

*These notes refer to the Regulation of Financial Services (Land Transactions)
Act 2005 (c.24) which received Royal Assent on 19 December 2005*

REGULATION OF FINANCIAL SERVICES (LAND TRANSACTIONS) ACT 2005

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Regulation of Financial Services (Land Transactions) Act 2005 which received Royal Assent on 19 December 2005. They have been prepared by HM Treasury in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Financial Services and Markets Act 2000 (“FSMA”) provides consumer protection by, amongst other things, allowing only authorised or exempt persons (as those terms are defined in FSMA) to carry on a “regulated activity” in the United Kingdom. In order for an activity to be regulated under FSMA, it must be carried on by way of business and be specified in an order made under section 22 of FSMA. Schedule 2 to FSMA sets out in broad terms the kinds of activities and investments which can be specified in an order under section 22. Whilst it covers contractual rights in respect of loans secured on land, it does not cover such rights in respect of other types of finance provided in connection with the acquisition or disposal of land.
4. On 12 December 2001 it was announced that the Financial Services Authority (“FSA”) would regulate activities relating to mortgages. Regulation of mortgage activities commenced on 31 October 2004¹.
5. The Government announced it would look at regulation of activities relating to home reversion schemes² in its Green Paper “Simplicity, security and choice: working and saving for retirement” published on 17 December 2002. On 5 June 2003 the Chief Secretary to the Treasury announced that the Government would carry out an open consultation on whether activities relating to home reversion schemes should be regulated by the FSA.
6. The consultation document “Regulating home reversion plans” was published on 11 November 2003. On 10 May 2004 the Financial Secretary to the Treasury announced the Government’s intention to bring home reversion schemes into the scope of FSA regulation.

¹ [Financial Services and Markets Act 2000 \(Commencement of Mortgage Regulation\) \(Amendment\) Order 2002 SI 2002/1777](#).

² Under a typical scheme, an arrangement whereby a homeowner sells all or part of his house at a discounted rate to a reversion provider in return for a lump sum and/or income and continues to live in the house rent-free for life.

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7. During the process described above, it was recognised that Ijara products³ and flexible tenure products⁴ share many features of home reversion schemes and are also unregulated. A further consultation document ‘Defining Home Reversions’ was published on 26 July 2004 and consulted on the content of the definition, including whether Ijara products and flexible tenure products should be included.
8. A consultation response document was published on 16 December 2004 which announced that both Ijara products and flexible tenure products would be brought within the scope of FSA regulation, to create a level playing field between these products and mortgages and to increase consumer protection. However as flexible tenure products are currently only provided by local authorities and registered social landlords and the intention is to exempt these entities from FSA regulation in the same way as for regulated mortgage contracts, it is not intended to make an order under section 22 in relation to flexible tenure products for the time being. The Act is wide enough to ensure that flexible tenure products can be regulated in the future as this market develops.

OVERVIEW OF THE ACT

9. The purpose of the Act is to enable activities relating to financial arrangements involving the acquisition or disposal of land to be specified as “regulated activities” under section 22 of FSMA, and hence to be brought under FSA regulation.

TERRITORIAL EXTENT

10. The Act extends to England and Wales, Scotland and Northern Ireland.

TERRITORIAL APPLICATION: WALES

11. There is no effect on the National Assembly for Wales and no particular effect on Wales.

COMMENTARY ON SECTIONS

12. *Section 1* amends Schedule 2 to FSMA to add financial arrangements where the finance provider either (i) acquires a major interest in land from the person being provided with finance or (ii) disposes of a major interest in land to the person being provided with finance. “Major interest” means a freehold or leasehold interest and is defined separately for England and Wales, Scotland and Northern Ireland to take account of the different property laws in the three jurisdictions. The transfer of the major interest in land can be made either directly between the finance provider and the person being provided with finance or via an intermediary.
13. The amendment of Schedule 2 is in broad terms, consistent with the approach taken in the existing provisions of Schedule 2. The definition of home reversion schemes and Ijara products, and the description of activities to be regulated in connection with them, would be described in detail in the order which it is intended to make under section 22 of FSMA. However the breadth of the amendment in section 1 would also allow other financial arrangements involving the acquisition or disposal of land to be brought under FSA regulation, if it became appropriate to do so in the future (for example, for new products which may emerge in the market).

COMMENCEMENT

14. The Act will come into effect two months after being passed.

3 There are two main types of Islamic compliant products: Murabaha and Ijara. A typical Murabaha contract is an arrangement whereby a scheme provider buys a house and then sells it to a customer at a higher price to be repaid over time. The house is registered in the customer’s name and a charge given over it in favour of the scheme provider. Murabaha is already covered by FSA mortgage regulation since it meets the requirements of a “regulated mortgage contract”. A typical Ijara contract is an arrangement whereby the scheme provider buys a property and rents it to the customer over a term. The customer also pays the original purchase price over the same term and acquires ownership at the end of that term.

4 An arrangement whereby a homeowner can increase or decrease equity ownership by transferring interests in a property to and from a finance provider, such as a local authority.

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HANSARD REFERENCES

15. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
<i>House of Commons</i>		
Introduction	25 May 2005	Vol. 434 Col 707
Second Reading	23 June 2005	Vol. 435 Cols. 961-994
Committee	5 July 2005	Hansard Standing Committee E
Report and Third Reading	20 July 2005	Vol. 436 Cols. 1327-1337
<i>House of Lords</i>		
Introduction	21 July 2005	Vol. 673 Col 1602
Second Reading	17 October 2005	Vol. 674 Cols. 554-565
Committee (Discharged)	23 November 2005	Vol. 675 Col 1625
Third Reading	5 December 2005	Vol. 676 Col 420
Royal Assent - 19 December 2005		House of Commons Hansard Vol. 440 Col 1650
		House of Lords Hansard Vol. 676 Col 1620