
STATUTORY INSTRUMENTS

2003 No. 1475

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

PART 2

AMENDMENTS TO THE REGULATED ACTIVITIES ORDER

Meaning of “overseas person”

3. In article 3(1) of the Regulated Activities Order (interpretation), in paragraph (a) of the definition of “overseas person”—

- (a) after “25,” insert “25A,”; and
- (b) for “and 53” substitute “, 53, 53A and 61”.

Arranging regulated mortgage contracts

4. After article 25 of the Regulated Activities Order insert—

“Arranging regulated mortgage contracts

25A.—(1) Making arrangements—

- (a) for another person to enter into a regulated mortgage contract as borrower; or
- (b) for another person to vary the terms of a regulated mortgage contract entered into by him as borrower after the coming into force of article 61, in such a way as to vary his obligations under that contract,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements entering into a regulated mortgage contract as borrower is also a specified kind of activity.

(3) In this article “borrower” has the meaning given by article 61(3)(a)(i).”.

Exclusion of arrangements not causing a deal

5. In article 26 of the Regulated Activities Order (arrangements not causing a deal), after “article 25(1)” insert “and article 25A(1)”.

Exclusion where a person provides means of communication between parties

6. In article 27 of the Regulated Activities Order (enabling parties to communicate), after “article 25(2)” insert “and article 25A(2)”.

Exclusion where the arranger is a party to the contract

7. After article 28 of the Regulated Activities Order insert—

“Arranging contracts to which the arranger is a party

28A.—(1) There are excluded from article 25A(1) any arrangements—

- (a) for a contract into which the person making the arrangements enters or is to enter; or
- (b) for a variation of a contract to which that person is (or is to become) a party.

(2) There are excluded from article 25A(2) any arrangements which a person makes with a view to contracts into which he enters or is to enter.”.

Exclusion of arrangements where transaction is with or through an authorised person

8. In article 29 of the Regulated Activities Order (arranging deals with or through authorised persons), in paragraph (1)—

- (a) after “article 25(1) and (2)” insert “and article 25A(1) and (2)”; and
- (b) in sub-paragraph (b), after “in his capacity as an investor” insert “or (as the case may be) a borrower under a regulated mortgage contract”.

Exclusion of arrangements made in the course of administration by authorised person

9. After article 29 of the Regulated Activities Order insert—

“Arrangements made in the course of administration by authorised person

29A. A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 25A(1)(b) as a result of—

- (a) anything done by an authorised person (“B”) in relation to a regulated mortgage contract which B is administering pursuant to an arrangement of the kind mentioned in article 62(a); or
- (b) anything A does in connection with the administration of a regulated mortgage contract in circumstances falling within article 62(b).”.

Exclusion of arrangements which consist of introduction to an authorised person etc. for independent advice

10. In article 33 of the Regulated Activities Order (introducing)—

- (a) after “article 25(2)” insert “and article 25A(2)”; and
- (b) in paragraph (b)(iii)—
 - (i) after “25,” insert “25A,” and
 - (ii) for “52 and 53” substitute “52, 53 and 53A”.

Exclusion of arrangements consisting of an introduction to an authorised person etc.

11. After article 33 of the Regulated Activities Order insert—

“Introducing to authorised persons etc.

33A.—(1) There are excluded from article 25A(2) arrangements where—

- (a) they are arrangements under which a client is introduced to a person (“N”) who is—
 - (i) an authorised person who has permission to carry on a regulated activity of the kind specified by any of articles 25A, 53A, and 61(1),
 - (ii) an appointed representative who may carry on a regulated activity of the kind specified by either of articles 25A and 53A without contravening the general prohibition, or
 - (iii) an overseas person who carries on activities specified by any of articles 25A, 53A and 61(1); and
 - (b) the conditions mentioned in paragraph (2) are satisfied.
- (2) Those conditions are—
- (a) that the person making the introduction (“P”) does not receive any money, other than money payable to P on his own account, paid by the client for or in connection with any transaction which the client enters into with or through N as a result of the introduction; and
 - (b) that before making the introduction P discloses to the client such of the information mentioned in paragraph (3) as applies to P.
- (3) That information is—
- (a) that P is a member of the same group as N;
 - (b) details of any payment which P will receive from N, by way of fee or commission, for introducing the client to N;
 - (c) an indication of any other reward or advantage received or to be received by P that arises out of his introducing clients to N.
- (4) In this article, “client” means a borrower, within the meaning given by article 61(3)(a)(i), or a person who is or may be contemplating entering into a regulated mortgage contract as such a borrower (as the case may be).”.

Other exclusions—arranging

12. In article 36 (other exclusions)—

- (a) the current text is numbered paragraph (1); and
- (b) after paragraph (1) insert—

“(2) Article 25A is also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business), 72 (overseas persons) and 72A (information society services).”.

