
STATUTORY INSTRUMENTS

2006 No. 2383

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) (No.2) Order 2006**

PART 2

AMENDMENTS OF THE REGULATED ACTIVITIES ORDER

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

2. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 is amended as follows.

Definitions

3.—(1) In article 3(1)(1) (interpretation)—

(a) after the definition of “funeral plan contract” insert—

““home purchase provider” has the meaning given by article 63F(3);

“home purchaser” has the meaning given by article 63F(3);”;

(b) in paragraph (a) of the definition of “overseas person”—

(i) after “25A,” insert “ 25B, 25C, ”; and

(ii) for “and 61” substitute “, 53B, 53C, 61, 63B and 63F”;

(c) after the definition of “personal pension scheme”(2) insert—

““plan provider” has the meaning given by paragraph (3) of article 63B, read with paragraphs (7) and (8) of that article;”;

(d) after the definition of “qualifying contract of insurance” insert—

““regulated home purchase plan” has the meaning given by article 63F(3);

“regulated home reversion plan” has the meaning given by article 63B(3);”;

(e) after the definition of “relevant investment” insert—

““reversion seller” has the meaning given by article 63B(3);”.

(2) In article 3(2) after “article 25(1)” insert “, 25A(1), 25B(1) or 25C(1)”.

Arranging regulated home reversion plans and regulated home purchase plans

4. After article 25A (arranging regulated mortgage contracts) insert—

(1) The definition of “relevant investment” was inserted by [S.I. 2003/1476](#).

(2) The definition of “personal pension scheme” was inserted by [S.I. 2006/1969](#).

“Arranging regulated home reversion plans

25B.—(1) Making arrangements—

- (a) for another person to enter into a regulated home reversion plan as reversion seller or as plan provider; or
- (b) for another person to vary the terms of a regulated home reversion plan, entered into on or after 6th April 2007 by him as reversion seller or as plan provider, in such a way as to vary his obligations under that plan,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements entering into a regulated home reversion plan as reversion seller or as plan provider is also a specified kind of activity.

Arranging regulated home purchase plans

25C.—(1) Making arrangements—

- (a) for another person to enter into a regulated home purchase plan as home purchaser; or
- (b) for another person to vary the terms of a regulated home purchase plan, entered into on or after 6th April 2007 by him as home purchaser, in such a way as to vary his obligations under that plan,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements entering into a regulated home purchase plan as home purchaser is also a specified kind of activity.”.

Exclusion of arrangements not causing a deal

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

Exclusion where a person provides a means of communication between parties

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

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

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

(2) In article 28A—

(a) in paragraph (1)—

- (i) for “article 25A(1)” substitute “articles 25A(1), 25B(1) and 25C(1)”;
- (ii) for “contract”, in both places it occurs, substitute “contract or plan”;

(b) in paragraph (2)—

- (i) for “article 25A(2)” substitute “articles 25A(2), 25B(2) and 25C(2)”;
- (ii) after “contracts” insert “or plans”.

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

8. In article 29(1) (arranging deals with or through authorised persons)—
- (a) for “article 25(1) and (2) and article 25A(1) and (2)” substitute “articles 25(1) and (2), 25A(1) and (2), 25B(1) and (2) and 25C(1) and (2)”;
 - (b) in sub-paragraph (b) for “investor or (as the case may be) a borrower under a regulated mortgage contract” substitute “investor, borrower, reversion seller, plan provider or (as the case may be) home purchaser”.

Exclusion made in the course of administration by an authorised person

9. In article 29A (arrangements made in the course of administration by authorised person)—
- (a) the existing text becomes paragraph (1);
 - (b) after paragraph (1) insert—
 - “(2) A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 25B(1)(b) as a result of—
 - (a) anything done by an authorised person (“B”) in relation to a regulated home reversion plan which B is administering pursuant to an arrangement of the kind mentioned in article 63C(a); or
 - (b) anything A does in connection with the administration of a regulated home reversion plan in circumstances falling within article 63C(b).
 - (3) A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 25C(1)(b) as a result of—
 - (a) anything done by an authorised person (“B”) in relation to a regulated home purchase plan which B is administering pursuant to an arrangement of the kind mentioned in article 63G(a); or
 - (b) anything A does in connection with the administration of a regulated home purchase plan in circumstances falling within article 63G(b).”.

