

Status: Point in time view as at 31/12/2020.

Changes to legislation: The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, Section 61 is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

STATUTORY INSTRUMENTS

2001 No. 544

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

PART II

SPECIFIED ACTIVITIES

CHAPTER XV

REGULATED MORTGAGE CONTRACTS

The activities

Regulated mortgage contracts

- 61.**—(1) Entering into a regulated mortgage contract as lender is a specified kind of activity.
- (2) Administering a regulated mortgage contract is also a specified kind of activity, [^{F1}where—
- (a) the contract was entered into by way of business on or after 31st October 2004; or
 - (b) the contract—
 - (i) was entered into by way of business before 31st October 2004, and
 - (ii) was a regulated credit agreement immediately before 21st March 2016.]
- (3) In this Chapter—
- [^{F2}(a) [^{F3}subject to paragraph (5),] a contract is a “regulated mortgage contract” if, at the time it is entered into, the following conditions are met—
- [^{F4}(i) the contract is one under which a person (“the lender”) provides credit to an individual or to trustees (“the borrower”);
 - (ii) the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land [^{F5}...];
 - (iii) at least 40% of that land is used, or is intended to be used—
 - (aa) in the case of credit provided to an individual, as or in connection with a dwelling; or
 - (bb) in the case of credit provided to a trustee which is not an individual, as or in connection with a dwelling by an individual who is a beneficiary of the trust, or by a related person;]
- [^{F6}but such a contract is not a regulated mortgage contract if it [^{F7}falls within article 61A(1) or (2)];]
- (b) “administering” a regulated mortgage contract means either or both of—
- (i) notifying the borrower of changes in interest rates or payments due under the contract, or of other matters of which the contract requires him to be notified; and

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(ii) taking any necessary steps for the purposes of collecting or recovering payments due under the contract from the borrower;

but a person is not to be treated as administering a regulated mortgage contract merely because he has, or exercises, a right to take action for the purposes of enforcing the contract (or to require that such action is or is not taken);

(c) “credit” includes a cash loan, and any other form of financial accommodation.

(4) For the purposes of [F8] paragraph 3(a)—

[F9](a) “mortgage” includes a charge and (in Scotland) a heritable security;]

[F10](aa) “land”—

(i) in relation to a contract entered into before IP completion day, means land in the United Kingdom or within the territory of an EEA State;

(ii) in relation to a contract entered into on or after IP completion day, means land in the United Kingdom.]

(b) 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;

(c) “related person”, in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust, means—

(i) that person’s spouse [F11] 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; F12...

F13(d)

[F14](5) In this Chapter, a contract entered into before 21st March 2016 is a “regulated mortgage contract” only if—

(a) at the time it was entered into, entering into the contract was an activity of the kind specified by paragraph (1), or

(b) the contract is a consumer credit back book mortgage contract within the meaning of article 2 of the Mortgage Credit Directive Order 2015.]

Textual Amendments

- F1** Words in art. 61(2) substituted (5.11.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 3\) Order 2015 \(S.I. 2015/1863\)](#), art. 1(2)(b)(4), **2(4)**
- F2** Art. 61(3)(a) substituted (31.10.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2001 \(S.I. 2001/3544\)](#), arts. 1(1)(b), **8(b)**
- F3** Words in art. 61(3)(a) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2016 \(S.I. 2016/392\)](#), art. 1(2)(3)(c), **2(18)(a)** (with Pt. 5)
- F4** Art. 61(3)(a)(i)-(iii) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(21)(a)(i)** (with Pt. 4)
- F5** Words in art. 61(3)(a)(ii) omitted (31.12.2020) by virtue of [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **145(2)** (with savings in S.I. 2019/680, reg. 11 (as amended by S.I. 2019/1212, regs. 1(3), 22(3)); 2020 c. 1, Sch. 5 para. 1(1)

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- F6** Words in art. 61(3)(a) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **17**
- F7** Words in art. 61(3)(a) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(21)(a)(ii)** (with Pt. 4)
- F8** Words in art. 61(4) substituted (31.10.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2001 \(S.I. 2001/3544\)](#), arts. 1(1)(b), **8(c)**
- F9** Art. 61(4)(a) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(21)(b)** (with Pt. 4)
- F10** Art. 61(4)(aa) inserted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **145(3)** (with savings in S.I. 2019/680, **reg. 11** (as amended by S.I. 2019/1212, regs. 1(3), **22(3)** and S.I. 2020/1301, regs. 1, 3, **Sch. para. 33(q)**); 2020 c. 1, **Sch. 5 para. 1(1)**)
- F11** Words in art. 61(4)(c)(i) inserted (5.12.2005) by [The Civil Partnership Act 2004 \(Amendments to Subordinate Legislation\) Order 2005 \(S.I. 2005/2114\)](#), reg. 1, **Sch. 16 para. 1(3)**
- F12** Word in art. 61(4) omitted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(21)(c)(i)** (with Pt. 4)
- F13** Art. 61(4)(d) omitted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(21)(c)(ii)** (with Pt. 4)
- F14** Art. 61(5) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2016 \(S.I. 2016/392\)](#), art. 1(2)(3)(c), **2(18)(b)** (with Pt. 5)

Commencement Information

- I1** Art. 61 in force at 31.10.2004, see art. 1(2)(b) (as read with Treasury notice dated 9.7.2003)

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