

2009 No. 1342

FINANCIAL SERVICES AND MARKETS

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

Approved by both Houses of Parliament

Made - - - - 1st June 2009

Laid before Parliament 2nd June 2009

Coming into force in accordance with article 1(2)

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SCHEDULE — APPLICATION OF THE ACT AND THE PRINCIPAL
ORDER TO PERSONS WITH AN INTERIM PERMISSION

In the opinion of the Treasury, one of the effects of the following Order is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000^(a)) will become a regulated activity;

^(a) 2000 c.8. A relevant amendment was made by the Regulation of Financial Services (Land Transactions) Act 2005 (c.24), which inserts paragraph 23A of Schedule 2 to the 2000 Act.

The Treasury make the following Order in exercise of the powers conferred on them by sections 22(1) and (5), 426, 427 and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000:

PART 1 GENERAL

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009.

(2) This Order comes into force—

- (a) other than for the purposes of enabling applications to be made for a Part IV permission, or a variation of a Part IV permission, in relation to activities of the kind specified by articles 25E, 53D or 63J or, so far as relevant to any such activity, article 64 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001^(a) on 1st July 2009; and
- (b) for the purposes of enabling applications to be made for a Part IV permission, or a variation of a Part IV permission, in relation to activities of the kind specified by articles 25E, 53D or 63J or, so far as relevant to any such activity, article 64 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, on 30th June 2010.

(3) In this Order “the Act” means the Financial Services and Markets Act 2000 and “the Principal Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

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)”.

(a) S.I. 2001/544 amended by S.I. 2003/1474 and S.I. 2006; there are other amending instruments but none is relevant.

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 25E(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 25E(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(a); 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, 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

(a) 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).

- (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”.

PART 3

AMENDMENTS OF PRIMARY LEGISLATION

Amendments of the Companies Act 1985

23. In section 262(1) of the Companies Act 1985(a) (minor definitions) in the definition of “regulated activity”—

- (a) after paragraph (ab) insert—
 - “(ac) article 25E (arranging regulated sale and rent back agreements),”; and
- (b) after paragraph (cb) insert—
 - “(cc) article 53D (advising on regulated sale and rent back agreements),”.

Amendments of the Law of Property (Miscellaneous Provisions) Act 1989

24. In section 2 of the Law of Property (Miscellaneous Provisions) Act 1989(b) (contracts for sale etc. of land to be made by signed writing)—

(a) 1985 c.6; the definition of regulated activity was inserted by S.I. 2005/2280 and amended by S.I. 2006/2383.
 (b) 1989 c.34; section 2 was amended by S.I. 2001/3649 and S.I. 2006/2383.

- (a) in subsection (5)(c) for “, a regulated home reversion plan or a regulated home purchase plan” substitute “a regulated home reversion plan, a regulated home purchase plan or a regulated sale and rent back agreement”; and
- (b) in subsection (6) for “ and “regulated home purchase plan”” substitute “, “regulated home purchase plan” and “regulated sale and rent back agreement””.

Amendments of the Financial Services and Markets Act 2000

25. In section 49(2A)(b) of the Financial Services and Markets Act 2000(a) (persons connected with an applicant)—

- (a) in paragraph (b) of subsection (2A) for “or a regulated home purchase plan” substitute “, a regulated home purchase plan or a regulated sale and rent back agreement”; and
- (b) after subsection (3) insert—
 - “(4) In subsection (2A)(b) “regulated mortgage contract”, “regulated home reversion plan”, “regulated home purchase plan” and “regulated sale and rent back agreement” shall be construed in accordance with—
 - (a) section 22;
 - (b) any relevant order under that section; and
 - (c) Schedule 2.”.

Amendments of the Companies Act 2006

26. In section 474(1) of the Companies Act 2006(b) (accounts and reports: minor definitions) in the definition of “regulated activity”—

- (a) after paragraph (c) insert—
 - “(ca) article 25E (arranging regulated sale and rent back agreements),”; and
- (b) after paragraph (g) insert—
 - “(ga) article 53D (advising on regulated sale and rent back agreements),”.

