

Draft Order laid before Parliament under section 429 of the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act
2000 (Carrying on Regulated Activities by
Way of Business) (Amendment) Order 2011

Made - - - -

Coming into force in accordance with article 1

A draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 429(1) of the Financial Services and Markets Act 2000(1).

The Treasury, in exercise of the powers conferred by sections 419 and 428(3) of that Act, make the following Order:

1. This Order may be cited as the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2011 and comes into force on the day after the day on which it is made.

2. In the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001(2) after article 4 insert—

“Entering into a sale and rent back agreement

5. A person (“A”) who carries on an activity of the kind specified by article 63J(1) of the Regulated Activities Order (entering into a regulated sale and rent back agreement)(3) is to be regarded as carrying on that activity by way of business except where A is a related person in relation to the agreement seller within the meaning of article 63J(4)(c) of the Regulated Activities Order.

6.—(1) Article 5 ceases to have effect on 1st January 2015.

(2) Before the end of 2012, the Treasury must—

(a) carry out a review of article 5;

(1) 2000 c.8. Section 429(1) has been amended but the amendments are not relevant to this Order.

(2) S.I. 2001/1177, to which there are amendments not relevant to this Order.

(3) S.I. 2001/544. Article 63J was inserted by S.I. 2009/1342 and amended by S.I. 2010/2960.

- (b) set out the conclusions of the review in a report; and
 - (c) publish the report.
- (2) The report must in particular—
- (a) set out the objectives intended to be achieved by article 5;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a scheme that imposes less regulation.”.

[date]

Names
Two of the Lords Commissioners of Her
Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (S.I. 2001/1177) which defines, in relation to certain specified regulated activities, the circumstances in which a person carrying on one of those activities is, or is not to be, regarded as carrying on that activity by way of business for the purposes of section 22 of the Financial Services and Markets Act 2000. Article 2 provides that a person carrying on the activity of entering into a regulated sale and rent back agreement will be regarded as doing so by way of business unless the parties to the agreement are family members.

The Order provides that the amendment will cease to have effect at the end of 2014. The Treasury is required to review the operation and effect of the amendment and to publish a report before the end of 2012. Following the review, the Treasury will decide whether the amendment should be allowed to expire (as provided for by this Order), be revoked early, or be maintained in force with or without amendments. A further instrument would be needed to maintain the amendment in force with or without amendments or to revoke the amendment early.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Payments, Credits and Inclusion Team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this Order on the website www.legislation.gov.uk.