
STATUTORY INSTRUMENTS

2009 No. 1342

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) Order 2009**

PART 2

AMENDMENTS OF THE REGULATED ACTIVITIES ORDER

Amendment of the Principal Order

2. The Principal Order is amended as follows.

Definitions

- 3.—(1) In article 3(1) (interpretation) —
- (a) after the definition of “the Act” insert—
 - ““agreement provider” has the meaning given by article 63J(3);
 - “agreement seller” has the meaning given by article 63J(3);”;
 - (b) after the definition of “regulated mortgage contract” insert—
 - ““regulated sale and rent back agreement” has the meaning given by article 63J(3);”;
 - (c) in paragraph (a) of the definition of “overseas person” —
 - (i) after “25D” insert “25E,”;
 - (ii) after “53C” insert “53D,”; and
 - (iii) for “and 63F” insert “, 63F and 63J”.
- (2) In article 3(2) for “or 25C(1)” insert “, 25C(1) or 25E(1)”.

Arranging sale and rent back agreements

4. After article 25D (operating a multilateral trading facility) insert—

“Arranging regulated sale and rent back agreements

25E.—(1) Making arrangements—

- (a) for another person to enter into a regulated sale and rent back agreement as an agreement seller or as an agreement provider; or
- (b) for another person (“A”) to vary the terms of a regulated sale and rent back agreement, entered into on or after 1st July 2009 by A as agreement seller or agreement provider, in such a way as to vary A’s obligations under that agreement, is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements entering into a regulated sale and rent back agreement as agreement seller or agreement provider is also a specified kind of activity.”.

Exclusion of arrangements not causing a deal

5. In article 26 (arrangements not causing a deal) for “and 25C(1)” substitute “, 25C(1) and 25 E(1)”.

Exclusion where a person provides a means of communication between parties

6. In article 27 (enabling parties to communicate) for “or 25C(2)” substitute “, 25C(2) or 25 E(2)”.

Exclusion where the arranger is a party to the contract, plan or agreement

7.—(1) In the title of article 28A (arranging contracts or plans to which the arranger is a party) for “or plans” substitute “, plans or agreements”.

(2) In article 28A—

(a) in paragraph (1)—

(i) for “and 25C(1)” substitute “, 25C(1) and 25E(1)”;

(ii) for “or plan” in both places substitute “, plan or agreement”;

(b) in paragraph (2)—

(i) for “and 25C(2)” substitute “, 25C(2) and 25E(2)”;

(ii) for “or plans” substitute “, plans or agreements”.

Exclusion of arrangements where transaction is with or through authorised persons

8. In article 29(1) (arranging deals with or through authorised persons)—

(a) for “and 25C(1) and (2)” substitute “, 25C(1) and (2) and 25E(1) and (2)”;

(b) in sub-paragraph (b) for “investor, borrower, reversion seller, plan provider or (as the case may be) home purchaser” substitute “investor, borrower, reversion seller, plan provider, home purchaser, agreement provider or (as the case may be) agreement seller”.

Exclusion made in the course of administration by authorised person

9. In article 29A (arrangements made in the course of administration by authorised person) after paragraph (3) insert—

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

(a) anything done by an authorised person (“B”) in relation to a regulated sale and rent back agreement which B is administering pursuant to an arrangement of the kind mentioned in article 63K(a); or

(b) anything A does in connection with the administration of a regulated sale and rent back agreement in circumstances falling within article 63K(b).”.

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

10. In article 33 (introducing)—

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

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

- 11.** In article 33A (introducing to authorised persons etc.)—
- (a) after paragraph (1B) insert—
 - “(1C) There are excluded from article 25E(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 25E, 53D and 63J(1),
 - (ii) an appointed representative who may carry on a regulated activity of the kind specified by either of articles 25E or 53D without contravening the general prohibition, or
 - (iii) an overseas person who carries on activities specified by any of articles 25E, 53D and 63J(1); and
 - (b) the conditions mentioned in paragraph (2) are satisfied.”;
 - (b) after paragraph 4(c) insert—
 - “;
 - (d) for the purposes of paragraph (1C), an agreement provider, an agreement seller or a person who is or may be contemplating entering into a regulated sale and rent back agreement as an agreement provider or agreement seller.”.