PART 4

AMENDMENTS OF OTHER SECONDARY LEGISLATION

Amendments of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001

27. In the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001(c) after article 3C (arranging and advising on regulated home purchase plans) insert—

“Arranging and advising on regulated sale and rent back agreements

3D. A person is not to be regarded as carrying on by way of business an activity specified by—

- (a) article 25E of the Regulated Activities Order (arranging regulated sale and rent back agreements);
- (b) article 53D of that Order (advising on regulated sale and rent back agreements); or

(a) 2008 c.8; section 49(2A) was inserted by S.I. 2001/544 and amended by S.I. 2004/1610 and S.I. 2006/2383.
 (b) 2006 c.46.
 (c) S.I. 2001/1177; article 3A was inserted by S.I. 2003/1475 and articles 3B and 3C were inserted by S.I. 2006/2383.

- (c) article 64 of that Order (agreeing), so far as relevant to either of the articles mentioned in sub-paragraphs (a) and (b),

unless that person carries on the business of engaging in that activity.”.

Amendments of the Financial Services and Markets Act 2000 (Exemption) Order 2001

28. In the Financial Services and Markets Act 2000 (Exemption) Order 2001(a), Part 4 of the Schedule (persons exempt in respect of particular regulated activities) is amended as follows—

- (a) in paragraph 47 (local authorities)—
 - (i) delete “or” at the end of sub-paragraph (c);
 - (ii) after sub-paragraph (d) insert—
 - “; or
 - (e) article 25E, 53D or 63J of that Order (arranging, advising on, entering into or administering a regulated sale and rent back agreement)”;
- (b) in paragraph 48 (social housing)—
 - (i) delete “or” at the end of sub-paragraph (c);
 - (ii) after sub-paragraph (d) insert—
 - “;
 - (e) article 25E, 53D or 63J of that Order (arranging, advising on, entering into or administering a regulated sale and rent back agreement)”.

Amendments of the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001

29.—(1) The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001(b) is amended as follows.

- (2) In article 2(1) (interpretation)—
 - (a) after the definition of “the Act” insert—
 - ““agreement provider” has the meaning given by paragraph (3) of article 63J of the Regulated Activities Order, read with paragraphs (6) and (7) of that article;
 - “agreement seller” has the meaning given by article 63J(3) of the Regulated Activities Order”;
 - (b) after the definition of “regulated mortgage contract” insert—
 - ““regulated sale and rent back agreement” has the meaning given by article 63J(3) of the Regulated Activities Order;”.
- (3) After article 6F (activities to which exemption from the general prohibition does not apply: regulated home purchase plans) insert—

“6G.—(1) An activity of the kind specified by article 53D of the Regulated Activities Order (advising on regulated sale and rent back agreements) where the advice in question falls within paragraph (2).

- (2) Subject to paragraph (3), advice falls within this paragraph in so far as—
 - (a) it consists of a recommendation, given to an individual to enter as agreement seller or agreement provider into a regulated sale and rent back agreement with a particular person; and

(a) S.I. 2001/1201; paragraphs 47 and 48 of the Schedule were substituted by S.I. 2003/1675 and amended by S.I. 2006/2383.
(b) S.I. 2001/1227; relevant amending instruments are S.I. 2001/3650, S.I. 2003/1475 and 2006/2383.

(b) in entering into a regulated sale and rent back agreement that person would be carrying on an activity of the kind specified by article 63J(1) of the Regulated Activities Order (regulated sale and rent back agreements).

(3) Advice does not fall within paragraph (2) if it endorses a corresponding recommendation given to the individual by an authorised person with permission to carry on an activity of the kind specified by article 53D of the Regulated Activities Order or a person who is an exempt person in relation to an activity of that kind.

6H.—(1) An activity of the kind specified by article 63J(1) or (2) of the Regulated Activities Order (regulated sale and rent back agreements).

(2) Paragraph (1) does not apply to an activity carried on by a person in his capacity as a trustee or personal representative where the agreement seller under the regulated sale and rent back agreement in question is a beneficiary under the trust, will or intestacy.”.

