
STATUTORY INSTRUMENTS

2006 No. 2383

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) (No.2) Order 2006**

Approved by both Houses of Parliament

Made - - - - 12th September 2006

Laid before Parliament 13th September 2006

Coming into force in accordance with article 1(2)

In the opinion of the Treasury, one of the effects of the following Order is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000(1)) will become a regulated activity;

The Treasury make the following Order in exercise of the powers conferred on them by sections 22(1) and (5), 426, 427 and 428(3) of, and paragraph 25 of Schedule 2 to, that Act:

PART 1

GENERAL

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006.

(2) This Order comes into force—

(a) for the purposes of enabling applications to be made for—

(i) a Part IV permission, or a variation of a Part IV permission, in relation to activities of the kind specified by article 25B, 25C, 53B, 53C, 63B or 63F or, so far as relevant to any such activity, article 64 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(2); or

(ii) the Authority's approval under section 59 of the Financial Services and Markets Act 2000 in relation to any of those activities,

on 6th November 2006; and

(1) 2000 c.8. A relevant amendment was made by the Regulation of Financial Services (Land Transactions) Act 2005 (c.24) which inserts paragraph 23A of Schedule 2 to the 2000 Act.

(2) S.I. 2001/544, amended by S.I. 2003/1475; there are other amending instruments but none is relevant.

- (b) for all other purposes, on 6th April 2007.

PART 2

AMENDMENTS OF THE REGULATED ACTIVITIES ORDER

Amendments of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

2. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 is amended as follows.

Definitions

- 3.—(1) In article 3(1)(3) (interpretation)—
- (a) after the definition of “funeral plan contract” insert—
 - ““home purchase provider” has the meaning given by article 63F(3);
 - “home purchaser” has the meaning given by article 63F(3);”;
 - (b) in paragraph (a) of the definition of “overseas person”—
 - (i) after “25A,” insert “ 25B, 25C, ”; and
 - (ii) for “and 61” substitute “, 53B, 53C, 61, 63B and 63F”;
 - (c) after the definition of “personal pension scheme”(4) insert—
 - ““plan provider” has the meaning given by paragraph (3) of article 63B, read with paragraphs (7) and (8) of that article;”;
 - (d) after the definition of “qualifying contract of insurance” insert—
 - ““regulated home purchase plan” has the meaning given by article 63F(3);
 - “regulated home reversion plan” has the meaning given by article 63B(3);”;
 - (e) after the definition of “relevant investment” insert—
 - ““reversion seller” has the meaning given by article 63B(3);”.
- (2) In article 3(2) after “article 25(1)” insert “, 25A(1), 25B(1) or 25C(1)”.

Arranging regulated home reversion plans and regulated home purchase plans

4. After article 25A (arranging regulated mortgage contracts) insert—

“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.

(3) The definition of “relevant investment” was inserted by S.I. 2003/1476.

(4) The definition of “personal pension scheme” was inserted by S.I. 2006/1969.

(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.

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.”.

Exclusion of arrangements not causing a deal

5. In article 26 (arrangements not causing a deal), for “article 25(1) and article 25A(1)” substitute “articles 25(1), 25A(1), 25B(1) and 25C(1)”.

Exclusion where a person provides a means of communication between parties

6. In article 27 (enabling parties to communicate) for “article 25(2) and article 25A(2)” substitute “article 25(2), 25A(2), 25B(2) or 25C(2)”.

Exclusion where the arranger is a party to the contract or plan

7.—(1) In the title of article 28A (arranging contracts to which the arranger is a party) after “contracts” insert “or plans”.

(2) In article 28A—

- (a) in paragraph (1)—
 - (i) for “article 25A(1)” substitute “articles 25A(1), 25B(1) and 25C(1)”;
 - (ii) for “contract”, in both places it occurs, substitute “contract or plan”;
- (b) in paragraph (2)—
 - (i) for “article 25A(2)” substitute “articles 25A(2), 25B(2) and 25C(2)”;
 - (ii) after “contracts” insert “or plans”.

Exclusion of arrangements where transaction is with or through an authorised person

8. In article 29(1) (arranging deals with or through authorised persons)—

- (a) for “article 25(1) and (2) and article 25A(1) and (2)” substitute “articles 25(1) and (2), 25A(1) and (2), 25B(1) and (2) and 25C(1) and (2)”;
- (b) in sub-paragraph (b) for “investor or (as the case may be) a borrower under a regulated mortgage contract” substitute “investor, borrower, reversion seller, plan provider or (as the case may be) home purchaser”.

Exclusion made in the course of administration by an authorised person

- 9.** In article 29A (arrangements made in the course of administration by authorised person)—
- (a) the existing text becomes paragraph (1);
 - (b) after paragraph (1) insert—
 - “(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).”.

