration or analogous remedies), for the words “section 72 of the Financial Services Act 1986” substitute “section 372 of the Financial Services and Markets Act 2000”.

**Meaning of “appropriate bank or institution”**

**225.** In section 73 of the Bankruptcy (Scotland) Act 1985 (interpretation) for the definition of “appropriate bank or institution”(8) substitute—

““appropriate bank or institution” means—

- (a) the Bank of England,
- (b) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits,
- (c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits, or
- (d) a person who is exempt from the general prohibition in respect of accepting deposits as a result of an exemption order made under section 38(1) of that Act,

and the expressions in this definition must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act;”.

*Housing (Scotland) Act 1987 (c. 26)*

**Definition of “bank”**

**226.—**(1) Section 338 of the Housing (Scotland) Act 1987 (interpretation) is amended as follows.

(2) In subsection (1)—

(a) in the definition of “bank”, for paragraph (a) substitute—

- “(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits,
- (ab) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result

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(7) Section 10(1)(c) was substituted by the Financial Services Act 1986 (c. 60, S.I.F 69) section 212(2), Schedule 16, paragraph 29.

(8) The definition of “appropriate bank or institution” was substituted by the Banking Act 1987 (c. 22, S.I.F 10), section 108(1), Schedule 6, paragraph 20.

of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits, or”;

(b) for the definition of “insurance company” substitute—

““insurance company” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance, or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance;”.

(3) After subsection (1) insert—

“(1A) The definitions of “bank” and “insurance company” in subsection (1) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

#### **Local authority indemnity for building societies: consultation requirements**

**227.** In section 229(4) of the Housing (Scotland) Act 1987 (local authority indemnity for building societies: consultation requirements) for “Building Societies Commission” substitute “Financial Services Authority”.

*The Criminal Justice (Scotland) Act 1987 (c. 41)*

#### **Competent authorities for receipt of information**

**228.** For paragraphs (e) to (l) of section 54(5) of the Criminal Justice (Scotland) Act 1987 (competent authorities for the purposes of disclosure of information obtained in relation to serious or complex fraud) substitute—

“(e) a person appointed under—

- (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
- (ii) section 168 of that Act (investigations in particular cases),
- (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
- (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
- (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),

to conduct an investigation;

- (f) a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (compensation scheme manager);”.

*Self-Governing Schools etc. (Scotland) Act 1989 (c. 39)*

**Specification of banks and investments**

**229.**—(1) Section 53 of the Self-Governing Schools etc. (Scotland) Act 1989 (disposal of surplus money on winding up) is amended as follows.

(2) In subsection (1)(a), for the words “any bank” to the end substitute—  
“any person who has permission under the Financial Services and Markets Act 2000 to accept deposits); and”.

(3) For subsection (4) substitute—

“(4) This section applies to any investment which is a security.”

(4) For subsection (5) substitute—

“(5) The references to accepting deposits in subsection (1)(a) and to an investment being a security in subsection (4) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

*Enterprise and New Towns (Scotland) Act 1990 (c. 35)*

**Exclusion from financial promotion restriction**

**230.** For section 31(2) of the Enterprise and New Towns (Scotland) Act 1990 (application and disapplication of certain provisions) substitute—

“(2) Section 21 of the Financial Services and Markets Act 2000 (restrictions on financial promotion) shall not apply to any invitation or inducement (within the meaning of that section) which Scottish Enterprise communicates in the discharge of its functions.”

*Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)*

**Definition of “relevant institution”**

**231.** For section 12(13)(a) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (dormant accounts of charities in banks, etc.) substitute—

“(a) a “relevant institution” is—

- (i) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
- (ii) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits;
- (iii) such other person or class of persons as the Secretary of State may by regulations made under this section, prescribe;”.

**Definition of “recognised financial institution”**

**232.**—(1) Section 19 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (executory services by recognised financial institutions) is amended as follows.

(2) For subsection (2) substitute—

“(2) In this section “recognised financial institution” means—

- (a) any person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits;
- (c) any subsidiary (as defined by section 736(1) of the Companies Act 1985) of a body falling within paragraph (a) or (b) above whose business or any part of whose business consists of the provision of executry services.”.

