

## Chapter 14

# Guidance on home reversion and home purchase activities

## 14.1 Background

### Q1. What is the purpose of these questions and answers (“Q&As”) and who should be reading them?

These Q&As are aimed at *persons* involved in the provision or promotion of financial arrangements involving the acquisition or disposal of land for the purpose of enabling an individual:

- to purchase a property; or
- to raise funds from the equity in a property that he already owns, other than by means of a traditional mortgage.

They are intended to help such persons understand whether they will, as a result of the Regulation of Financial Services (Land Transactions) Act 2005 and secondary legislation made following that Act:

- be carrying on a *regulated activity* and need *authorisation* or exemption under section 19 of the Financial Services and Markets Act 2000; or
- be subject to the restriction on *financial promotions* in section 21 of the Financial Services and Markets Act 2000.

The Q&As complement the general *guidance* on regulated activities, which is in Chapter 2 of our Perimeter Guidance Manual (■ PERG 2), the general guidance on regulated mortgage activities in Chapter 4 (■ PERG 4), the general guidance on financial promotions in Chapter 8 (■ PERG 8) and the relevant legislation.

The Q&As that follow are set out in sections:

- general issues (■ PERG 14.2);
- activities relating to home reversion plans (■ PERG 14.3);
- activities relating to home purchase plans (■ PERG 14.4);
- activities relating to regulated sale and rent back agreements (■ PERG 14.4A);
- the ‘by way of business’ test (■ PERG 14.5);
- carrying on a regulated activity in the United Kingdom (■ PERG 14.6);
- exemptions (■ PERG 14.7);and
- financial promotions (■ PERG 14.8).

## 14.2 General issues

### Q2. What is the purpose of the Regulation of Financial Services (Land Transactions) Act 2005?

This Act makes clear that the potential regulatory scope of the Financial Services and Markets Act 2000 enables the FCA to regulate activities that are similar to those that are already regulated when carried on in relation to traditional mortgages but which involve the provider acquiring land rather than simply providing finance for its purchase by the homeowner. This typically includes:

- schemes where a provider buys an interest in a homeowner's property and allows the homeowner to continue to reside in the property ('home reversion plans');
- certain types of Islamic financing arrangements designed to enable the purchase of a home in a way that is acceptable under Islamic law, such as Ijara or diminishing Musharaka ('home purchase plans'); and
- schemes where a provider buys an interest in a homeowner's property and allows the homeowner to continue to reside in the property in return for payment of rent ('sale and rent back agreement').

### Q3. I propose to carry on activities in relation to home finance arrangements of the kind mentioned in Q2. In what circumstances will I need to be authorised under FSMA or be an exempt person?

You will need to be an authorised or exempt person if you will:

- be carrying on *regulated activities*;
- be doing so by way of business;
- be doing so on or after 6 April 2007 in relation to home purchase plans and home reversion plans or on or after 1 July 2009 in relation to sale and rent back agreements; and
- be doing so in the *United Kingdom*.

### Q4. How will I know if my proposed home finance activities are regulated?

*Regulated activities* are specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ('the *Regulated Activities Order*'). This was amended, following the enactment of the Regulation of Financial Services (Land Transactions) Act 2005, to extend its scope to cover certain home finance activities. These amendments were made in the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No2) Order 2006 (SI 2006/2383) which came into effect on 6 April 2007 and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) which came into effect on 1 July 2009. Regulated home finance activities are:

- *entering into a home reversion plan, entering into a home purchase plan or entering into a regulated sale and rent back agreement* as the provider

of the plan/agreement or, in the case of *home reversion plans* and *regulated sale and rent back agreements* only, as a person to whom rights or obligations acquired by the provider are transferred or who, during the currency of the plan or agreement, acquires all or part of the interest in land bought by the provider;

- *administering a home reversion plan, administering a home purchase plan or administering a regulated sale and rent back agreement;*
- *arranging (bringing about) a home reversion plan, arranging (bringing about) a home purchase plan or arranging (bringing about) a regulated sale and rent back agreement;*
- *making arrangements with a view to home reversion plans, making arrangements with a view to home purchase plans or making arrangements with a view to regulated sale and rent back agreements;*
- *advising on a home reversion plan, advising on a home purchase plan or advising on a regulated sale and rent back agreement; and*
- *agreeing to do any of the above.*

But some activities are specifically excluded from regulatory scope.