Exclusion of arrangements which consist of introduction to an authorised person etc. for independent advice

- 10.** In article 33 (introducing)—
- (a) for “article 25(2) and article 25A(2)” substitute “articles 25(2), 25A(2), 25B(2) and 25C(2)”;
 - (b) in paragraph (b)(iii)—
 - (i) after “25A, ” insert “25B, 25C, ”;
 - (ii) for “and 53A” substitute “, 53A, 53B and 53C”.

Exclusion of certain other arrangements consisting of an introduction to an authorised person etc.

- 11.** In article 33A (introducing to authorised persons etc.)—
- (a) after paragraph (1) insert—
 - “(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.”;
- (b) for paragraph (4) substitute—
- “(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.”.

Other exclusions: arranging

12. In article 36(2) (other exclusions) for “Article 25A is” substitute “Articles 25A, 25B and 25C are”.

Advising on regulated home reversion plans and regulated home purchase plans

13. After article 53A (advising on regulated mortgage contracts) insert—

“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.

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.”.

Exclusion of advice given in newspapers etc.

14. In article 54 (advice given in newspapers etc.)—

- (a) in paragraph (1)—
 - (i) for “article 53 and article 53A” substitute “articles 53, 53A, 53B and 53C”;
 - (ii) in sub-paragraph (a) for “or (as the case may be) article 53A” substitute “, 53A, 53B or 53C, as the case may be”;
 - (iii) after sub-paragraph (b)(ii) insert—
 - “;
 - (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”;
- (b) in paragraph (2) for “article 53 and article 53A” substitute “articles 53, 53A, 53B and 53C”.

Exclusion of advice given in the course of administration by authorised person

15. In article 54A (advice given in the course of administration by authorised person)—

- (a) the existing text becomes paragraph (1);
- (b) after paragraph (1) insert—
 - “(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).”.

Other exclusions: advising

16. In article 55(2) (other exclusions) for “Article 53A is” substitute “Articles 53A, 53B and 53C are”.

Regulated mortgage contracts

17. In article 61(3)(a) (regulated mortgage contracts) after paragraph (iii) insert—
“but such a contract is not a regulated mortgage contract if it is a regulated home purchase plan;”.

Entering into and administering regulated home reversion plans and regulated home purchase plans

18. After article 63A (other exclusions) insert—

“CHAPTER 15A

REGULATED HOME REVERSION PLANS

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⁽⁵⁾;
- (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 and Wales, has the meaning given by section 3 of the Care Standards Act 2000⁽⁶⁾;
 - (b) in relation to Scotland, means accommodation provided by a "care home" within the meaning of section 2(3) of the Regulation of Care (Scotland) Act 2001⁽⁷⁾;
 - (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⁽⁸⁾; 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)

⁽⁵⁾ 1992 c. 35.

⁽⁶⁾ 2000 c.14.

⁽⁷⁾ 2001 asp 8.

⁽⁸⁾ S.I. 2003/431 (N.I.9).

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.

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) and 72A (information society services).

CHAPTER 15B

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) and 72A (information society services).”.

Exclusion of trustees, nominees and personal representatives

19. In article 66 (trustees, nominees and personal representatives)—

- (a) in paragraph (2) for “and 25A(1) and (2)” substitute “, 25A(1) and (2), 25B(1) and (2) and 25C(1) and (2)”;

- (b) in paragraph (6) for “and 53A” substitute “, 53A, 53B and 53C”;
- (c) after paragraph (6A) insert—

“(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.”;

- (d) in paragraph (7) for “ and (6A)” insert “, (6A), (6B) and (6C)”.

Exclusion of activities carried on in the course of a profession or non-investment business

- 20.** In article 67(1) (activities carried on in the course of a profession or non-investment business)

- (a) after “25A, ” insert “25B, 25C, ”;
- (b) for “and 53A” substitute “, 53A, 53B and 53C”.

Overseas persons

- 21.** In article 72 (overseas persons) for paragraphs (5A) to (5F) substitute—

“(5A) An overseas person does not carry on an activity of the kind specified by article 25A(1)(a), 25B(1)(a) or 25C(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) and 25C(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) and 25C(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) or 63F(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) or 63F(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;

- (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;
- (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.”.

Business Angel-led Enterprise Capital Funds: interpretation

22. In article 72F(1)(9) (interpretation) in paragraph (b) of the definition of “high net worth company” for “(in a manner which creates a binding obligation on the company)” substitute “(in a manner which binds the company)”.

Specified investments

23. After article 88 (regulated mortgage contracts) insert—

“Regulated home reversion plans

88A. Rights under a regulated home reversion plan.

Regulated home purchase plans

88B. Rights under a regulated home purchase plan.”.

Rights to or interests in investments

24. In article 89(1) (rights to or interests in investments) for “article 88” substitute “article 88, 88A or 88B”.

PART 3

AMENDMENTS OF PRIMARY LEGISLATION

Amendments of the Consumer Credit Act 1974

25.—(1) The Consumer Credit Act 1974(10) is amended as follows.

