
STATUTORY INSTRUMENTS

2003 No. 1475

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) (No. 1) Order 2003**

PART 4

**AMENDMENTS TO OTHER INSTRUMENTS MADE UNDER
THE FINANCIAL SERVICES AND MARKETS ACT 2000**

Amendment to the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001

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

(2) In regulation 1 (citation, commencement and interpretation), in paragraph (2), after the definition of “the Regulated Activities Order” insert—

““regulated mortgage contract”, and “borrower” in relation to such a contract, have the same meaning as in article 61(3) of the Regulated Activities Order.”.

(3) In regulation 2 (descriptions of business for which appointed representatives are exempt), in paragraph (1)—

(a) after sub-paragraph (a) insert—

“(ab) an activity of the kind specified by article 25A of that Order (arranging regulated mortgage contracts);”;

(b) at the end of sub-paragraph (c) omit “or”;

(c) after sub-paragraph (c) insert—

“(ca) an activity of the kind specified by article 53A of that Order (advising on regulated mortgage contracts); or”;

(d) in sub-paragraph (d), for “(b) or (c)” substitute “(ab), (b), (c) or (ca)”.

(4) In regulation 3 (requirements applying to contracts between authorised persons and appointed representatives), after paragraph (2) insert—

“(3) 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 25A of that Order)—

(i) for persons to enter (or with a view to persons entering) as borrowers into regulated mortgage contracts with other counterparties, or

- (ii) for a person to vary a regulated mortgage contract entered into by a person as borrower after the coming into force of article 61 of that Order with other counterparties; or
- (b) gives advice (in circumstances constituting the carrying on of an activity of the kind specified by article 53A of that Order) on the merits of—
 - (i) persons entering as borrowers into regulated mortgage contracts with other counterparties, or
 - (ii) persons varying regulated mortgage contracts entered into by them as borrower after the coming into force of article 61 of that Order with other counterparties.”.

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

24.—(1) The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001(2) is amended as follows.

- (2) The existing article 6A(3) is renumbered as article 6B.
- (3) After article 6 insert—

“**6A.**—(1) An activity of the kind specified by article 53A of the Regulated Activities Order (advising on regulated mortgage contracts) 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 borrower into a regulated mortgage contract with a particular person; and
 - (b) in entering into a regulated mortgage contract that person would be carrying on an activity of the kind specified by article 61(1) of the Regulated Activities Order (regulated mortgage contracts).
- (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 53A of the Regulated Activities Order or a person who is an exempt person in relation to an activity of that kind.”.

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

25. In the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001(4), after article 3 insert—

“Arranging and advising on regulated mortgage contracts

- 3A.** A person is not to be regarded as carrying on by way of business an activity of the kind specified by—
- (a) article 25A of the Regulated Activities Order (arranging regulated mortgage contracts);
 - (b) article 53A of that Order (advising on regulated mortgage contracts); or

(2) S.I. [2001/1227](#), as amended by S.I. [2001/3650](#), S.I. [2002/682](#) and S.I. [2002/1777](#).

(3) Article 6A was inserted by S.I. [2001/3650](#), article 3.

(4) S.I. [2001/1177](#).

(c) article 64 of that Order (agreeing), so far as relevant to any of the articles mentioned in sub-paragraphs (a) and (b),
unless he carries on the business of engaging in that activity.”.