## **14.3 Activities relating to home reversion plans**

### **Q5. What is a home reversion plan?**

Broadly speaking, this is an arrangement under which, at the time it is entered into, a *person* (the 'reversion purchaser') buys all or part of an interest in land (other than timeshare accommodation) in the UK from a homeowner (being an individual or a trustee whose beneficiary is an individual) (the 'reversion occupier') on the basis that the individual or a related person is entitled under the arrangement, and intends, to use at least 40% of the land as a dwelling until:

- the end of a fixed period of at least twenty years; or
- the individual dies; or
- the individual enters a care home.

It should be noted that an arrangement will be a *home reversion plan* if the intention is for the land to be used as a dwelling until any one of the above eventualities arises. It is not necessary for the arrangement to provide for all three eventualities, merely one or more of them.

This means that an arrangement is not a home reversion plan if:

- the occupier is not an individual; or
- the land is to be used for the purpose of letting as a dwelling to someone other than a related person of the individual (or beneficiary under the trust) who owns it; or
- the land is used primarily for business purposes; or
- the land is overseas.

A related person, in relation to an individual, means:

- that person's spouse or civil partner; or
- a person (whether or not of the same sex) whose relationship with that person has the characteristics of a husband and wife relationship; or
- that person's:
  - parent or grandparent;
  - child or grandchild; or
  - sibling.

### **Q6. Will a sale and rent back agreement be a home reversion plan?**

Where an arrangement meets the requirements for both a *regulated sale and rent back agreement* and a *home reversion plan*, it will be treated as a *home reversion plan* only and will not be a *regulated sale and rent back agreement*. Guidance on the meaning of a *regulated sale and rent back agreement* is in ■ PERG 14.4A (Activities relating to regulated sale and rent back agreements).

### **Q7. Can an arrangement that was established before 6 April 2007 be a home reversion plan?**

Yes. An arrangement may still be a *home reversion plan* even though it was established before 6 April 2007. However, regulated activities carried on in relation to a home reversion plan established before 6 April 2007 will only be subject to regulation:

- when carried on on or after 6 April 2007; and
- in certain circumstances (see Q21 for a summary).

**Q8. When will I be carrying on the activity of entering into a home reversion plan?**

This will occur when you enter into the plan at the outset as the reversion purchaser. It can also occur at a later stage if all or part of the rights or obligations of the reversion purchaser are transferred to you or if you acquire all or part of the interest in land bought by the reversion purchaser (where you become a 'reversion transferee'). This is so, whether you are acquiring the rights or obligations from the reversion purchaser or from an existing reversion transferee. This includes acquiring the rights or obligations or the interest in land purely as an investment. However, investors will only be regulated if they satisfy the 'by way of business test' (see Q38). We refer to reversion purchasers and reversion transferees collectively in this guidance as 'reversion providers'.

So, if you are a reversion transferee under a plan that was established before 6 April 2007, you will only be subject to regulation for carrying on the regulated activity of entering into the plan if you do so on or after 6 April 2007.

**Q9. What exclusions may be available to me if I am entering into home reversion plans?**

The main exclusions are those:

- for trustees who enter into a plan where the reversion occupier is an individual who is a beneficiary under the trust (article 66(6B) of the *Regulated Activities Order*);
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for *local authorities* (article 72G of the *Regulated Activities Order*).

**Q10. When will I be carrying on the activity of administering a home reversion plan?**

This will arise if you carry out any one or more of the following functions for a reversion provider or a reversion occupier in relation to a plan that was originally established on or after 6 April 2007:

- taking necessary steps to make payments to the reversion occupier; or
- taking necessary steps to collect or recover payments due from the reversion occupier; or
- notifying the reversion occupier of changes in payments due under the plan, or of other matters of which the plan requires him to be notified.

One effect of this is that you will not become subject to regulation if you are administering a plan that was originally established before 6 April 2007 and a reversion transferee enters into the plan after that date. See Q21 for more detail about when activities are regulated if a plan was originally established before 6 April 2007.

It is irrelevant, for the purposes of determining if you are administering a home reversion plan, whether or not the plan was entered into by way of business. In this respect, the activity is different to the regulated activities of

*administering a regulated mortgage contract or administering a home purchase plan.*

**Q11. What exclusions may be available to me if I am administering home reversion plans?**

Specific exclusions may apply if you are not an *authorised person* and:

- you arrange for an authorised person with the appropriate *Part 4A permission* to administer the plan - this includes where you administer the plan for a period of up to one month following the termination of such an arrangement; or
- you administer the plan under an agreement with an authorised person who has Part 4A permission to administer such a plan.