(2) In section 16 (exempt agreements)—

(a) for subsection (6C) substitute—

“(6C) This Act does not regulate a consumer credit agreement if—

- (a) it is secured by a land mortgage and entering into the agreement as lender is a regulated activity for the purposes of the Financial Services and Markets Act 2000; or

(9) Article 72F was inserted by [S.I. 2005/1518](#).

(10) [1974 c. 39](#); sections 16 and 53 were amended by [S.I. 2001/544](#); section 146 was amended by [S.I. 2003/1475](#) and [S.I. 2005/2967](#); there are other amending instruments but none is relevant.

- (b) it is or forms part of a regulated home purchase plan and entering into the agreement as home purchase provider is a regulated activity for the purposes of that Act.”;
- (b) in subsection (6D) for “subsection (6C)” substitute “subsection (6C)(a)”.
- (3) In section 53 (duty to display information) for “section 16(6C)” substitute “section 16(6C)(a)”.
- (4) In section 146 (exceptions from section 145)—
 - (a) in subsection (5A)—
 - (i) for paragraph (a) substitute—
 - “(a) to an authorised person, within the meaning of the 2000 Act, who has permission under that Act to enter into a relevant agreement as lender or home purchase provider (as the case may be); or”;
 - (ii) for “a relevant agreement” substitute “the relevant agreement”;
 - (b) in subsection (5D)—
 - (i) for the definition of “relevant agreement” substitute—
 - ““relevant agreement” means an agreement which—
 - (a) is secured by a land mortgage, or
 - (b) is or forms part of a regulated home purchase plan,but only if entering into the agreement as lender or home purchase provider (as the case may be) is a regulated activity for the purposes of the 2000 Act.”;
 - (ii) after “and references to “regulated activities”” insert “, “regulated home purchase plan” and “home purchase provider””.

Amendments of the Companies Act 1985

- 26.** In section 262(1) of the Companies Act 1985(**11**) (minor definitions) in the definition of “regulated activity”—
- (a) after paragraph (a) insert—
 - “(aa) article 25B (arranging regulated home reversion plans),
 - (ab) article 25C (arranging regulated home purchase plans),”;
 - (b) at the end of paragraph (c) delete “or” and insert—
 - “(ca) article 53B (advising on regulated home reversion plans),
 - (cb) article 53C (advising on regulated home purchase plans), or”.

Amendments of the Law of Property (Miscellaneous Provisions) Act 1989

- 27.** In section 2 of the Law of Property (Miscellaneous Provisions) Act 1989(**12**) (contracts for sale etc. of land to be made by signed writing)—
- (a) in subsection (5)(c) after “regulated mortgage contract” insert “, a regulated home reversion plan or a regulated home purchase plan”;
 - (b) in subsection (6) after ““regulated mortgage contract”” insert “, “regulated home reversion plan” and “regulated home purchase plan””.

(11) 1985 c. 6; the definition of “regulated activity” was inserted by S.I. 2005/2280.

(12) 1989 c. 34; section 2 was amended by S.I. 2001/3649.

Amendment of the Financial Services and Markets Act 2000

28. In section 49(2A)(b) of the Financial Services and Markets Act 2000(**13**) (persons connected with an applicant) after “regulated mortgage contract” insert “, a regulated home reversion plan or a regulated home purchase plan”.

PART 4

AMENDMENTS OF OTHER SECONDARY LEGISLATION

Amendments of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001

29. In the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001(**14**) after article 3A (arranging and advising on regulated mortgage contracts) insert—

“Arranging and advising on regulated home reversion plans

3B. A person is not to be regarded as carrying on by way of business an activity specified by—

- (a) article 25B of the Regulated Activities Order (arranging regulated home reversion plans);
- (b) article 53B of that Order (advising on regulated home reversion plans); or
- (c) article 64 of that Order (agreeing), so far as relevant to either of the articles mentioned in sub-paragraphs (a) and (b),

unless he carries on the business of engaging in that activity.

Arranging and advising on regulated home purchase plans

3C. A person is not to be regarded as carrying on by way of business an activity specified by—

- (a) article 25C of the Regulated Activities Order (arranging regulated home purchase plans);
- (b) article 53C of that Order (advising on regulated home purchase plans); or
- (c) article 64 of that Order (agreeing), so far as relevant to either of the articles mentioned in sub-paragraphs (a) and (b),

unless he carries on the business of engaging in that activity.”.

Amendments of the Financial Services and Markets Act 2000 (Exemption) Order 2001

30. In the Financial Services and Markets Act 2000 (Exemption) Order 2001(**15**), Part 4 of the Schedule (persons exempt in respect of particular regulated activities) is amended as follows—

- (a) in paragraph 47 (local authorities)—
 - (i) delete “or” at the end of sub-paragraph (a);

(13) 2000 c. 8; section 49(2A) was inserted by [S.I. 2001/544](#) as amended by [S.I. 2004/1610](#).

