

Chapter 6

Guidance on the Identification of Contracts of Insurance



6.3 Background

- 6.3.1

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The business of *effecting or carrying out contracts of insurance* is subject to prior *authorisation* under the *Act* and regulation by the *FCA* and *PRA*. (There are some limited exceptions to this requirement, for example, for breakdown insurance.)
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The *Regulated Activities Order*, which sets out the activities for which *authorisation* is required, does not attempt an exhaustive definition of a '*contract of insurance*'. Instead, it makes some specific extensions and limitations to the general common law meaning of the concept. For example, it expressly extends the concept to fidelity bonds and similar contracts of guarantee, which are not *contracts of insurance* at common law, and it excludes certain *funeral plan contracts*, which would generally be *contracts of insurance* at common law. Similarly, the *Exemption Order* excludes certain trade union provident business, which would also be insurance at common law. One consequence of this is that common law judicial decisions about whether particular contracts amount to 'insurance' or 'insurance business' are relevant in defining the scope of the *FCA's authorisation* and regulatory activities, as they were under predecessor legislation.
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The courts have not fully defined the common law meaning of 'insurance' and 'insurance business', since they have, on the whole, confined their decisions to the facts before them. They have, however, given useful guidance in the form of descriptions of *contracts of insurance*.
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The best established of these descriptions appears in the case of *Prudential v. Commissioners of Inland Revenue* [1904] 2 KB 658. This case, read with a number of later cases, treats as insurance any enforceable contract under which a 'provider' undertakes:

(1) in consideration of one or more payments;

(2) to pay money or provide a corresponding benefit (including in some cases services to be paid for by the provider) to a 'recipient';

(3) in response to a defined event the occurrence of which is uncertain (either as to when it will occur or as to whether it will occur at all) and adverse to the interests of the recipient.