The other main exclusions are those:

- for trustees who administer a plan where the reversion occupier is an individual who is a beneficiary under the trust (article 66(6B) of the *Regulated Activities Order*);
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for *local authorities* (article 72G of the *Regulated Activities Order*).

**Q12. When will I be carrying on the activity of arranging home reversion plans?**

There are three types of arranging activity that are regulated. These are making arrangements:

- (1) for another *person* to enter into a plan as a reversion occupier or as a reversion provider;
- (2) for another person, being a reversion occupier or a reversion provider, to vary the terms of a plan that was originally established on or after 6 April 2007, in such a way as to vary his obligations under that plan; and
- (3) with a view to a person who participates in the arrangements entering into a plan as a reversion occupier or as a reversion provider.

But none of these arranging activities will apply to you if they relate to a plan to which, as a result of your arranging activities, you are or will become a party (article 28A of the *Regulated Activities Order*).

You will only be making arrangements under (1) or (2) if your actions are such as to bring about the entry into the plan or the variation as the case may be (article 26 of the *Regulated Activities Order*). This means that your involvement must be material to whether the transaction occurs. For example, assisting a person by completing the necessary application forms on their behalf or acting as their agent or attorney in negotiating entry will amount to bringing about the transaction.

Arranging activities under (3) will typically include making regular introductions of homeowners to reversion providers or of reversion transferees to reversion purchasers or vice versa or of any of these to a *reversion intermediary*.

**Q13. I understand that any transaction that I have arranged before 6 April 2007 is not subject to regulation. But am I regulated if I arrange for a reversion transferee to enter into or vary a home reversion plan on or after 6 April 2007?**

This depends on the type of arranging you are carrying on. If you are arranging variations, this will only be regulated if the plan was originally established on or after 6 April 2007. But, if you are arranging for a reversion

transferee to enter into a plan and the arrangements are being made on or after 6 April 2007, you will be regulated for that arranging activity. See Q21 for more detail about when activities are regulated if a plan was originally established before 6 April 2007.

**Q14. Will I be regulated for arranging for a reversion provider to dispose of his rights and obligations or his interest in land under a home reversion plan to a reversion transferee?**

It is only arranging for a person to enter into or vary the terms of a plan that is subject to regulation. So, you will not be regulated for providing arranging services to the existing provider who wishes to dispose of his rights, obligations or interests but you are likely to be regulated if you are arranging for the transferee to enter into the plan by acquiring the rights, obligations or interests.

**Q15. What exclusions may be available to me if I am arranging home reversion plans?**

If you are an *unauthorised person* the following exclusions may be available to you:

- where you are arranging for a transaction to be entered into with or through an *authorised person* (article 29 of the *Regulated Activities Order*) (see Q16); and
- where you have arranged for an authorised person to administer the plan or are administering it yourself during the period of one month following the termination of your arrangement with the authorised person (article 29A(2) of the *Regulated Activities Order*).

Whether or not you are an unauthorised person, the other main exclusions that may apply include:

- introductions made with a view to the provision of regulated independent advice (article 33 of the *Regulated Activities Order*) (see Q17);
- introductions made to a regulated person who carries on home reversion plan activities (article 33A of the *Regulated Activities Order*) (see Q18);
- arrangements that are a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*);
- *overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39); and
- arrangements made by *local authorities* (article 72G of the *Regulated Activities Order*).

**Q16. When will the exclusion in article 29 of the Regulated Activities Order be available to me if I am arranging home reversion plans?**

The exclusion will apply to you when, as an *unauthorised person*, you are arranging any of the following:

- for a homeowner (your client) to enter into a plan with an authorised reversion provider or through an authorised intermediary;
- for a reversion provider (your client) to enter into a plan with a homeowner or to transfer rights or obligations or an interest in land to a reversion transferee if either the reversion transferee is an authorised person or the transaction is to be effected through an authorised intermediary; or
- for a reversion transferee (your client) to acquire rights or obligations from an authorised reversion provider or through an authorised intermediary;



- for your client to vary the terms of a plan where the reversion provider is an authorised person or the variation is arranged through an authorised intermediary.

This is subject to your meeting certain conditions which are, broadly speaking, that:

- you must not advise your client on the merits of his entering into the transaction; and
- you must not be paid by anyone other than your client.

The requirement that you do not receive any payment other than from your client does not prevent you receiving payment from the *authorised person* but you must then treat the sums paid to you as belonging to your client. There is nothing to prevent you then using the sums to offset payments due to you from your client for services rendered to him. This is provided that you have your client's agreement to do so.