(14) [S.I. 2001/1177](#); article 3A was inserted by [S.I. 2003/1475](#).

(15) [S.I. 2001/1201](#); paragraphs 47 and 48 of the Schedule were substituted by [S.I. 2003/1675](#).

- (ii) after sub-paragraph (b) insert—
 - “;
 - (c) article 25B, 53B or 63B of that Order (arranging, advising on, entering into or administering a regulated home reversion plan); or
 - (d) article 25C, 53C or 63F of that Order (arranging, advising on, entering into or administering a regulated home purchase plan)”;
- (b) in paragraph 48(1) (social housing)—
 - (i) delete “or” at the end of paragraph (a);
 - (ii) after paragraph (b) insert—
 - “;
 - (c) article 25B, 53B or 63B of that Order (arranging, advising on, entering into or administering a regulated home reversion plan); or
 - (d) article 25C, 53C or 63F of that Order (arranging, advising on, entering into or administering a regulated home purchase plan)”.

Amendments of the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001

31.—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001⁽¹⁶⁾ are amended as follows.

- (2) In regulation 1(2)⁽¹⁷⁾ (interpretation)—
 - (a) after the definition of “contract of long-term care insurance” insert—
 - ““home purchaser” has the same meaning as in article 63F(3) of the Regulated Activities Order;”;
 - (b) after the definition of “other counterparties” insert—
 - ““plan provider” has the meaning given by paragraph (3) of article 63B of the Regulated Activities Order, read with paragraphs (7) and (8) of that article;”;
 - (c) after the definition of “the Regulated Activities Order” insert—
 - ““regulated home purchase plan” has the same meaning as in article 63F(3) of the Regulated Activities Order;
 - “regulated home reversion plan” has the same meaning as in article 63B(3) of the Regulated Activities Order;”;
 - (d) after the definition of “regulated mortgage contract” insert—
 - ““reversion seller” has the same meaning as in article 63B(3) of the Regulated Activities Order;”.
- (3) In regulation 2(1) (descriptions of business for which appointed representatives are exempt)—
 - (a) after sub-paragraph (ab) insert—
 - “(aba) an activity of the kind specified by article 25B of that Order (arranging regulated home reversion plans);
 - “(abb) an activity of the kind specified by article 25C of that Order (arranging regulated home purchase plans);”;
 - (b) at the end of sub-paragraph (ca) delete “or”;

⁽¹⁶⁾ S.I. 2001/1217; amended by S.I. 2003/1475 and S.I. 2003/1476.

⁽¹⁷⁾ The definition of “contract of long-term insurance” was inserted by S.I. 2004/453.

- (c) after sub-paragraph (ca) insert—
- “(cb) an activity of the kind specified by article 53B of that Order (advising on regulated home reversion plans);
- (cc) an activity of the kind specified by article 53C of that Order (advising on regulated home purchase plans); or”;
- (d) in sub-paragraph (d) for “(b), (c) or (ca)” substitute “(aba), (abb), (b), (c), (ca), (cb) or (cc)”.
- (4) After regulation 3(3) (requirements applying to contracts between authorised persons and appointed representatives) insert—
- “(3A) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where he—
- (a) makes arrangements (in circumstances constituting the carrying on of an activity of the kind specified by article 25B of that Order)—
- (i) for a person to enter (or with a view to a person entering) as reversion seller or plan provider into a regulated home reversion plan with other counterparties, or
- (ii) for a person to vary a regulated home reversion plan entered into on or after 6th April 2007 by him as reversion seller or plan provider with other counterparties; or
- (b) gives advice (in circumstances constituting the carrying on of an activity of the kind specified by article 53B of that Order) on the merits of—
- (i) a person entering as reversion seller or plan provider into a regulated home reversion plan with other counterparties, or
- (ii) a person varying a regulated home reversion plan entered into on or after 6th April 2007 by him as reversion seller or plan provider with other counterparties.
- (3B) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where he—
- (a) makes arrangements (in circumstances constituting the carrying on of an activity of the kind specified by article 25C of that Order)—
- (i) for a person to enter (or with a view to a person entering) as home purchaser into a regulated home purchase plan with other counterparties, or
- (ii) for a person to vary a regulated home purchase plan entered into on or after 6th April 2007 by a person as home purchaser with other counterparties; or
- (b) gives advice (in circumstances constituting the carrying on of an activity of the kind specified by article 53C of that Order) on the merits of—
- (i) a person entering as home purchaser into a regulated home purchase plan with other counterparties, or
- (ii) a person varying a regulated home purchase plan entered into on or after 6th April 2007 by him as home purchaser with other counterparties.”.

Amendments of the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001

32.—(1) The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001(18) is amended as follows.

(18) S.I. 2001/1227; amended by S.I. 2001/3650 and S.I. 2003/1475; there are other amending instruments but none is relevant.