Amendments of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

30.—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(a) is amended as follows.

(2) In article 28B(1)(a) (one off non-real time communications and solicited real time communications) for “10G or 10H” substitute “10G, 10H, 10I, 10J or 10K”.

(3) In article 73(2) (advice centres)—

(a) delete “or” at the end of sub-paragraph (d);

(b) after sub-paragraph (e) insert—

“; or

(f) a regulated sale and rent back agreement”.

(4) In Schedule 1 Part 1 (controlled activities)—

(a) after paragraph 10H (advising on a regulated home purchase plan) insert—

“Providing a regulated sale and rent back agreement

10I. Entering into a regulated sale and rent back agreement as agreement provider is a controlled activity.

Arranging a regulated sale and rent back agreement

10J. Making arrangements—

(a) for another person to enter as agreement seller or agreement provider into a regulated sale and rent back agreement; or

(b) for an agreement seller or an agreement provider under a regulated sale and rent back agreement, entered into on or after 1st July 2009, to vary the terms of that plan in such a way as to vary the obligations of the agreement seller or the agreement provider under that plan,

is a controlled activity.

Advising on a regulated sale and rent back agreement

10K. Advising a person (“A”) is a controlled activity if the advice is—

(a) given to A in A’s capacity as agreement seller, potential agreement seller, agreement provider or potential agreement provider; and

(a) S.I. 2005/1529, amended by S.I. 2006/2383; there are other amending instruments but none is relevant.

- (b) advice on the merits of A doing either of the following—
 - (i) entering into a 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, in such a way as to vary A’s obligations under that agreement.”.

(5) In Schedule 1 Part 2 (controlled investments)—

- (a) after paragraph 26B (regulated home purchase plans) insert—

“Regulated sale and rent back agreement

26C. Rights under a regulated sale and rent back agreement.”.

- (b) in paragraph 27(1) (rights to or interests in investments) for “26A or 26B” substitute “26A, 26B or 26C”;
- (c) in paragraph 28 (interpretation)—
 - (i) before the definition of “buying” insert—
 - ““agreement provider” has the meaning given in paragraph (3) of article 63J of the Regulated Activities Order, read with paragraphs (6) and (7) of that article;
 - “agreement seller” has the meaning given in article 63J(3) of the Regulated Activities Order”;
 - (ii) after the definition of “regulated home reversion plan” and “reversion seller” insert—
 - ““regulated sale and rent back agreement” has the meaning given in article 63J(3) of the Regulated Activities Order;”.

Amendments of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008

31. In section 474(1) of the Companies Act 2006, as applied to limited liability partnerships by regulation 32 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008(a) (minor definition) in the definition of “regulated activity”—

- (a) after paragraph (c) insert —
 - “(ca) article 25E (arranging regulated sale and rent back agreements),”; and
- (b) after paragraph (g) insert —
 - “(ga) article 53D (advising on regulated sale and rent back agreements),”.

PART 5

TRANSITIONAL PROVISIONS

Interim permission and interim variation of permission

32.—(1) This article applies where—

- (a) a person (“A”) has submitted to the Authority a completed request to carry on activity of the kind specified by any of the following articles of the Principal Order (as amended by this Order)—