(3) After subsection (2) insert—

“(2A) The definition of “recognised financial institution” in subsection (2) above must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

(4) In subsection (6), for the words from “section 16” to the end, substitute “rules made under section 141(1) of the Financial Services and Markets Act 2000 (which may restrict insurers to carrying on insurance business).”.

### **Meaning of “executry services”**

**233.** In section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (interpretation of sections 16 to 22), in the definition of “executry services” for the words “investment business within the meaning of the Financial Services Act 1986” substitute “carrying on a regulated activity within the meaning of the Financial Services and Markets Act 2000”.

### *Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)*

### **Competent authorities for the receipt of information**

**234.** For paragraphs (e) to (l) of section 30(5) of the Criminal Law (Consolidation) (Scotland) Act 1995 (disclosure of information) substitute—

“(e) a person appointed under—

- (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
- (ii) section 168 of that Act (investigations in particular cases),
- (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
- (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
- (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),

to conduct an investigation;

- (f) a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (compensation scheme manager);”.

*Adults with Incapacity (Scotland) Act 2000 (asp 4)*

**Persons capable of giving “proper advice”**

**235.**—(1) Schedule 2 to the Adults with Incapacity (Scotland) Act 2000 (management of estate of adult) is amended as follows.

(2) In paragraph 5(2), for the words “authorised to carry on investment business in the United Kingdom for the purposes of the Financial Services Act 1986 (c. 60)” substitute “who has permission for the purposes of the Financial Services and Markets Act 2000 to advise on investments”.

(3) After paragraph 5(2) insert—

“(2A) Sub-paragraph (2) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

CHAPTER II

secondary legislation

*The Banking Appeal Tribunal (Scottish Appeals)*

**Revocation of instruments made under the Banking Act 1987**

**236.** The following instruments are revoked—

- (a) The Banking Appeal Tribunal (Scottish Appeals) Regulations 1987 (S.I. 1987/1336 (S.95));
- (b) The Banking Appeal Tribunal (Scottish Appeals) Amendment Regulations 1993 (S.I. 1993/1061 (S.150)).

*Local Government Superannuation (Scotland) Regulations 1987 (S.I. 1987/1850)*

**Actionable loss arising from pension mis-selling**

**237.** In regulation B4B(4)(b) of the Local Government Superannuation (Scotland) Regulations 1987(rejoining pensionable employment)(9)—

- (a) after the words “section 62 of the Financial Services Act 1986” insert “or section 150 of the Financial Services and Markets Act 2000”; and
- (b) the words “made under the Act” are revoked.

**Use and investment of superannuation funds' moneys**

**238.**—(1) Regulation P6 of the Local Government Superannuation (Scotland) Regulations 1987 (use and investment of superannuation funds' moneys) is amended as follows.

(2) In paragraph (7A)(10) for the words “the provisions of” to the end of sub-paragraph (b) substitute—

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(9) Regulation B4B(4)(b) was inserted by the Local Government Superannuation (Scotland) Amendment (No. 2) Regulations 1997 (S.I. 1997/1373 (S. 108)).

(10) Paragraph (7A) was inserted by the Local Government Superannuation (Scotland) Amendment (No. 2) Regulations 1993 (S.I. 1993/2013 (S.224)).



“the provisions of CIS 5.14.4R and CIS 5.14.6R of the rules made by the Financial Services Authority under Part 10 of the Financial Services and Markets Act 2000.”.

(3) In paragraph (10), for the definition of “investment manager”(11) substitute—

““investment manager” means a person who has permission for the purposes of the Financial Services and Markets Act 2000 to manage investments which are held for the purposes of an occupational pension scheme and who is reasonably believed by the administering authority to be suitably qualified to make investment decisions on their behalf, but who is not an employee of that authority;”.

(4) After paragraph (10) insert—

“(11) The definition of “investment manager” in paragraph (10) must be read with—

- (a) sections 22 and 419 of the Financial Services and Markets Act 2000;
- (b) any relevant order under those sections;
- (c) Schedule 2 to that Act.”.