- (2) In article 2(1) (interpretation)—
- (a) after the definition of “contractually based investment” insert—
- ““home purchase provider” has the meaning given by article 63F(3) of the Regulated Activities Order;
- “home purchaser” has the meaning given by article 63F(3) of the Regulated Activities Order;”;
- (b) after the definitions of “occupational pension scheme” and “personal pension scheme” insert—
- ““plan provider” has the meaning given by paragraph (3) of article 63B of the Regulated Activities Order, read with paragraphs (7) and (8) of that article;”;
- (c) after the definition of “the Regulated Activities Order” insert—
- ““regulated home purchase plan” has the meaning given by article 63F(3) of the Regulated Activities Order;
- “regulated home reversion plan” has the meaning given by article 63B(3) of the Regulated Activities Order;
- “regulated mortgage contract” has the meaning given by article 61 of the Regulated Activities Order;”
- (d) after the definition of “relevant investment” insert—
- ““reversion seller” has the meaning given by article 63B(3) of the Regulated Activities Order;”.
- (3) After article 6B (activities to which exemption from the general prohibition does not apply: regulated mortgage contracts) insert—

6C.—(1) An activity of the kind specified by article 53B of the Regulated Activities Order (advising on regulated home reversion plans) where the advice in question falls within paragraph (2).

(2) Subject to paragraph (3), advice falls within this paragraph in so far as—

- (a) it consists of a recommendation, given to an individual to enter as reversion seller or plan provider into a regulated home reversion plan with a particular person; and
- (b) in entering into a regulated home reversion plan that person would be carrying on an activity of the kind specified by article 63B(1) of the Regulated Activities Order (regulated home reversion plans).

(3) Advice does not fall within paragraph (2) if it endorses a corresponding recommendation given to the individual by an authorised person with permission to carry on an activity of the kind specified by article 53B of the Regulated Activities Order or a person who is an exempt person in relation to an activity of that kind.

6D.—(1) An activity of the kind specified by article 63B(1) or (2) of the Regulated Activities Order (regulated home reversion plans).

(2) Paragraph (1) does not apply to an activity carried on by a person in his capacity as a trustee or personal representative where the reversion seller under the regulated home reversion plan in question is a beneficiary under the trust, will or intestacy.

6E.—(1) An activity of the kind specified by article 53C of the Regulated Activities Order (advising on regulated home purchase plans) where the advice in question falls within paragraph (2).

(2) Subject to paragraph (3), advice falls within this paragraph in so far as—

- (a) it consists of a recommendation, given to an individual to enter as home purchaser into a regulated home purchase plan with a particular person; and
 - (b) in entering into a regulated home purchase plan that person would be carrying on an activity of the kind specified by article 63F(1) of the Regulated Activities Order (regulated home purchase plans).
- (3) Advice does not fall within paragraph (2) if it endorses a corresponding recommendation given to the individual by an authorised person with permission to carry on an activity of the kind specified by article 53C of the Regulated Activities Order or a person who is an exempt person in relation to an activity of that kind.

6F.—(1) An activity of the kind specified by article 63F(1) or (2) of the Regulated Activities Order (regulated home purchase plans).

(2) Paragraph (1) does not apply to an activity carried on by a person in his capacity as a trustee or personal representative where the home purchaser under the regulated home purchase plan in question is a beneficiary under the trust, will or intestacy.”.

Amendment of the Money Laundering Regulations 2003

33. In regulation 2(3)(h) of the Money Laundering Regulations 2003(**19**) (interpretation) after “a regulated mortgage contract” insert “, rights under a regulated home reversion plan or rights under a regulated home purchase plan”.

Amendments of the Consumer Credit (Advertisement) Regulations 2004

34. In the Consumer Credit (Advertisements) Regulations 2004(**20**) for regulation 10(5) (exclusions) substitute—

“(5) These regulations do not apply to any advertisement in so far as it is a communication of an invitation or inducement to enter into—

- (a) a regulated mortgage contract within the meaning of article 61 of the Financial Services and Markets Act (Regulated Activities) Order 2001; or
- (b) a regulated home purchase plan within the meaning of article 63F of that Order.”.

Amendments of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

35.—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(**21**) is amended as follows.

(2) In the title of article 28B (real time communications: introductions in connection with qualifying credit) delete “in connection with qualifying credit”.

(3) In article 28B(1)(a) for “paragraphs 10, 10A or 10B” substitute “paragraph 10, 10A, 10B, 10C, 10D, 10E, 10F, 10G or 10H”.

(4) In article 73(2) (advice centres)—

- (a) delete “or” at the end of sub-paragraph (b);
- (b) after sub-paragraph (c) insert—

“;

- (d) a regulated home reversion plan; or

(19) S.I. 2003/3075.

(20) S.I. 2004/1484.

(21) S.I. 2005/1529.