Other exclusions: arranging

- 12.** In article 36(2) (other exclusions) for “and 25C” substitute “, 25C and 25E”.

Advising on regulated sale and rent back agreements

- 13.** After article 53C (advising on regulated home purchase plans) insert—

“Advising on regulated sale and rent back agreements

- 53D.** Advising a person is a specified kind of activity if the advice—
- (a) is given to the person (“A”) in A’s capacity as—
 - (i) an agreement seller or potential agreement seller, or
 - (ii) an agreement provider or potential agreement provider; and
 - (b) is advice on the merits of A doing either of the following—
 - (i) entering into a particular regulated sale and rent back agreement; or
 - (ii) varying the terms of a regulated sale and rent back agreement entered into on or after 1st July 2009 by A as agreement seller or agreement provider, in such a way so as to vary A’s obligations under that agreement.”.

Exclusion of advice given in newspapers etc.

14. In article 54 (advice given in newspapers etc.)—

- (a) in paragraph (1) for “and 53C” substitute “, 53C and 53D”;
- (b) in sub-paragraph (a) for “or 53C,” substitute “, 53C or 53D,”;
- (c) after sub-paragraph (b)(iv) insert—
 - “;
 - (v) to enter as agreement seller or agreement provider into regulated sale and rent back agreements, or vary the terms of regulated sale and rent back agreements entered into by them as agreement seller or agreement provider”;
- (d) in paragraph (2) for “and 53C” substitute “, 53C and 53D”.

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

15. In article 54A (advice given in the course of administration by authorised person) after paragraph (3) insert—

- “(4) A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 53D by reason of
 - (a) anything done by an authorised person (“B”) in relation to a regulated sale and rent back agreement which B is administering pursuant to arrangements of the kind mentioned in article 63K(a); or
 - (b) anything A does in connection with the administration of a regulated sale and rent back agreement in circumstances falling within article 63K(b).”.

Other exclusions: advising

16. In article 55(2) (other exclusions) for “and 53C” substitute “, 53C and 53D”.

Entering into and administering regulated sale and rent back agreements

17. After article 63I (other exclusions) insert—

“CHAPTER 15C

REGULATED SALE AND RENT BACK AGREEMENTS

The activities

Entering into and administering regulated sale and rent back agreements

63J.—(1) Entering into a regulated sale and rent back agreement as an agreement provider is a specified kind of activity.

(2) Administering a regulated sale and rent back agreement is also a specified kind of activity when the agreement was entered into on or after 1st July 2009.

(3) In this Chapter—

- (a) a “regulated sale and rent back agreement” is an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into—
 - (i) the arrangement is one under which a person (the “agreement provider”) buys all or part of the qualifying interest in land (other than timeshare

accommodation) in the United Kingdom from an individual or trustees (the “agreement seller”); and

- (ii) the agreement seller (if the agreement seller is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so;

but such an arrangement is not a regulated sale and rent back agreement if it is a regulated home reversion plan;

- (b) “administering” a regulated sale and rent back agreement means any of—
 - (i) notifying the agreement seller of changes in payments due under the agreement, or of other matters of which the agreement requires the agreement seller to be notified;
 - (ii) taking any necessary steps for the purpose of making payments to the agreement seller under the agreement; and
 - (iii) taking any necessary steps for the purposes of collecting or recovering payments due under the agreement from the agreement seller,

but a person is not to be treated as administering a regulated sale and rent back agreement because that person has, or exercises, a right to take action for the purposes of enforcing the agreement (or to require that such action is or is not taken).

- (4) For the purposes of paragraph (3)—

- (a) the reference to a “qualifying interest” in land—
 - (i) in relation to land in England and Wales, is to an estate in fee simple absolute or a term of years absolute, whether subsisting at law or in equity;
 - (ii) in relation to land in Scotland, is to the interest of an owner in land or the tenant’s right over or interest in a property subject to a lease;
 - (iii) in relation to land in Northern Ireland, is to any freehold estate or any leasehold estate, whether subsisting at law or in equity;
- (b) “timeshare accommodation” has the meaning given by section 1 of the Timeshare Act 1992(1); and
- (c) “related person” in relation to the agreement seller or, where the agreement seller is a trustee, a beneficiary of the trust, means—
 - (i) that person’s spouse or civil partner;
 - (ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristic of the relationship between husband and wife;
 - (iii) that person’s parent, brother, sister, child, grandparent or grandchild.