*The Teachers' Superannuation (Scotland) Regulations 1992 (S.I. 1992/280)*

**Meaning of “reference banks”**

**239.**—(1) The Teachers' Superannuation (Scotland) Regulations 1992 are amended as follows.

(2) For paragraph (5)(b) of regulation E31A (interest on late payment of certain benefits)(12) substitute—

“(b) “the reference banks” means the four largest persons for the time being who—

- (i) have permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
- (ii) are incorporated in and carrying on in the United Kingdom a regulated activity of accepting deposits; and
- (iii) quote a base rate applicable to sterling deposits,

and in this definition the reference to accepting deposits must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act;”.

*The Brechin and Bridge of Dun Light Railway Order 1992 (S.I. 1992/1267)*

**Meaning of “insurer”**

**240.**—(1) Article 10 of the Brechin and Bridge of Dun Light Railway Order 1992 (public liability insurance) is amended as follows.

(2) In paragraph (1), for the definition of “insurer” substitute—

““insurer” means—

- (a) any person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance of a relevant class, or

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(11) The definition of “investment manager” was substituted by the Local Government Superannuation (Scotland) Amendment Regulations 1991 (S.I. 1991/78 (S.7)), regulation 5(4).

(12) Regulation E31A was substituted by the Teachers' Superannuation (Scotland) Amendment Regulations 1999 (S.I. 1999/446 (S. 30)), regulation 15.

- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance of a relevant class;”.
- (3) After paragraph (1) insert—
  - “(1A) The definition of “insurer” in paragraph (1) must be read with—
    - (a) section 22 of the Financial Services and Markets Act 2000;
    - (b) any relevant order under that section; and
    - (c) Schedule 2 to that Act.”.

*The Non-Domestic Rating (Payment of Interest)  
(Scotland) Regulations 1992 (S.I. 1992/2184 (S. 218))*

**Definition of “reference banks”**

**241.**—(1) Regulation 4 of the Non-Domestic Rating (Payment of Interest) (Scotland) Regulations 1992 (calculation of interest—repayment on or after 1st October 1992) is amended as follows.

- (2) In paragraph (3)—
  - (a) for the words from “seven” to “United Kingdom” substitute—
    - “seven largest persons who—
      - (a) have permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits; and
      - (b) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits;”;
  - (b) for the words “an institution” substitute “a person”; for the words “that institution” substitute “that person” and for the word “its” substitute “the”.
- (3) After paragraph (3) insert—
  - “(4) Paragraph (3) must be read with—
    - (a) section 22 of the Financial Services and Markets Act 2000;
    - (b) any relevant order under that section; and
    - (c) Schedule 2 to that Act.”.

*The Registered Housing Associations (Accounting  
Requirements) (Scotland) Order 1993 (S.I. 1993/487 (S. 52))*

**Meaning of “listed investment”**

**242.** In paragraph 15 of Schedule 2 to the Registered Housing Associations (Accounting Requirements) (Scotland) Order 1993 (investments)—

- (a) in sub-paragraph (1)(b) for the words “the Financial Services Act 1986” substitute “the Financial Services and Markets Act 2000”;
- (b) in sub-paragraph (3) for the words “the Financial Services Act 1986” substitute “the Financial Services and Markets Act 2000”.

*The Criminal Justice (Scotland) Act 1987 (Crown Servants and Regulators etc.) Regulations 1994 (S.I. 1994/1808) (S.80))*

**Exemption from obligation to disclose knowledge or suspicion of money laundering**

**243.** In regulation 4(1) of the Criminal Justice (Scotland) Act 1987 (Crown Servants and Regulators etc.) Regulations 1994 (designation of persons appearing to the Secretary of State to be performing regulatory etc. functions)—

- (a) for sub-paragraph (c) substitute—
  - “(c) the Financial Services Authority;”;
- (b) sub-paragraphs (b), (d) to (g) and (i) to (m) are revoked.

*The National Health Service Superannuation Scheme (Scotland) Regulations 1995 (S.I. 1995/365)*

**Actionable loss arising from pension mis-selling**

**244.** In paragraph (1)(c) of regulation B6(13) of the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (opting into the scheme: mis-sold pensions), after the words “section 62 of the Financial Services Act 1986” add “or section 150 of the Financial Services and Markets Act 2000”.

