
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, where the contract was entered into after the coming into force of this article.

(3) In this Chapter—

(a) a “regulated mortgage contract” means a contract under which—

(i) a person (“the lender”) provides credit to an individual or to trustees (“the borrower”); and

(ii) the obligation of the borrower to repay is secured by a first legal mortgage on land (other than timeshare accommodation) in the United Kingdom, at least 40% of which is used, or is intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a related person;

(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

(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 paragraph (3)(a)(ii)—

(a) a “first legal mortgage” means a legal mortgage ranking in priority ahead of all other mortgages (if any) affecting the land in question, where “mortgage” includes charge and (in Scotland) a heritable security;

- (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;
 - (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) “timeshare accommodation” has the meaning given by section 1 of the Timeshare Act 1992 (1).

Exclusions

Arranging administration by authorised person

62. A person who is not an authorised person does not carry on an activity of the kind specified by article 61(2) in relation to a regulated mortgage contract where he—

- (a) arranges for another person, being an authorised person with permission to carry on an activity of that kind, to administer the contract; or
- (b) administers the contract 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

63. A person who is not an authorised person does not carry on an activity of the kind specified by article 61(2) in relation to a regulated mortgage contract where he administers the contract pursuant to an agreement with an authorised person who has permission to carry on an activity of that kind.

(1) 1992 c. 35. The definition of “timeshare accommodation” in section 1 was amended by S.I.1997/1081, reg. 2.