
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 new regulated activities. The Principal Order specifies kinds of activities and investments for the purposes of the Financial Services and Markets Act 2000 (c.8) (“the Act”). When an activity of a specified kind is carried on by way of business in relation to an investment of a specified kind, it is a “regulated activity” for the purposes of the Act. Section 19 of the Act prohibits persons who are not authorised or exempt from carrying on any regulated activity in the United Kingdom. Contravention of that prohibition is a criminal offence. A person who has permission under Part IV of the Act to carry on one or more regulated activities is authorised.

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 the Act, inserted by the Regulation of Financial Services (Land Transactions) Act 2005 (c. 24)). This Order specifies the activities of entering into, administering, arranging and advising on regulated sale and rent back agreements.

The activities will become regulated activities for the purposes of the interim regime on 1st July 2009 and for the purposes of making applications for Part IV permission or variation of Part IV permission on 30th June 2010. In order to ensure that the business of those persons who are currently lawfully carrying on the activity which will be regulated for the first time under the Act is not disrupted, a person who requests interim permission on or before 1st August 2009 will receive an interim permission to enable him to continue to carry on that activity. Persons who are already authorised to carry out another regulated activity may request interim variation of permission. The interim permission (or interim variation of permission) will take effect from 1st July 2009. The interim permission (or interim variation of permission) lapses at the time when the request is withdrawn or refused, is superseded by the determination of an application for Part IV permission or on 30th June 2010, whichever date is the earliest.

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

Article 4 inserts a new article into the Principal Order to specify the new regulated activity of arranging regulated sale and rent back agreements. Articles 5 to 11 amend articles 26 to 33A of the Principal Order, so as to apply the exclusions specified in those articles to arranging sale and rent back agreements. 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 a new article into the Principal Order to specify the new regulated activity of advising on regulated sale and rent back agreements. 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 advising on regulated sale and rent back agreements. Those exclusions relate to advice given in the media and advice given in the course of administration by an authorised person.

Article 17 inserts news article into the Principal Order to specify the new regulated activity of entering into and administering regulated sale and rent back agreements and to apply exclusions relating to arranging administration by an authorised person and administration pursuant to an agreement with an authorised person.

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

Articles 18, 19 and 20 amend respectively articles 66, 67 and 72 of the Principal Order so as to extend certain other exclusions to entering into, arranging and advising on regulated sale and rent back agreements.

Article 22 inserts a new article into the Principal Order to specify rights under regulated sale and rent back agreements as specified investments and exclude such rights from the scope of article 89 of the Principal Order.

Articles 23 to 26 make consequential amendments to the Companies Act 1985 (c. 6), the Law of Property (Miscellaneous Provisions) Act 1989 (c. 34), the Act and the Companies Act 2006 (c.46).

Articles 27 to 31 make consequential amendments to other secondary legislation including other instruments made under the Act.

Article 32 confers an interim permission (or interim variation of permission) to enter into, administer, arrange or advise on regulated sale and rent back agreements on persons who have submitted a request for interim permission (or interim variation of permission) on or before 1st August 2009 and are either already conducting the activities to which their request relates (or already authorised under Part IV of the Act to carry on other regulated activities).

Article 33 enables the Financial Services Authority to modify, amongst other things, its rules in their application to persons with an interim permission or interim variation of permission.

Article 34 and the Schedule provide for the application of provisions in the Act and the Principal Order to persons with an interim permission, indicating where such provisions are to be treated as including or not including such persons.

An Impact Assessment of the effect of this instrument on the costs of business has been prepared and is available on HM Treasury' website (www.hm-treasury.gov.uk) or from the Payments, Credits and Inclusion team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).