Advising on regulated mortgage contracts

13. After article 53 of the Regulated Activities Order insert—

“Advising on regulated mortgage contracts

53A.—(1) Advising a person is a specified kind of activity if the advice—

- (a) is given to the person in his capacity as a borrower or potential borrower; and
- (b) is advice on the merits of his doing any of the following—
 - (i) entering into a particular regulated mortgage contract, or

- (ii) varying the terms of a regulated mortgage contract entered into by him after the coming into force of article 61 in such a way as to vary his obligations under that contract.
- (2) In this article, “borrower” has the meaning given by article 61(3)(a)(i).”.

Exclusion of advice given in print, electronic or broadcast media

14.—(1) Article 54 of the Regulated Activities Order (advice given in newspapers etc.) is amended as follows.

- (2) In paragraph (1), after “from article 53” insert “and article 53A”.
- (3) In sub-paragraph (a) of that paragraph, after “in article 53” insert “or (as the case may be) article 53A”.
- (4) For sub-paragraph (b) of that paragraph substitute—
 - “(b) that of leading or enabling persons—
 - (i) to buy, sell, subscribe for or underwrite securities or contractually based investments, or (as the case may be),
 - (ii) to enter as borrower into regulated mortgage contracts, or vary the terms of regulated mortgage contracts entered into by them as borrower.”.
- (5) In paragraph (2), after “from article 53” insert “and article 53A”.

Exclusion of advice given in the course of administration by authorised person

15. After article 54 of the Regulated Activities Order insert—

“Advice given in the course of administration by authorised person

54A. A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 53A by reason of—

- (a) anything done by an authorised person (“B”) in relation to a regulated mortgage contract which B is administering pursuant to arrangements of the kind mentioned in article 62(a); or
- (b) anything A does in connection with the administration of a regulated mortgage contract in circumstances falling within article 62(b).”.

Other exclusions—advising

16. In article 55 of the Regulated Activities Order (other exclusions)—

- (a) the current text is numbered paragraph (1); and
- (b) after paragraph (1) insert—
 - “(2) Article 53A is also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business) and 72A (information society services).”.

Other exclusions—regulated mortgage contracts

17. For article 63A and the heading to that article, substitute—

“Other exclusions

63A. Article 61 is also subject to the exclusions in articles 66 (trustees etc.), 72 (overseas persons) and 72A (information society services).”.

Exclusion of trustees, nominees and personal representatives

18. In article 66 of the Regulated Activities Order (trustees, nominees and personal representatives)—

- (a) in paragraph (2), for “article 25(1) and (2)” substitute “articles 25(1) and (2) and 25A(1) and (2)”;
- (b) in paragraph (6), for “article 53” substitute “articles 53 and 53A”;
- (c) after paragraph (6) insert—
 - “(6A) Subject to paragraph (7), a person acting as trustee or personal representative does not carry on an activity of the kind specified by article 61(1) or (2) where the borrower under the regulated mortgage contract in question is a beneficiary under the trust, will or intestacy.”; and
- (d) in paragraph (7), for “(4) and (6)” substitute “(4), (6) and (6A)”.

Exclusion of activities carried on in the course of a profession or non-investment business

19. In paragraph (1) of article 67 of the Regulated Activities Order (activities carried on in the course of a profession or non-investment business)—

- (a) after “25(1) and (2)”, insert “, 25A”; and
- (b) for “and 53”, substitute “53 and 53A”.

Overseas persons

20. In article 72 of the Regulated Activities Order (overseas persons), after paragraph (5) insert—

“(5A) An overseas person does not carry on an activity of the kind specified by article 25A(1)(a) where each person who may be contemplating entering into a regulated mortgage contract as borrower is a non-resident individual.

(5B) There are excluded from article 25A(1)(b) arrangements made by an overseas person to vary the terms of a qualifying contract.

(5C) There are excluded from article 25A(2) arrangements made by an overseas person which are made solely with a view to non-resident individuals who participate in those arrangements entering as borrower into regulated mortgage contracts.

(5D) An overseas person does not carry on an activity of the kind specified by article 61(1) by entering into a qualifying contract.

(5E) An overseas person does not carry on an activity of the kind specified by article 61(2) where he administers a qualifying contract.

(5F) In paragraphs (5A) to (5E)—

- (a) “non-resident individual” means an individual who is not normally resident in the United Kingdom; and
- (b) “qualifying contract” means a regulated mortgage contract within the meaning of article 61(3)(a), the borrower or, as the case may be, each borrower under which is (or was) a non-resident individual at the time when he enters (or entered) into the contract.”.