- (e) a regulated home purchase plan”.
- (5) In Schedule 1 Part 1 (controlled activities)—
 - (a) after paragraph 10B (advising on qualifying credit etc.) insert—

“Providing a regulated home reversion plan

10C. Entering into a regulated home reversion plan as plan provider is a controlled activity.

Arranging a regulated home reversion plan

10D. Making arrangements—

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

is a controlled activity.

Advising on a regulated home reversion plan

10E. Advising a person is a controlled activity if the advice is—

- (a) given to the person in his capacity as reversion seller, potential reversion seller, plan provider or potential plan provider; and
- (b) advice on the merits of his doing either of the following—
 - (i) entering into a 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.

Providing a regulated home purchase plan

10F. Entering into a regulated home purchase plan as home purchase provider is a controlled activity.

Arranging a regulated home purchase plan

10G. Making arrangements—

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

is a controlled activity.

Advising on a regulated home purchase plan

10H. Advising a person is a controlled activity if the advice is—

- (a) given to the person in his capacity as home purchaser or potential home purchaser; and
 - (b) advice on the merits of his doing either of the following—
 - (i) entering into a 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.”.
- (6) In Schedule 1 Part 2 (controlled investments)—
- (a) after paragraph 26 (agreements for qualifying credit) insert—

“Regulated home reversion plans

26A. Rights under a regulated home reversion plan.

Regulated home purchase plans

26B. Rights under a regulated home purchase plan.”

- (b) in paragraph 27(1) (rights to or interests in investments) for “paragraph 26” substitute “paragraph 26, 26A or 26B”;
- (c) in paragraph 28 (interpretation)—
 - (i) after the definition of “contractually based investment” insert—

““home purchase provider” and “home purchaser” have the meanings given in article 63F(3) of the Regulated Activities Order;”;
 - (ii) after the definition of “occupational pension scheme” insert—

““plan provider” has the meaning given by paragraph (3) of article 63B of the Regulated Activities Order, read with paragraphs (7) and (8) of that article;”;
 - (iii) after the definition of “qualifying funeral plan contract” insert—

““regulated home purchase plan” has the meaning given in article 63F(3) of the Regulated Activities Order;

“regulated home reversion plan” and “reversion seller” have the meanings given in article 63B(3) of the Regulated Activities Order;”.

PART 5

TRANSITIONAL PROVISIONS

Interpretation

36. In this Part—

“the Act” means the Financial Services and Markets Act 2000(22);

“commencement” means the beginning of 6th April 2007;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

Interim permission

37.—(1) This article applies where—

- (a) a person (“the applicant”) has submitted to the Authority an application for Part IV permission or a variation of a Part IV permission, to the extent that the application relates to an activity of the kind specified by any of the following articles of the Regulated Activities Order (as amended by this Order)—
 - (i) article 25B (arranging regulated home reversion plans);
 - (ii) article 25C (arranging regulated home purchase plans);
 - (iii) article 53B (advising on regulated home reversion plans);
 - (iv) article 53C (advising on regulated home purchase plans);
 - (v) article 63B (entering into and administering regulated home reversion plans);
 - (vi) article 63F (entering into and administering regulated home purchase plans); or
 - (vii) article 64 (agreeing to carry on specified kinds of activity), so far as relevant to any of the above activities;
- (b) the applicant had carried on such activity before 6th November 2006;
- (c) the Authority received the application on or before 23rd March 2007; and
- (d) the application has not been finally decided before commencement.

(2) The applicant is to be treated as having on commencement the permission to which the application relates.

(3) A permission which an applicant is to be treated as having is referred to in this Part as an “interim permission”.

(4) Without prejudice to the exercise by the Authority of its powers under Part 4 of the Act, an interim permission lapses—

- (a) where the application relates to an activity of the kind specified by article 63B or 63F of the Regulated Activities Order or article 64 of that Order, so far as relevant to any such activity, when the application has been finally decided;
- (b) where the application relates to an activity of the kind specified by article 25B, 25C, 53B or 53C of the Regulated Activities Order or article 64 of that Order, so far as relevant to any such activity—
 - (i) when the application has been finally decided; or
 - (ii) at the beginning of 6th April 2008,whichever is the earlier.

(5) In this article, “finally decided” means—

- (a) subject to paragraph (6), when the application is withdrawn;
- (b) when the Authority grants permission under section 42 of the Act (giving permission) to carry on the activity in question;
- (c) when the Authority varies a permission under section 44 of the Act (variation etc. at request of authorised person) to add the activity in question;
- (d) where the Authority has refused an application and the matter is not referred to the Tribunal, when the time for referring the matter to the Tribunal has expired;
- (e) where the Authority has refused an application and the matter is referred to the Tribunal, when—

- (i) if the reference is determined by the Tribunal (including a determination following remission back to the Tribunal for rehearing in accordance with section 137(3)(a) of the Act (appeal on a point of law)), the time for bringing an appeal has expired; or
- (ii) on an appeal from a determination by the Tribunal on a point of law, the Court itself determines the application in accordance with section 137 of the Act.