**Q17. When will the exclusion in article 33 of the Regulated Activities Order be available to me if I am arranging home reversion plans?**

Broadly speaking, the exclusion will apply where:

- your arranging activity is limited to *making arrangements with a view to home reversion plans*;
- you make introductions of homeowners, reversion purchasers or reversion transferees to an *authorised person*, an *exempt person* or an *overseas person*; and
- the introduction is made with a view to the provision of independent advice or the provision of independent discretionary services relating to home reversion plans.

**Q18. When will the exclusion in article 33A of the Regulated Activities Order be available to me if I am arranging home reversion plans?**

Broadly speaking, the exclusion will apply where:

- your arranging activity is limited to *making arrangements with a view to home reversion plans*;
- you make introductions of homeowners or of prospective reversion providers (your client) to an *authorised person*, an *appointed representative* or an *overseas person*;
- you do not receive any money paid by your client in relation to the transaction other than a sum that is due to you for your own account (for example, your fee for providing the introductory service); and
- you disclose to your client certain information about your relationship with the person to whom you are effecting introductions and about any reward you may receive for doing so.

**Q19. When will I be carrying on the activity of advising on a home reversion plan?**

This will arise if:

- you are giving advice to a *person* who is or who is contemplating becoming a reversion occupier, a reversion purchaser or a reversion transferee; and
- the advice relates to the merits of his entering into a home reversion plan in that capacity or varying the terms of a plan that he has already entered into.

Advice on the merits of varying the terms of a plan will only be regulated where the plan was originally established on or after 6 April 2007. However,

advice given to a reversion transferee on the merits of his entering into a plan that was originally established before 6 April 2007 will be subject to regulation. See Q21 for more detail about when activities are regulated if a plan was originally established before 6 April 2007.

Advice given to a person on the merits of his transferring rights or obligations or interests in land under a plan to another person is not regulated.

Much of the detailed guidance on *advising on regulated mortgage contracts* in ■ PERG 4.6 may be applied to the activity of *advising on a home reversion plan*.

**Q20. What exclusions may be available to me if I am advising on home reversion plans?**

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*);
- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); and
- advice given by *local authorities* (article 72G of the *Regulated Activities Order*).

Detailed guidance on the exclusion in article 54 is in ■ PERG 7.

**Q21. I can see that the fact that the home reversion plan was originally established before 6 April 2007 can affect whether the services that I provide to parties to the plan after that date are regulated. Can you summarise the position in this respect please?**

Yes. This all depends on the combination of the date of entry or variation and the capacity in which your customer enters or entered into the plan. The following table clarifies when your services will be regulated activities and when they will not.

Potential home reversion plan activity	Whether the activity is regulated if undertaken on or after 6 April 2007 when the plan was originally established before 6 April 2007
Entering into a plan as reversion purchaser (see Q8)	N/A - this activity will only take place when the plan is first established
Entering into a plan as reversion transferee (see Q8)	Yes
Administering a plan (see Q10)	No
Arranging (see Q12) for a person to enter into a plan as:	
(a) a reversion purchaser or a reversion occupier	N/A - this activity will only take place when the plan is first established
(b) a reversion transferee	Yes
Arranging variations (see Q12) of a plan	No
Advising (see Q19) a person on entering into a plan in his capacity as:	

Potential home reversion plan activity	Whether the activity is regulated if undertaken on or after 6 April 2007 when the plan was originally established before 6 April 2007
(a) a reversion purchaser or a reversion occupier	N/A - this activity will only take place when the plan is first established
(b) a reversion transferee	Yes
Advising (see Q19) a person on varying the terms of a plan	No

**Q22. Will changes involving the circumstances of the reversion occupier that may take place after the plan has been entered into (such as moving house, marriage or change of occupants) have any implications in terms of regulated activity?**

This depends on the facts and is a question of degree that requires an assessment against the criteria that make up the definition of a home reversion plan. There are two main issues that would need to be considered. These are:

- is the change likely to cause a new plan to be entered into; and
- does the change involve a variation of the terms of the plan (if it was originally entered into on or after 6 April 2007) such as to vary the obligations of the provider or the occupier?