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

10. In article 33 (introducing)—
- (a) for “article 25(2) and article 25A(2)” substitute “articles 25(2), 25A(2), 25B(2) and 25C(2)”;
 - (b) in paragraph (b)(iii)—
 - (i) after “25A, ” insert “25B, 25C, ”;
 - (ii) for “and 53A” substitute “, 53A, 53B and 53C”.

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 (1) insert—
 - “(1A) There are excluded from article 25B(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 25B, 53B and 63B(1),
 - (ii) an appointed representative who may carry on a regulated activity of the kind specified by either of articles 25B and 53B without contravening the general prohibition, or
 - (iii) an overseas person who carries on activities specified by any of articles 25B, 53B and 63B(1); and
 - (b) the conditions mentioned in paragraph (2) are satisfied.
- (1B) There are excluded from article 25C(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 25C, 53C and 63F(1),
 - (ii) an appointed representative who may carry on a regulated activity of the kind specified by either of articles 25C and 53C without contravening the general prohibition, or
 - (iii) an overseas person who carries on activities specified by any of articles 25C, 53C and 63F(1); and
 - (b) the conditions mentioned in paragraph (2) are satisfied.”;
- (b) for paragraph (4) substitute—
- “(4) In this article, “client” means—
- (a) for the purposes of paragraph (1), 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;
 - (b) for the purposes of paragraph (1A), a reversion seller, a plan provider or a person who is or may be contemplating entering into a regulated home reversion plan as a reversion seller or as a plan provider;
 - (c) for the purposes of paragraph (1B), a home purchaser or a person who is or may be contemplating entering into a regulated home purchase plan as a home purchaser.”.

Other exclusions: arranging

12. In article 36(2) (other exclusions) for “Article 25A is” substitute “Articles 25A, 25B and 25C are”.

Advising on regulated home reversion plans and regulated home purchase plans

13. After article 53A (advising on regulated mortgage contracts) insert—

“Advising on regulated home reversion plans

53B. Advising a person is a specified kind of activity if the advice—

- (a) is given to the person in his capacity as—
 - (i) a reversion seller or potential reversion seller, or
 - (ii) a plan provider or potential plan provider; and
- (b) is advice on the merits of his doing either of the following—

- (i) entering into a particular regulated home reversion plan, or
- (ii) varying the terms of a regulated home reversion plan, entered into on or after 6th April 2007 by him, in such a way as to vary his obligations under that plan.

Advising on regulated home purchase plans

53C. Advising a person is a specified kind of activity if the advice—

- (a) is given to the person in his capacity as a home purchaser or potential home purchaser; and
- (b) is advice on the merits of his doing either of the following—
 - (i) entering into a particular regulated home purchase plan, or
 - (ii) varying the terms of a regulated home purchase plan, entered into on or after 6th April 2007 by him, in such a way as to vary his obligations under that plan.”.

Exclusion of advice given in newspapers etc.

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

- (a) in paragraph (1)—
 - (i) for “article 53 and article 53A” substitute “articles 53, 53A, 53B and 53C”;
 - (ii) in sub-paragraph (a) for “or (as the case may be) article 53A” substitute “, 53A, 53B or 53C, as the case may be”;
 - (iii) after sub-paragraph (b)(ii) insert—
 - “;
 - (iii) to enter as reversion seller or plan provider into regulated home reversion plans, or vary the terms of regulated home reversion plans entered into by them as reversion seller or plan provider,
 - (iv) to enter as home purchaser into regulated home purchase plans, or vary the terms of regulated home purchase plans entered into by them as home purchaser”;
- (b) in paragraph (2) for “article 53 and article 53A” substitute “articles 53, 53A, 53B and 53C”.

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)—

- (a) the existing text becomes paragraph (1);
- (b) after paragraph (1) insert—
 - “(2) A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 53B by reason of—
 - (a) anything done by an authorised person (“B”) in relation to a regulated home reversion plan which B is administering pursuant to arrangements of the kind mentioned in article 63C(a); or
 - (b) anything A does in connection with the administration of a regulated home reversion plan in circumstances falling within article 63C(b).
 - (3) A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 53C by reason of—

- (a) anything done by an authorised person (“B”) in relation to a regulated home purchase plan which B is administering pursuant to arrangements of the kind mentioned in article 63G(a); or
- (b) anything A does in connection with the administration of a regulated home purchase plan in circumstances falling within article 63G(b).”.