(5) For the purposes of paragraph (3)(a)(ii), 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.

- (6) In this Order—

- (a) references to entering into a regulated sale and rent back agreement as agreement provider include acquiring any obligations or rights of the agreement provider,

(1) 1992 c.35; section 1 was amended by S.I. 1997/1081 and by the Employment Rights Act 1996 (c.18), sections 240 and 243 and Schedule 1, paragraph 53(a) and (b).

including the agreement provider's interest in land or interests under one or more of the instruments or agreements referred to in paragraph (3)(a); but

- (b) in relation to a person who acquires any such obligations or rights, an activity is a specified kind of activity for the purposes of articles 25E(1)(b) and 53D(b)(ii) and paragraph (2) only if the agreement was entered into by the agreement provider (rather than the obligations or rights acquired) on or after 1st July 2009.

(7) Accordingly, references in this Order to an agreement provider, other than in paragraph (6), include a person who acquires any such obligations or rights.

Exclusions

Arranging administration by authorised person

63K. A person who is not an authorised person does not carry on an activity of the kind specified by article 63J(2) in relation to a regulated sale and rent back agreement where that person—

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

63L. A person who is not an authorised person does not carry on an activity of the kind specified by article 63J(2) in relation to a regulated sale and rent back agreement where that person administers the agreement pursuant to an agreement with an authorised person who has permission to carry on activity of that kind.

Other exclusions

63M. Article 63J is also subject to the exclusions in article 66 (trustees etc.), 72 (overseas persons) and 72A (information society services)."

Exclusion of trustees, nominees and personal representatives

18. In article 66 (trustees, nominees and personal representatives)—

- (a) in paragraph (2) for "and 25C(1) and (2)" substitute ", 25C(1) and (2) and 25E (1) and (2)";
- (b) in paragraph (6) for "and 53C" substitute ", 53C and 53D";
- (c) after paragraph (6C) insert—

“(6D) Subject to paragraph (7), a person acting as a trustee or personal representative does not carry on an activity of the kind specified by article 63J(1) or (2) where the agreement seller under the regulated sale and rent back agreement is a beneficiary under the trust, will or intestacy.”;

- (d) in paragraph (7) for "and (6C)" substitute ", (6C) and (6D)".

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

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

- (a) after "25C," insert "25E,"; and

- (b) for “and 53C” substitute “, 53C and 53D”.

Overseas persons

20. In article 72 (overseas persons)—

- (a) in paragraph (5A) for “or 25C(1)(a)” substitute “, 25C(1)(a) or 25E(1)(a)”;
- (b) in paragraph (5B) for “and 25C(1)(b)” substitute “, 25C(1)(b) and 25E(1)(b)”;
- (c) in paragraph (5C) for “and 25C(2)” substitute “, 25C(2) and 25E(2)”;
- (d) in paragraph (5D) for “or 63F(1)” substitute “, 63F(1) or 63J(1)”;
- (e) in paragraph (5E) for “or 63F(2)” substitute “, 63F(2) or 63J(2)”;
- (f) in paragraph (5F) after sub-paragraph (b) (iii) insert—
 - “(iv) in relation to articles 25E and 63J, a regulated sale and rent back agreement where the agreement seller (or each agreement seller) is non-resident when the agreement seller enters into it;”
- (g) in paragraph (5F) after sub-paragraph (c) (iii) insert—
 - “(iv) in the case of a regulated sale and rent back agreement, as agreement seller or agreement provider;”
- (h) in paragraph (5F) after sub-paragraph (d) (iii) insert—
 - “;
 - (iv) in relation to article 25E, a regulated sale and rent back agreement”.

Specified investments

21. After article 88B (regulated home reversion plans) insert—

“Regulated sale and rent back agreements

88C. Rights under a regulated sale and rent back agreement.”.

Rights to or interests in investments

22. In article 89(1) (rights to or interests in investments) for “88A or 88B” substitute “88A, 88B or 88C”.