*The Charities (Dormant Accounts) (Scotland) Regulations 1995 (S.I. 1995/2056)*

**Prescribed “relevant institutions”**

**245.** In regulation 2A of the Charities (Dormant Accounts) (Scotland) Regulations 1995(14) for the words “(being institutions mentioned in Schedule 2 to the Banking Act 1987)” substitute “that is to say a company which was, immediately before the repeal of the Banking Act 1987, exempted from the prohibition in section 3 of that Act by virtue of section 4(1) of, and paragraph 4 of Schedule 2 to, that Act”.

*The Acquisition of Land (Rate of Interest After Entry)  
(Scotland) Regulations 1995 (S.I. 1995/2791) (S.206))*

**Definition of reference banks**

**246.—(1)** Regulation 2 of the Acquisition of Land (Rate of Interest after Entry) (Scotland) Regulations 1995 (rate of interest) is amended as follows.

- (2) In paragraph (5)(a) for the words from “seven” to “United Kingdom,” substitute—  
“seven largest persons who—
  - (a) have permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits; and
  - (b) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits;”;

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(13) Regulation B6 was inserted by the National Health Services Superannuation Scheme (Scotland) Amendment Regulations 1997 (S.I. 1997/1434 (S.111), regulation 4.

(14) Regulation 2A was inserted by the Charities (Dormant Accounts) (Scotland) Amendment Regulations 1997 (S.I. 1997/964 (S.86)).

(3) In paragraphs (5)(b) and (6) for the words “an institution” (in both places) substitute “a person”; for the words “that institution” substitute “that person” and for “its” (wherever it appears) substitute “his”.

(4) After paragraph (5) insert—

“(5A) Paragraph (5) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

*THE TEACHERS' SUPERANNUATION (ADDITIONAL VOLUNTARY CONTRIBUTIONS) (SCOTLAND) REGULATIONS 1995 (S.I. 1995/2814)*

**Meaning of “insurer”**

**247.**—(1) Regulation 9 of the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995 (investment of contributions) is amended as follows.

(2) In paragraphs (1) and (2), for “insurance company” wherever it appears substitute “insurer”.

(3) For paragraph (3) substitute—

“(3) In this regulation “insurer” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance, or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance.”.

(4) After paragraph (3) insert—

“(4) Paragraph (3) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section;
- (c) Schedule 2 to that Act.”.

*The Fossil Fuel Levy (Scotland) Regulations 1996 (S.I. 1996/293)*

**Investment of sums collected**

**248.**—(1) Regulation 25 of the Fossil Fuel Levy (Scotland) Regulations 1996 (investment of sums collected) is amended as follows.

(2) In paragraph (3) for the words from “an institution” to “Regulations 1992”(15) substitute—  
 “a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits and an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule to accept deposits as a result of satisfying the establishment conditions within the meaning of that Schedule”.

(3) After paragraph (3) insert—

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(15) The words now being substituted were themselves substituted by the Fossil Fuels Levy (Scotland) Amendment Regulations 1996 (S.I. 1996/1512) (S.135) regulation 2.)

“(4) Paragraph (3) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

*The Independent Qualified Conveyancers (Scotland) Regulations 1997 (S.I. 1997/316) (S.20))*

### **Meaning of “banks” and “recognised financial institution”**

**249.**—(1) Regulation 2 of the Independent Qualified Conveyancers (Scotland) Regulations 1997 (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) for the definition of “Bank” substitute—

““Bank” means—

- (a) a person (other than a building society) who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits; or
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule to accept deposits as a result of satisfying the establishment conditions within the meaning of that Schedule;”;

(b) for the definition of “recognised financial institution” substitute—

““recognised financial institution” means—

- (a) any person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits;
- (c) any subsidiary (as defined by section 736(1) of the Companies Act 1985) of a body falling within paragraph (a) or (b) above whose business or any part of whose business consists of the provision of executry services.”.