(6) An applicant who is treated as having an interim permission may not withdraw the application without first obtaining the consent of the Authority.

(7) Where—

- (a) the Authority exercises its powers under section 45 (variation etc. on the Authority’s own initiative) in relation to an authorised person who holds an interim permission; and
- (b) as a result of the variation there are no longer any regulated activities for which the authorised person has permission,

the Authority must, once it is satisfied that it is no longer necessary to keep the interim permission in force, cancel it.

Interim approval

38.—(1) This article applies where—

- (a) the applicant (within the meaning of article 37(1)(a)) has submitted to the Authority an application made under section 60 of the Act (applications for approval); and
- (b) the application has not been finally decided before commencement.

(2) The person in respect of whom the application is made is to be treated as having on commencement the approval of the Authority for the purposes of section 59 of the Act (approval for particular arrangements) in relation to the functions to which the application relates.

(3) An approval which a person is to be treated as having is referred to in this Part as an “interim approval”.

(4) Without prejudice to the exercise by the Authority of its powers under Part 5 of the Act, an interim approval lapses—

- (a) where the application relates to an activity of the kind specified by article 63B or 63F of the Regulated Activities Order or article 64 of that Order, so far as relevant to any such activity, when the application has been finally decided;
- (b) where the application relates to an activity of the kind specified by article 25B, 25C, 53B or 53C of the Regulated Activities Order or article 64 of that Order, so far as relevant to any such activity—
 - (i) when the application has been finally decided; or
 - (ii) at the beginning of 6th April 2008,
 whichever is the earlier.

(5) In this article, “finally decided” means—

- (a) when the application is withdrawn;
- (b) when the Authority grants the application for approval under section 62 of the Act (applications for approval: procedure and right to refer to Tribunal);
- (c) where the Authority has refused an application and the matter is not referred to the Tribunal, when the time for referring the matter to the Tribunal has expired;
- (d) where the Authority has refused an application and the matter is referred to the Tribunal, when—

- (i) if the reference is determined by the Tribunal (including a determination following remission back to the Tribunal for rehearing in accordance with section 137(3)(a) of the Act), the time for bringing an appeal has expired; or
- (ii) on an appeal from a determination by the Tribunal on a point of law, the Court itself determines the application in accordance with section 137 of the Act.

Application of the Authority’s rules etc. to persons with an interim permission or an interim approval

39.—(1) The Authority may direct in writing that any relevant provision which would otherwise apply to a person by virtue of his interim permission or interim approval is not to apply or is to apply to him as modified in the way specified in the direction.

(2) Where the Authority makes a rule, gives guidance or issues a statement or code which applies only to persons with an interim permission or an interim approval (or only to a class of such persons), sections 65 (statements and codes: procedure), 155 (consultation) and 157(3) (guidance) of the Act do not apply to that rule, guidance, statement or code.

(3) For the purposes of paragraph (1) a “relevant provision” is any provision made as a result of the exercise by the Authority of any of its legislative functions mentioned in paragraph 1(2) of Schedule 1 to the Act (the Financial Services Authority).

Application of the Act etc.

40. The Schedule modifies the application of the Act and the Regulated Activities Order in relation to persons with an interim permission or an interim approval.

Signatory text

12th September 2006

Dave Watts
Claire Ward
Two of the Lords Commissioners
of Her Majesty’s Treasury

SCHEDULE

Article 40

APPLICATION OF THE ACT AND THE REGULATED ACTIVITIES ORDER TO PERSONS WITH AN INTERIM PERMISSION OR AN INTERIM APPROVAL

1. Paragraphs 2 and 3 apply to every person with an interim permission.
2. For the purposes of section 20 (authorised persons acting without permission), a person's interim permission is treated as having been given to him under Part 4 of the Act.
3. A person's interim permission is to be disregarded for the purposes of—
 - (a) section 38(2) (exemption orders);
 - (b) section 40(2) (application for permission);
 - (c) subject to paragraph 7, section 42 (giving permission);
 - (d) section 43 (imposition of requirements); and
 - (e) section 44(1), (4) and (5) (variation etc at request of authorised person).
4. Paragraphs 5(1) and 6 to 10 apply to a person who falls within section 31(1) (authorised persons) by virtue only of having an interim permission.

5.—(1) A person with an interim permission is to be treated on or after commencement as an authorised person for the purposes of the Act (and any provision made under the Act), unless otherwise expressly provided for by this Schedule.