(a) S.I. 2008/1911

- (i) article 25E (arranging regulated sale and rent back agreements);
 - (ii) article 53D (advising on regulated sale and rent back agreements);
 - (iii) article 63J (entering into and administering regulated sale and rent back agreements);
or
 - (iv) article 64 (agreeing to carry on specified kinds of activity), so far as relevant to any of the above activities;
- (b) A —
- (i) has carried on such activity before 1st July 2009 and the Authority has received the request on or before 1st August 2009; or
 - (ii) is an authorised person with a Part IV permission.
- (2) A is to be treated as having, on 1st July 2009, a Part IV permission to carry on the activity to which the request relates.
- (3) A permission which A is to be treated as having is referred to in this Order as an “interim permission”.
- (4) A variation of permission which A is to be treated as having is referred to in this Order as an “interim variation of permission”.
- (5) Section 51 (applications under this Part) of the Act shall apply to a request made under this article; and for that purpose—
- (a) a reference to an application for a Part IV permission, an application for the variation of a Part IV permission, an application under this Part and an application is taken to be a reference to a request under this article;
 - (b) a reference to a Part IV permission is taken to be a reference to interim permission under this article;
 - (c) a reference to the variation of a Part IV permission is taken to be a reference to interim variation of permission under this article; and
 - (d) section 51 is to be read with any other necessary modifications.
- (6) A request made in accordance with this article must be determined by the Authority before the end of the period of three months beginning with the date on which it received the completed request.
- (7) The Authority may give interim permission or interim variation of permission for A to carry out the regulated activity or regulated activities to which the request relates or such of them as may be specified in the permission if it has ensured that A will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 to the Act in relation to all such activities.
- (8) Should A be aggrieved by the determination of a request made under this article, A may apply to the Authority in writing for a review of the determination provided that the application for a review is made before the end of the period of 21 days beginning with the date on which the decision notice is given.
- (9) Should A’s request not be considered on the basis that it was received by the Authority after 1st August 2009, A may apply to the Authority in writing for a review of the refusal provided that the application for a review is made before the end of the period of 21 days beginning with the date on which the decision notice is given.
- (10) The decision on review shall be made by a person of appropriate seniority who was not involved in the original decision and shall be determined before the end of the period of 28 days beginning with the date on which the application for a review was received.
- (11) On an application for a review, any evidence relating to the subject matter of the review may be considered, whether or not it was available to the Authority at the material time.
- (12) The person determining the review may give interim permission or interim variation of permission for A to carry out the regulated activity or regulated activities to which the request relates or such of them as may be specified in the permission if that person has ensured that A will

satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 to the Act in relation to all such activities.

(13) On determining a request or an application for a review made in accordance with this article, the Authority must give A a decision notice setting out the reasons for the determination.

(14) Without prejudice to the exercise by the Authority of its powers under Part IV of the Act, an interim permission or interim variation of permission lapses—

- (a) on the date that the Authority gives A a decision notice refusing a request for interim permission or interim variation of permission made in accordance with this article;
- (b) on the date that the Authority, in accordance with paragraph (17), consents to the withdrawal of the request;
- (c) when an application for Part IV permission or a variation of a Part IV permission to carry on such activity to which the interim permission or interim variation of permission relates has been finally decided; or
- (d) on 30th June 2010;

whichever is the earliest.

(15) In this article, “refusing a request” means where the Authority has refused a request and —

- (a) A does not apply for a review, when the time for applying for a review has expired; or
- (b) A applies for a review, when the review has been determined in accordance with paragraphs (10) to (12).

(16) In this article, “finally decided” means—

- (a) subject to paragraphs (17) and (18), when the application is withdrawn;
- (b) when the Authority grants permission under section 42 of the Act (giving permission) to carry on the activity in question;
- (c) when the Authority varies a permission under section 44 of the Act (variation etc. at request of authorised person) to add the activity in question;
- (d) where the Authority has refused an application and the matter is not referred to the Tribunal, when the time for referring the matter to the Tribunal has expired;
- (e) where the Authority has refused an application and the matter is referred to the Tribunal, when—
 - (i) if the reference is determined by the Tribunal (including a determination following remission back to the Tribunal for rehearing in accordance with section 137(3)(a) of the Act (appeal on a point of law)), the time for bringing an appeal has expired; or
 - (ii) on an appeal from a determination of the Tribunal on a point of law, the Court itself determines the application in accordance with section 137 of the Act.

(17) Should A make a request for interim permission or interim variation of permission, the application may not be withdrawn without A first having obtained the consent of the Authority.

(18) Should A hold an interim permission or interim variation of permission and make an application for Part IV permission or a variation of a Part IV permission in relation to an activity to which the interim permission or interim variation of permission relates, the application may not be withdrawn without A first having obtained the consent of the Authority.