(3) After paragraph (1) insert—

“(1A) The definitions of “bank” and “recognised financial institution” in paragraph (1) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

*The Executry Practitioners (Scotland) Regulations 1997 (S.I. 1997/317) (S.21))*

### **Meaning of “bank” and “recognised financial institution”**

**250.**—(1) Regulation 2 of the Executry Practitioners (Scotland) Regulations 1997 (interpretation) is amended as follows.

(2) In paragraph (1) for the definition of “bank” substitute—

““Bank” means—

- (a) a person (other than a building society) who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits; or
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule to accept deposits as a result of satisfying the establishment conditions within the meaning of that Schedule;”.

(3) In paragraph (1) for the definition of “recognised financial institution” substitute—

““recognised financial institution” means—

- (a) any person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits;
- (c) any subsidiary (as defined by section 736(1) of the Companies Act 1985) of a body falling within paragraph (a) or (b) above whose business or any part of whose business consists of the provision of executry services.”.

(4) After paragraph (1) insert—

“(1A) The definitions of “bank” and “recognised financial institution” in paragraph (1) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

*The Local Government Pension Scheme (Scotland) Regulations 1998 (S.I. 1998/366)*

**Meaning of “authorised insurer” and “relevant institution”**

**251.**—(1) Regulation 4(16)(16) of the Local Government Pension Scheme (Scotland) Regulations 1998 (agreements to enable employees of non-Scheme employers to be members (“admission agreements”)) is amended as follows.

(2) For sub-paragraph (a) substitute—

“(a) “authorised insurer” means—

- (i) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of general insurance; or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of general insurance, and the expressions used in this definition must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act.”.

(3) For sub-paragraph (e) substitute—

“(e) “relevant institution” means—

- (i) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 accept deposits;

- (ii) a person who is exempt from the general prohibition in respect of accepting deposits as a result of an exemption order made under section 38(1) of that Act;
  - (iii) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule to accept deposits as a result of satisfying the establishment conditions within the meaning of that Schedule,
- and the expressions used in this definition must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act.”.

### **Actionable loss arising from pensions mis-selling**

**252.** In regulation 6(9) of the Local Government Pension Scheme (Scotland) Regulations 1998 (joining the Scheme), after the words “section 62 of the Financial Services Act 1986” add “or section 150 of the Financial Services and Markets Act 2000”.

### **Appropriate annuity contracts etc.**

**253.**—(1) Regulation 145(17) of the Local Government Pension Scheme (Scotland) Regulations 1998 (qualifying arrangements) is amended as follows.

- (2) In paragraph (2), for sub-paragraph (a) substitute—
  - “(a) effects or carries out contracts of long-term insurance in the United Kingdom or any other member State; and”.
- (3) For paragraph (3) substitute—
  - “(3) Paragraph (2)(a) must be read with—
    - (a) section 22 of the Financial Services and Markets Act 2000;
    - (b) any relevant order made under that section; and
    - (c) Schedule 2 to that Act.”.

### **Definition of terms**

**254.**—(1) Schedule 1 to the Local Government Pension Scheme (Scotland) Regulations 1998 (interpretation) is amended as follows.

- (2) In the definition of “AVC insurance company”—
  - (a) for paragraphs (a) and (b) substitute—
    - “(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance;
    - (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance; or”
  - (b) for the words after the end of paragraph (c) substitute—
    - “and paragraphs (a) and (b) of this definition must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act.”.
- (3) In the definition of “the Reference banks”—



- (a) for the words from “seven largest institutions” to the end of the definition substitute—  
“seven largest persons for the time being who—
  - (a) have permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
  - (b) are incorporated in and carrying on in the United Kingdom a regulated activity of accepting deposits; and
  - (c) quote a base rate in sterling,
 and in this definition—
  - the size of a person at any time is to be determined by reference to the gross assets denominated in sterling of that person, together with any subsidiary (as defined in section 736 of the Companies Act 1985), as shown in the audited end-of-year accounts last published before that time; and
  - the reference to accepting deposits must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act;”.
- (4) In the definition of “open ended investment company”(18) for the words “section 75(8) of the Financial Services Act 1986” substitute “section 236 of the Financial Services and Markets Act 2000”.