Broadly speaking, it would seem likely that, if the occupier were to move house, there would be a need for the existing plan to be terminated and a new plan to be entered into. Where this happens, the person who enters into the new plan as provider and anyone arranging or advising on the new plan will potentially need to be authorised or exempt. Changes such as may occur due to marriage or change of occupants, change of other relevant details or drawdown of funds under a staggered payment arrangement may necessitate a new plan or may involve a variation in the existing plan depending on the extent to which they alter the obligations of the provider or the occupier. Where such changes do involve a variation, anyone arranging or advising on the variation would potentially need to be authorised or exempt. But this applies only where the plan was originally entered into on or after 6 April 2007.

## 14.4 Activities relating to home purchase plans

### Q23. What is a home purchase plan?

Broadly speaking, a *home purchase plan* is an arrangement under which, at the time it is entered into:

- 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*;
- an individual or a trustee whose beneficiary is an individual (the 'home purchaser') is obliged to buy that interest over the course of or at the end of a specified period; and
- the individual or a related person is entitled to use at least 40% of the land as a dwelling during that fixed period and intends to do so.

Where an undivided share of a qualifying interest is bought, the interest must be held on trust for the home purchase provider and the individual or trustee as beneficial tenants in common.

This means that an arrangement is not a home purchase plan if:

- the home purchaser is not an individual or trustees;
- the land is used for the purpose of letting as a dwelling to someone other than a related person of the individual who is obliged to buy it;
- the land is used primarily for business purposes; or
- the land is overseas.

A related person, in relation to an individual, means:

- that person's spouse or civil partner; or
- a person (whether or not of the same sex) whose relationship with that person has the characteristics of a husband and wife relationship; or
- that person's:
  - parent or grandparent;
  - child or grandchild; or
  - sibling.

### Q24. Are home purchase plans limited to arrangements designed to comply with Islamic principles?

There is nothing in the definition of a *home purchase plan* to suggest that this is the case. However, it is clear from the comments made by HM Treasury in relation to the introduction of the Regulation of Financial Services (Land Transactions) Act 2005 that the definition is primarily directed at arrangements of this kind.

### Q25. Will all Islamic *home financing* arrangements be home purchase plans?

No. Murabaha arrangements involve the homeowner buying the property from the provider on deferred payment terms. These types of arrangement will be *regulated mortgage contracts* assuming that they meet the necessary conditions including that there is a first legal charge over the property (see ■ PERG 4).

Ijara arrangements (where the provider buys the land and allows the customer to occupy it whilst also making regular payments towards eventually buying the land) and diminishing Musharaka arrangements (where the provider and the customer share an interest in the land and the customer gradually acquires a greater interest in the land over a period of time) will be *home purchase plans* provided they meet the necessary conditions (see Q23).

A home purchase plan may also satisfy the requirements for a *regulated mortgage contract*. Where this arises, the plan is treated as a home purchase plan and not a regulated mortgage contract.

**Q26. When will I be carrying on the activity of entering into a home purchase plan?**

You will carry on this activity by entering into a *home purchase plan* as the home purchase provider. Unlike a reversion transferee under a *home reversion plan*, you will not be carrying on a regulated activity purely as a result of acquiring rights, obligations or interests in land from the provider.

**Q27. What exclusions may be available to me if I am entering into home purchase plans as a provider?**

The main exclusions are:

- for trustees who enter into a plan where the home purchaser is an individual who is a beneficiary under the trust (article 66(6C) of the *Regulated Activities Order*);
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for providers that are *local authorities* (article 72G of the *Regulated Activities Order*).

**Q28. When will I be carrying on the activity of administering a home purchase plan?**

This will arise if you carry out either or both of the following functions in relation to a plan that was entered into by the home purchase provider by way of business on or after 6 April 2007:

- 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
- taking any necessary steps for the purposes of collecting or recovering payments due under the plan from the home purchaser.

But you will not be treated as *administering a home purchase plan* merely because you have, or you exercise, a right to take action for the purposes of enforcing the plan (or to require that such action is or is not taken).

**Q29. I propose to administer home purchase plans. How will I know if the plan I propose to administer has been entered into by way of business?**

In most cases, this will be obvious because the provider will be a body corporate whose business involves being a provider under such plans and, in

the majority of cases, should be an *authorised person*. We understand that this is the usual situation with Islamic home financing arrangements. However, if the plan were to have been entered into by an investor, the factors set out in Q38 will need to be considered to determine whether it was entered into by way of business. A typical example of a plan not entered into by way of business would be where the provider is a friend or relative who does not seek to profit from acting as the provider. Another example might be a plan entered into by a charitable organisation that occasionally purchases interests in land with sums derived from charitable donations and that does so on non-commercial terms.