Other exclusions: advising

16. In article 55(2) (other exclusions) for “Article 53A is” substitute “Articles 53A, 53B and 53C are”.

Regulated mortgage contracts

17. In article 61(3)(a) (regulated mortgage contracts) after paragraph (iii) insert—
“but such a contract is not a regulated mortgage contract if it is a regulated home purchase plan;”.

Entering into and administering regulated home reversion plans and regulated home purchase plans

18. After article 63A (other exclusions) insert—

“CHAPTER 15A

REGULATED HOME REVERSION PLANS

The activities

Entering into and administering regulated home reversion plans

63B.—(1) Entering into a regulated home reversion plan as plan provider is a specified kind of activity.

(2) Administering a regulated home reversion plan is also a specified kind of activity where the plan was entered into on or after 6th April 2007.

(3) In this Chapter—

- (a) a “regulated home reversion plan” 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 “plan provider”) buys all or part of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the “reversion seller”);
 - (ii) the reversion seller (if he is an individual) or an individual who is a beneficiary of the trust (if the reversion 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; and
 - (iii) the arrangement specifies one or more qualifying termination events, on the occurrence of which that entitlement will end;
- (b) “administering” a regulated home reversion plan means any of—
 - (i) notifying the reversion seller of changes in payments due under the plan, or of other matters of which the plan requires him to be notified;

- (ii) taking any necessary steps for the purposes of making payments to the reversion seller under the plan; and
 - (iii) taking any necessary steps for the purposes of collecting or recovering payments due under the plan from the reversion seller,
- but a person is not to be treated as administering a regulated home reversion plan merely because he has, or exercises, a right to take action for the purposes of enforcing the plan (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 or 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(3);
 - (c) “related person” in relation to the reversion seller or, where the reversion 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 characteristics of the relationship between husband and wife; or
 - (iii) that person’s parent, brother, sister, child, grandparent or grandchild; and
 - (d) “qualifying termination event”, in relation to a person’s entitlement to occupy land, means—
 - (i) the person becomes a resident of a care home;
 - (ii) the person dies;
 - (iii) the end of a specified period of at least twenty years beginning with the day on which the reversion seller entered into the arrangement.
- (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) For the purposes of the definition of “qualifying termination event” in paragraph (4), “care home”—
- (a) in relation to England and Wales, has the meaning given by section 3 of the Care Standards Act 2000(4);
 - (b) in relation to Scotland, means accommodation provided by a “care home” within the meaning of section 2(3) of the Regulation of Care (Scotland) Act 2001(5);
 - (c) in relation to Northern Ireland, means—

(3) 1992 c. 35.
(4) 2000 c.14.
(5) 2001 asp 8.

- (i) a residential care home within the meaning of article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(6); or
 - (ii) a nursing home within the meaning of article 11 of that Order.
- (7) In this Order—
- (a) references to entering into a regulated home reversion plan as plan provider include acquiring any obligations or rights (including his interest in land) of the plan provider, under such a plan; 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 25B(1)(b) and 53B(b)(ii) and paragraph (2) only if the plan was entered into by the plan provider (rather than the obligations or rights acquired) on or after 6th April 2007.
- (8) Accordingly, references in this Order to a plan provider, other than in paragraph (7), include a person who acquires any such obligations or rights.

Exclusions

Arranging administration by authorised person

63C. A person who is not an authorised person does not carry on an activity of the kind specified by article 63B(2) in relation to a regulated home reversion plan where he—

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

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

Other exclusions

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

CHAPTER 15B

REGULATED HOME PURCHASE PLANS

The activities

Entering into and administering regulated home purchase plans

63F.—(1) Entering into a regulated home purchase plan as home purchase provider is a specified kind of activity.

(2) Administering a regulated home purchase plan is also a specified kind of activity where the plan was entered into by way of business on or after 6th April 2007.

(3) In this Chapter—

(a) a “regulated home purchase plan” 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 “home purchase provider”) buys a qualifying interest or an undivided share of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom;
- (ii) where an undivided share of a qualifying interest in land is bought, the interest is held on trust for the home purchase provider and the individual or trustees mentioned in paragraph (iii) as beneficial tenants in common;
- (iii) the arrangement provides for the obligation of an individual or trustees (the “home purchaser”) to buy the interest bought by the home purchase provider over the course of or at the end of a specified period; and
- (iv) the home purchaser (if he is an individual) or an individual who is a beneficiary of the trust (if the home purchaser 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 during that period, and intends to do so;

(b) “administering” a regulated home purchase plan means either or both of—

- (i) notifying the home purchaser of changes in payments due under the plan, or of other matters of which the plan requires him to be notified; and
- (ii) taking any necessary steps for the purposes of collecting or recovering payments due under the plan from the home purchaser;

but a person is not to be treated as administering a regulated home purchase plan merely because he has, or exercises, a right to take action for the purposes of enforcing the plan or to require that such action is or is not taken.