*The National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 (S.I. 1998/1451) (S.75))*

**Meaning of “insurance company”**

**255.**—(1) Regulation 2 of the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 (interpretation) is amended as follows.

- (2) In paragraph (1) for the definition of “insurance company” substitute—

““insurance company” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance; or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule to effect or carry out contracts of long-term insurance as a result of satisfying the establishment conditions within the meaning of that Schedule;”.

- (3) After paragraph (1) insert—

“(1A) The definition of “insurance company” in paragraph (1) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

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(18) The definition of “open ended investment company” was substituted by S.I. 2000/74, regulation 6(2).



*The Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998 (S.I. 1998/2888) (S.168))*

**Definitions of terms**

**256.**—(1) In regulation 2 of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998 (general definitions)(**19**)—

- (a) the existing provision becomes paragraph (1);
- (b) the definitions of “European authorised institution” and “European institution” are revoked;
- (c) the definition of “home-regulated investment business” is revoked;
- (d) for the definition of “relevant institution” substitute—

““relevant institution” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
  - (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits; or
  - (c) a person who is an exempt person in respect of accepting deposits as a result of an order made under section 38(1) of that Act;”;
- (e) after paragraph (1) insert—
- “(2) The definition of “relevant institution” in paragraph (1), together with regulations 3(5) to (6A) and 4(2) and paragraph 4 of Part I of Schedule 1, must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.”.

**Meaning of “investment”**

**257.**—(1) In regulation 3 of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998 (definition of “investment”), for paragraphs (5) and (6) substitute—

“(5) A contract of insurance is an investment if and only if it is a contract of a relevant class, and is entered into with a person within paragraph (6) for whom entering into the contract constitutes the carrying on of a regulated activity (within the meaning of the Financial Services and Markets Act 2000).

(6) The persons within this paragraph are—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance of a relevant class;
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance of a relevant class; or

- (c) a person who does not fall within sub-paragraph (a) or (b) and who, because he has his head office in an EEA State (within the meaning of that Act) other than the United Kingdom, is permitted by the law of that State to effect or carry out contracts of insurance of a relevant class.
- (6A) A contract of insurance is of a relevant class for the purposes of paragraphs (5) and (6) if it is—
  - (a) a contract of insurance on human life or a contract to pay an annuity on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified); or
  - (b) a contract to manage the investments of pension funds, whether or not combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.”.
- (2) For paragraphs (7) and (8) substitute—
  - “(7) A stock lending arrangement is an investment if, and only if, in respect of it, the conditions in rules 5.14.4R and 5.14.6R in the Collective Investment Scheme Sourcebook are complied with.
  - (8) For the purposes of paragraph (7)—
    - (a) the references in rules 5.14.4R and 5.14.6R to the trustee must be read as if they were references to the administering authority; and
    - (b) the “Collective Investment Scheme Sourcebook” means the Collective Investment Scheme Sourcebook made by the Financial Services Authority under Part 10 of the Financial Services and Markets Act 2000.”.

### **Meaning of “investment manager”**

**258.**—(1) Regulation 4 of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998 (definition of “investment manager”), for paragraphs (2) to (4) substitute—

- “(2) A person is an investment manager if—
  - (a) he has permission under Part 4 of the Financial Services and Markets Act 2000 to manage the assets of occupational pension schemes;
  - (b) he is an EEA firm of the kind mentioned in paragraph 5(a) or (b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to manage the assets of occupational pension schemes; or
  - (c) he is a person—
    - (i) who does not carry on regulated activities (within the meaning of that Act) from a permanent place of business maintained by him in the United Kingdom;
    - (ii) whose head office is situated in an EEA State (within the meaning of that Act) other than the United Kingdom;
    - (iii) who is recognised by the law of that EEA State as a national of that or another EEA State;
    - (iv) who is authorised under that law to carry on one or more regulated activities (within the meaning of that Act); and

- (v) who is not prevented by that law from managing the assets of occupational pension schemes or assets belonging to another person.”.