**Q30. What exclusions may be available to me if I am administering home purchase plans?**

Specific exclusions may apply if you are not an *authorised person* and:

- you arrange for an authorised person with the appropriate *Part 4A permission* to administer the plan - this includes where you administer the plan for a period of up to one month following the termination of such an arrangement; or
- you administer the plan under an agreement with an authorised person who has Part 4A permission to administer such a plan.

The other main exclusions are those:

- for trustees who administer a plan where the home purchaser is an individual who is a beneficiary under the trust (article 66(6C) of the *Regulated Activities Order*);
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for *local authorities* (article 72G of the *Regulated Activities Order*).

**Q31. When will I be carrying on the activity of arranging home purchase plans?**

There are three types of arranging activity that are regulated. These are making arrangements:

- (1) for another person to enter into a plan as a home purchaser;
- (2) for another person being a home purchaser to vary the terms of a plan entered into by him on or after 6 April 2007, in such a way as to vary his obligations under that plan; and
- (3) with a view to a person who participates in the arrangements entering into a plan as a home purchaser.

But none of these arranging activities will apply to you if they relate to a plan to which you are or will, as a result of your arranging activities, become a party (article 28A of the *Regulated Activities Order*).

You will only be making arrangements under (1) or (2) if your actions are such as to bring about the entry into the plan or the variation as the case may be (article 26 of the *Regulated Activities Order*). This means that your involvement must be material to whether the transaction occurs. For example, assisting a home purchaser by completing the necessary application forms on their behalf or acting as their agent or attorney in negotiating entry will amount to bringing about the transaction.

Arranging activities under (3) will typically include making regular introductions of prospective home purchasers to a provider or intermediary.

Unlike home reversion plans, arranging for a person to enter into, or vary, a plan as a provider is not, itself, a regulated activity.



**Q32. What exclusions may be available to me if I am arranging home purchase plans?**

If you are an *unauthorised person* the following exclusions may be available to you:

- where you are arranging for a transaction to be entered into with or through an authorised person (article 29 of the *Regulated Activities Order*) (see Q33);
- where you have arranged for an *authorised person* to administer the plan or are administering it yourself during the period of one month following the termination of your arrangement with the authorised person (article 29A(3) of the *Regulated Activities Order*).

Whether or not you are an unauthorised person, the other main exclusions that may apply include:

- introductions made with a view to the provision of regulated independent advice (article 33 of the *Regulated Activities Order*) (see Q17 which applies equally to *home purchase plans*);
- introductions made to a regulated person who carries on home reversion plan activities (article 33A of the *Regulated Activities Order*) (see Q34);
- arrangements that are a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*);
- *overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39); and
- arrangements made by *local authorities* (article 72G of the *Regulated Activities Order*).

**Q33. When will the exclusion in article 29 of the Regulated Activities Order be available to me if I am arranging home purchase plans?**

The exclusion will apply to you when, as an *unauthorised person*, you are arranging for a prospective home purchaser (your client) to enter into a plan with an authorised home purchase provider or through an authorised intermediary;

This is subject to your meeting certain conditions which are, broadly speaking, that:

- you must not advise your client on the merits of his entering into the transaction; and

The requirement that you do not receive any payment other than from your client does not prevent you receiving payment from the *authorised person* but you must then treat the sums paid to you as belonging to your client. There is nothing to prevent you then using the sums to offset payments due to you from your client for services rendered to him. This is provided that you have your client's agreement to do so.

**Q34. When will the exclusion in article 33A of the Regulated Activities Order be available to me if I am arranging home purchase plans?**

Broadly speaking, the exclusion will apply where:

- the arranging activity you carry on is limited to *making arrangements with a view to home purchase plans*;
- you make introductions of prospective home purchasers (your client) to an *authorised person*, an *appointed representative* or an *overseas person*;
- you do not receive any money paid by your client in relation to the transaction other than a sum that is due to you for your own account (for example, your fee for providing the introductory service); and

- you disclose to your client certain information about your relationship with the person to whom you are effecting introductions and about any reward you may receive for doing so.

**Q35. When will I be carrying on the activity of advising on home purchase plans?**

This will arise if you are:

- giving advice to a person who is or who is contemplating becoming a home purchaser; and
- the advice relates to the merits of his entering into a *home purchase plan* in that capacity or varying the terms of a plan that he has already entered into.

Advice on the merits of varying the terms of a plan is only regulated when the plan was entered into on or after 6 April 2007.