(4) Article 63B(4)(a) to (c) applies for the purposes of paragraph (3)(a) with references to the “reversion seller” being read as references to the “home purchaser”.

(5) Article 63B(5) applies for the purposes of paragraph (3)(a)(iv) with the reference to “paragraph (3)(a)(ii)” being read as a reference to “paragraph (3)(a)(iv)”.

Exclusions

Arranging administration by authorised person

63G. A person who is not an authorised person does not carry on an activity of the kind specified by article 63F(2) in relation to a regulated home purchase plan where he—

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

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

Other exclusions

63I. Article 63F 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

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

- (a) in paragraph (2) for “and 25A(1) and (2)” substitute “, 25A(1) and (2), 25B(1) and (2) and 25C(1) and (2)”;
- (b) in paragraph (6) for “and 53A” substitute “, 53A, 53B and 53C”;
- (c) after paragraph (6A) insert—

“(6B) Subject to paragraph (7), a person acting as trustee or personal representative does not carry on an activity of the kind specified by article 63B(1) or (2) where the reversion seller under the regulated home reversion plan in question is a beneficiary under the trust, will or intestacy.

(6C) Subject to paragraph (7), a person acting as trustee or personal representative does not carry on an activity of the kind specified by article 63F(1) or (2) where the home purchaser under the regulated home purchase plan in question is a beneficiary under the trust, will or intestacy.”;

- (d) in paragraph (7) for “ and (6A)” insert “, (6A), (6B) and (6C)”.

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

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

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

Overseas persons

21. In article 72 (overseas persons) for paragraphs (5A) to (5F) substitute—

“(5A) An overseas person does not carry on an activity of the kind specified by article 25A(1)(a), 25B(1)(a) or 25C(1)(a) if each person who may be contemplating entering into the relevant type of agreement in the relevant capacity is non-resident.

(5B) There are excluded from articles 25A(1)(b), 25B(1)(b) and 25C(1)(b) arrangements made by an overseas person to vary the terms of a qualifying agreement.

(5C) There are excluded from articles 25A(2), 25B(2) and 25C(2), arrangements made by an overseas person which are made solely with a view to non-resident persons who participate in those arrangements entering, in the relevant capacity, into the relevant type of agreement.

(5D) An overseas person does not carry on an activity of the kind specified in article 61(1), 63B(1) or 63F(1) by entering into a qualifying agreement.

(5E) An overseas person does not carry on an activity of the kind specified in article 61(2), 63B(2) or 63F(2) where he administers a qualifying agreement.

(5F) In paragraphs (5A) to (5E)—

- (a) “non-resident” means not normally resident in the United Kingdom;
- (b) “qualifying agreement” means—
 - (i) in relation to articles 25A and 61, a regulated mortgage contract where the borrower (or each borrower) is non-resident when he enters into it;
 - (ii) in relation to articles 25B and 63B, a regulated home reversion plan where the reversion seller (or each reversion seller) is non-resident when he enters into it;
 - (iii) in relation to articles 25C and 63F, a regulated home purchase plan where the home purchaser (or each home purchaser) is non-resident when he enters into it;
- (c) “the relevant capacity” means—
 - (i) in the case of a regulated mortgage contract, as borrower;
 - (ii) in the case of a regulated home reversion plan, as reversion seller or plan provider;
 - (iii) in the case of a regulated home purchase plan, as home purchaser;
- (d) “the relevant type of agreement” means—
 - (i) in relation to article 25A, a regulated mortgage contract;
 - (ii) in relation to article 25B, a regulated home reversion plan;
 - (iii) in relation to article 25C, a regulated home purchase plan.”.

Business Angel-led Enterprise Capital Funds: interpretation

22. In article 72F(1)(7) (interpretation) in paragraph (b) of the definition of “high net worth company” for “(in a manner which creates a binding obligation on the company)” substitute “(in a manner which binds the company)”.

Specified investments

23. After article 88 (regulated mortgage contracts) insert—

“Regulated home reversion plans

88A. Rights under a regulated home reversion plan.

Regulated home purchase plans

88B. Rights under a regulated home purchase plan.”.

Rights to or interests in investments

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