(19) Where—

- (a) the Authority exercises its powers under section 45 of the Act (variation etc. on the Authority’s own initiative) in relation to an authorised person who holds an interim permission; and
- (b) as a result of the variation there are no longer any regulated activities for which the authorised person has permission,

the Authority must, once it is satisfied that it is no longer necessary to keep the interim permission in force, cancel it.

Application of the Authority’s rules etc. to persons with an interim permission or interim variation of permission

33.—(1) The Authority may direct in writing that any relevant provision which would otherwise apply to a person by virtue of an interim permission or interim variation of permission is not to apply or is to apply as modified in the way specified in the direction.

(2) Where the Authority makes a rule, gives guidance or issues a statement or code which applies only to persons with an interim permission or interim variation of permission (or only to a class of such persons), section 65 (statements and codes: procedure), 155 (consultation) and 157(3) (guidance) of the Act do not apply to that rule, guidance, statement or code.

(3) For the purposes of paragraph (1), a “relevant provision” is any provision made as a result of the exercise by the Authority of any of its legislative functions mentioned in paragraph 1(2) of Schedule 1 to the Act (the Financial Services Authority).

Application of the Act etc.

34. The Schedule modifies the application of the Act and the Principal Order in relation to persons with an interim permission.

1st June 2009

Tony Cunningham
Frank Roy
Two of the Lords Commissioners
of Her Majesty’s Treasury

APPLICATION OF THE ACT AND THE PRINCIPAL ORDER TO PERSONS WITH AN INTERIM PERMISSION

1. Paragraphs 2 and 3 apply to every person with an interim permission.
2. For the purposes of section 20 (authorised persons acting without permission), a person's interim permission is treated as having been given under Part IV of the Act.
3. A person's interim permission is to be disregarded for the purposes of—
 - (a) section 38(2) (exemption orders);
 - (b) section 40(2) (application for permission);
 - (c) subject to paragraph 7, section 42 (giving permission);
 - (d) section 43 (imposition of requirements);
 - (e) section 44(1), (4) and (5) (variation etc at request of authorised person);
 - (f) section 45(1)(b) (variation etc on the Authority's own initiative);
 - (g) section 52 (determination of applications);
 - (h) section 53 (exercise of own-initiative power: procedure);
 - (i) section 54 (cancellation of Part IV permission: procedure);
 - (j) section 55 (right to refer matters to the Tribunal);
 - (k) section 59 (approval for particular arrangements);
 - (l) section 60 (applications for approval);
 - (m) section 61 (determination of applications);
 - (n) section 62 (applications for approval: procedure and right to refer to Tribunal); and
 - (o) section 63 (withdrawal of approval).
4. Paragraphs 5 to 9 apply to a person who falls within section 31(1) (authorised persons) by virtue only of having an interim permission.
5. A person with an interim permission is to be treated on or after 1st July 2009 as an authorised person for the purposes of the Act (and any provision made under the Act), unless otherwise expressly provided for by this Schedule.
6. For the purposes of section 21(2) (restrictions on financial promotion), a person with an interim permission is not to be treated as an authorised person for the purposes of communicating or approving the content of a communication except where the communication invites or induces a person to enter into (or offer to enter into) an agreement the making or performance of which constitutes a controlled activity which corresponds to a regulated activity which is covered by his interim permission.
7. Subsection (3)(a) of section 213 (the compensation scheme) does not apply to a person who is a relevant person, within the meaning of that section, by virtue only of having an interim permission.
8. In article 29 of the Principal Order (arranging deals with or through authorised persons), with the exception of the first reference, the references to an "authorised person" do not include a person with an interim permission.
9. In sub-paragraph (a) of paragraph (4) of article 29A of the Principal Order (arrangements made in the course of administration by authorised person), the references to an "authorised person" do not include a person with an interim permission.

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 new 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.

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).

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STATUTORY INSTRUMENTS

2009 No. 1342

FINANCIAL SERVICES AND MARKETS

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

£5.50