This differs from the position in relation to *home reversion plans* where advice given to the provider is also regulated.

Much of the detailed guidance on *advising on regulated mortgage contracts* in ■ PERG 4.6 may be applied to the activity of *advising on a home purchase plan*.

**Q36. What exclusions may be available to me if I am advising on home purchase plans?**

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*);
- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); and
- advice given by *local authorities* (article 72G of the *Regulated Activities Order*).

Detailed guidance on the exclusion in article 54 is in ■ PERG 7.

**Q37. Will changes involving the circumstances of the home purchaser that may take place after the plan has been entered into (such as moving house, marriage or change of occupants) have any implications in terms of regulated activity?**

This depends on the facts and is a question of degree that requires an assessment against the criteria that make up the definition of a home purchase plan. There are two main issues that would need to be considered. These are:

- is the change likely to cause a new plan to be entered into? and
- does the change involve a variation of the terms of the plan (if it was originally entered into on or after 6 April 2007) such as to vary the obligations of the home purchaser?

Broadly speaking, it would seem likely that, if the home purchaser were to move house, there would be a need for the existing plan to be terminated and a new plan to be entered into. Where this happens, the person who enters into the new plan as provider and anyone arranging, or advising the home purchaser on, the new plan will potentially need to be authorised or exempt. Changes such as may occur due to marriage or change of occupants or of other relevant details may necessitate a new plan. Alternatively, they



may involve a variation in the existing plan, depending on the extent to which they alter the obligations of the home purchaser. Where such changes do involve a variation, anyone advising the home purchaser on, or arranging, the variation would potentially need to be authorised or exempt. But this applies only where the plan was originally entered into on or after 6 April 2007.

## 14.4A Activities relating to regulated sale and rent back agreements

### Q37A. What is a regulated sale and rent back agreement?

Broadly speaking, this is an arrangement under which, at the time it is entered into, a person (the "agreement provider") buys all or part of an interest in land (other than time share accommodation) in the *United Kingdom* from a homeowner (being an individual or a trustee whose beneficiary is an individual) ("the agreement seller") on the basis that the individual or a related person is entitled under the arrangement, and intends, to use at least 40% of the land as a dwelling. However such an arrangement is not a *regulated sale and rent back agreement* if it is a *home reversion plan*.

This means that an arrangement is not a *regulated sale and rent back agreement* if:

- the agreement seller is not an individual; or
- the land is to be used for the purpose of letting as a dwelling to someone other than a related person of the individual (or beneficiary under the trust) who owns it; or
- the land is used primarily for business purposes; or
- the land is overseas; or
- if it is a *home reversion plan* (see Q5).

A related person, in relation to an individual, means:

- that person's spouse or civil partner;
- a person (whether or not of the same sex) whose relationship with that person has the characteristics of a husband and wife relationship; or
- that person's:
  - parent or grandparent;
  - child or grandchild; or
  - sibling.

As regards the requirement that the conditions need to be met 'at the time the arrangement was entered into', it should be noted that a *regulated sale and rent agreement* is an arrangement that may actually comprise several agreements. For example, a *regulated sale and rent back agreement* may include an agreement for the sale of a freehold interest in land and a subsequent tenancy agreement relating to the occupation of that land. Just because the tenancy agreement was not completed at the same time as the sale of the freehold interest does not mean there is no *regulated sale and rent back agreement*.

### Q37B. Can an arrangement that was established before 1 July 2009 be a regulated sale and rent back agreement?

Yes it can be. An arrangement may still be a *regulated sale and rent back agreement* even if it was established before 1 July 2009. However, regulated activities carried on in relation to a sale and rent back agreement established before 1 July 2009 will only be subject to regulation:

- when carried on on or after 1 July 2009; and
- in certain circumstances (see Q37Q for a summary).

**Q37C. When will I be carrying on the activity of entering into a regulated sale and rent back agreement?**

This will occur when you enter into the agreement at the outset as the agreement provider even if you do so only once. It can also occur at a later stage if all or part of the rights or obligations of the agreement provider are transferred to you or if you acquire all or part of the interest in land bought by the agreement provider (where you become an 'agreement transferee'). This is so, whether you are acquiring the rights or obligations from the agreement provider or from an existing agreement transferee. This includes acquiring the rights or obligations or the interest in land purely as an investment. However, investors will only be regulated if they satisfy the 'by way of business test' (see 14.5). We refer to agreement providers and agreement transferees collectively in this guidance as 'agreement purchasers'.