(2) A person with an interim approval is to be treated on or after commencement as an approved person for the purposes of the Act (and any provision made under the Act).
6. For the purposes of section 21(2) (restrictions on financial promotion), a person with an interim permission is not to be treated as an authorised person for the purposes of communicating or approving the content of a communication except where the communication invites or induces a person to enter into (or offer to enter into) an agreement the making or performance of which constitutes a controlled activity which corresponds to a regulated activity which is covered by his interim permission.
7. A person with an interim permission may still be an appointed representative within the meaning of section 39(2) (exemption of appointed representatives) (and hence may be treated as exempt from the general prohibition as a result of section 39(1) for the purposes of section 42(3) (a) (giving permission)).
8. Subsection (3)(a) of section 213 (the compensation scheme) does not apply to—
 - (a) a person who is a relevant person, within the meaning of that section, by virtue only of having an interim permission; or
 - (b) an appointed representative of such person.
9. In article 29 of the Regulated Activities Order (arranging deals with or through authorised persons), with the exception of the first reference, the references to an “authorised person” do not include a person with an interim permission.
10. In sub-paragraph (a) of both paragraphs (2) and (3) of article 29A of the Regulated Activities Order (arrangements made in the course of administration by authorised person), the references to an “authorised person” do not include a person with an interim permission.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the “principal Order”) so as to specify as regulated activities for the purposes of the Financial Services and Markets Act 2000 (c. 8) (“FSMA”) the activities of entering into, administering, arranging and advising on regulated home reversion plans and regulated home purchase plans. The matters with respect to which regulated activities may be specified include finance arrangements in connection with the acquisition or disposal of land (paragraph 23A of Schedule 2 to FSMA, inserted by the Regulation of Financial Services (Land Transactions) Act 2005 (c. 24)). The Order also clarifies an existing provision relating to high net worth companies.

Article 3 inserts new definitions and makes a consequential amendment to the definition of “overseas person” in the principal Order.

Article 4 inserts new articles into the principal Order which specify the new regulated activities of arranging regulated home reversion plans (“home reversion arranging”) and arranging regulated home purchase plans (“home purchase arranging”).

Articles 5 to 11 amend articles 26 to 33A of the principal Order, so as to apply the exclusions specified in those articles to home reversion arranging and home purchase arranging. Those exclusions relate, for example, to arrangements not causing a deal, the provision of the means of communication between the parties to a transaction, arrangements to which the arranger is a party and arrangements where the transaction is with or through an authorised person.

Article 13 inserts new articles into the principal Order which specify the new regulated activities of advising on regulated home reversion plans (“home reversion advising”) and advising on regulated home purchase plans (“home purchase advising”).

Articles 14 and 15 amend respectively articles 54 and 54A of the principal Order so as to apply the exclusion specified in those articles to home reversion advising and home purchase advising. Those exclusions relate to advice given in the media and advice given in the course of administration by an authorised person.

Article 17 amends article 61 of the principal Order to provide that products which have the features of both a regulated home purchase plan and a regulated mortgage contract will not be considered a regulated mortgage contract.

Article 18 inserts new articles into the principal Order which specify the new regulated activities of entering into and administering regulated home reversion plans (“home reversion entry”) and entering into and administering regulated home purchase plans (“home purchase entry”) and apply exclusions relating to arranging administration by an authorised person and administration pursuant to an agreement with an authorised person.

Articles 19, 20 and 21 amend respectively articles 66, 67 and 72 of the principal Order so as to extend certain other exclusions to home reversion and home purchase entry, home reversion and home purchase arranging and home reversion and home purchase advising.

Article 22 amends the definition of “high net worth company” in article 72F of the principal Order to clarify that in order to be a high net worth company and benefit from the exception for business angel-led enterprise capital funds, a company must execute the specified document in a manner which binds it.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Articles 23 and 24 insert new articles into the principal Order which specify rights under regulated home reversion plans and rights under regulated home purchase plans as specified investments and exclude such rights from the scope of article 89 of the principal Order.

Articles 25 to 28 make consequential amendments to the Consumer Credit Act 1974 (c. 39), the Companies Act 1985 (c. 6), the Law of Property (Miscellaneous Provisions) Act 1989 (c. 34) and FSMA.

Articles 29 to 35 make consequential amendments to other secondary legislation including other instruments made under FSMA.

Article 37 confers an interim permission on certain applicants who have applied for permission under Part 4 of FSMA to enter into, administer, arrange or advise on regulated home reversion plans or regulated home purchase plans and whose application is pending on the date (6th April 2007) when those activities become regulated activities.

Article 38 confers interim approval, in similar terms to those in article 36, on people who are working for a person who has applied for a Part IV permission and who would need approval under Part 5 of FSMA.

Article 39 enables the Financial Services Authority to modify, amongst other things, its rules in their application to persons with an interim permission or interim approval.

Article 40 and the Schedule provide for the application of provisions in FSMA and the principal Order to persons with an interim permission or interim approval, indicating where such provisions are to be treated as including or not including such persons.

A Regulatory Impact Assessment of the effect of this instrument on the costs of business has been prepared and may be obtained from the Payments and Inclusion Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on HM Treasury's website (www.hm-treasury.gov.uk).