### **Limits on investments and other definitions**

**259.**—(1) Schedule 1 to the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998 (limits on investments) is amended as follows.

(2) For paragraph 4 of Part I of that Schedule (limits on investments) substitute—

“4. All deposits with—

- (a) any local authority, or
- (b) any body with power to issue a precept or requisition to a local authority, or to the expenses of which a local authority can be required to contribute,

which is an exempt person (within the meaning of the Financial Services and Markets Act 2000) in respect of accepting deposits as a result of an order made under section 38(1) of that Act, and all loans (but see paragraph 12).”.

(3) In paragraph 15—

- (a) in the definition of “collective investment scheme” for the words “section 75 of the Financial Services Act 1986” substitute “section 235 of the Financial Services and Markets Act 2000”; and
- (b) in the definition of “open-ended investment company” for the words “Open-ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996” substitute “Open-Ended Investment Companies Regulations 2001”.

*The Registered Housing Associations (Accounting Requirements) (Scotland) Order 1999 (S.I. 1999/1073)*

### **Listed investments shown on balance sheet**

**260.** In paragraph 28 of the Schedule to the Registered Housing Associations (Accounting Requirements) (Scotland) Order 1999, for the words from “granted a listing” to the end, substitute—

“granted a listing on—

- (a) a recognised investment exchange other than an overseas investment exchange within the meaning of the Financial Services and Markets Act 2000; or
- (b) any stock exchange of repute outside Great Britain.”.

*The Scotland Act 1998 (Transitory and Transitional Provisions) (Scottish Parliamentary Pension Scheme) Order 1999 (S.I. 1999/1082)*

### **Additional voluntary contributions**

**261.**—(1) Schedule 6 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Scottish Parliamentary Pension Scheme) Order 1999 (additional voluntary contributions) is amended as follows.

(2) After sub-paragraph (2) of paragraph 1 (interpretation) insert—

“(3) In this Schedule, paragraphs 5(2) and 8(2) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;

- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.
- (3) For sub-paragraphs (a) and (b) of paragraph 5(2) (investment of contributions) substitute—
  - “(a) in an insurance policy or policies taken out with an office or branch in the United Kingdom of—
    - (i) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance; or
    - (ii) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to effect or carry out contracts of long-term insurance;
  - (b) in a deposit account or accounts with a building society (within the meaning of the Building Societies Act 1986) which has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits.”.
- (4) In paragraph 8(2) (purchase of pensions), for the words from “being either” to the end of sub-paragraph (b) substitute—
  - “being a United Kingdom branch or office of—
    - (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance; or
    - (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule to effect or carry out contracts of long-term insurance as a result of satisfying the establishment conditions within the meaning of that Schedule;”.

*The Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748)*

### **Revocation of redundant provision**

**262.** In Schedule 1 to the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999—

- (a) paragraphs 8 and 23 (which relate to the tribunal established under section 47 of the Building Societies Act 1986<sup>(20)</sup>), and
- (b) paragraph 9 (which relates to the Financial Services Tribunal),

are revoked.

*The European Communities (Lawyer’s Practice) (Scotland) Regulations 2000 (S.I. 2000/121)*

### **Application of Part 20 of the Financial Services and Markets Act 2000 to European lawyers**

**263.**—(1) Schedule 2 to the European Communities (Lawyer’s Practice) (Scotland) Regulations (application, extension and modification of enactments to registered European lawyers) is amended as follows.

- (2) For paragraph 3 of Part II substitute—

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<sup>(20)</sup> 1986 c. 53. Section 47 is superseded by provisions inserted by S.I. 2001/2617 and the tribunal established under that section abolished.

“3. For the purposes of Part 20 of the Financial Services and Markets Act 2000 (provision of financial services by members of the professions), a registered European lawyer and any partner shall be treated as—

- (a) a member of the profession in relation to which the Law Society of Scotland<sup>(21)</sup> is established; and
- (b) as subject to the rules of the Law Society of Scotland.”.

(3) Paragraph 5 of Part II is revoked.

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(21) The Law Society of Scotland is a designated professional body for the purposes of Part 20: [S.I. 2001/1226](#).