So, if you are an agreement transferee under a plan that was established before 1 July 2009, you will only be subject to regulation for carrying on the regulated activity of entering into the plan if you do so on or after 1 July 2009.

**Q37D. What exclusions may be available to me if I am entering into regulated sale and rent back agreements as agreement provider?**

The main exclusions are those:

- for trustees who enter into a plan where the agreement seller is an individual who is a beneficiary under the trust (article 66(6D) of the *Regulated Activities Order*);
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for *local authorities* (article 72G of the *Regulated Activities Order*).

**Q37E. When will I be carrying on the activity of administering a regulated sale and rent back agreement?**

This will arise if you carry out any one or more of the following functions for an agreement purchaser or an agreement seller in relation to an agreement that was originally entered into on or after 1 July 2009:

- taking necessary steps to make payments to the agreement seller; or
- taking necessary steps to collect or recover payments due from the agreement seller; or
- notifying the agreement seller of changes in payments due under the agreement, or of other matters of which the agreement requires him to be notified.

One effect of this is that you will not become subject to regulation if you are administering an agreement that was originally established before 1 July 2009 and an agreement transferee enters into the plan after that date. See Q37Q for more detail about when activities are regulated if an agreement was originally entered into before 1 July 2009.

It is irrelevant for the purposes of determining if you are administering a regulated sale and rent back agreement whether or not the agreement was entered into by way of business. In this respect the activity is similar to the regulated activity of *administering a home reversion plan*.

**Q37F. If I collect rent due to an agreement purchaser under a regulated sale and rent back agreement or help the agreement seller set up a direct debit in favour of the agreement purchaser do I need to be regulated?**

Yes, it is likely that you will need to be authorised to carry out the *regulated activity of administering a regulated sale and rent back agreement*. However the following exclusions may be available:

- where you arrange for an authorised person with the appropriate *Part 4A permission* to administer the agreement - this includes where you administer the agreement for a period of up to one month following the termination of such an arrangement; or
- you administer the plan under an agreement with an authorised person which has a *Part 4A permission* to administer such an agreement.

**Q37G. Are there any other exclusions available in relation to administering a regulated sale and rent back agreement?**

The other main exclusions are those:

- for trustees who administer a plan where the agreement seller is an individual who is a beneficiary under the trust (article 66(6D) of the *Regulated Activities Order*);
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for *local authorities* (article 72G of the *Regulated Activities Order*).

**Q37H. When will I be carrying on the activity of arranging regulated sale and rent back agreements?**

There are three types of arranging activity that are regulated. These are making arrangements:

- (1) for another *person* to enter into a plan as an agreement purchaser or as an agreement seller;
- (2) for another *person*, being an agreement seller or an agreement purchaser, to vary the terms of an agreement that was originally established on or after 1 July 2009, in such a way as to vary his obligations under that agreement; and
- (3) with a view to a *person* who participates in the arrangements entering into an agreement as an agreement seller or as an agreement purchaser.

But none of these arranging activities will apply to you if they relate to an agreement to which, as a result of your arranging activities, you are or will become a party (article 28A of the *Regulated Activities Order*).

You will only be making arrangements under (1) or (2) if your actions are such as to bring about the entry into the agreement or the variation, as the case may be (article 26 of the *Regulated Activities Order*). This means that your involvement must be material to whether the transaction occurs. For example, assisting a person by completing the necessary application forms on their behalf or acting as their agent or attorney in negotiating entry will amount to bringing about the transaction.

Arranging activities under (3) will typically include making regular introductions of homeowners to agreement providers or of agreement

transferees to agreement providers or vice versa or any of these to a *firm* with *permission* (or which ought to have *permission*) to carry on a *regulated sale and rent back mediation activity*.

**Q37I. I understand that any transaction that I have arranged before 1 July 2009 is not subject to regulation. But do I need permission if I arrange for an agreement transferee to enter into or vary a regulated sale and rent back agreement on or after 1 July 2009?**

This depends on the type of arranging you are carrying on. If you are arranging variations, this will only be regulated if the agreement was originally established on or after 1 July 2009. But, if you are arranging for an agreement transferee to enter into an agreement and the arrangements are being made on or after 1 July 2009, you will be regulated for that arranging activity. See Q39Q for more detail about when activities are regulated if a plan was originally established before 1 July 2009.

**Q37J. Will I need to be regulated for arranging for an agreement provider to dispose of his rights and obligations or his interest in land under a regulated sale and rent back agreement to an agreement transferee?**

It is only arranging for a person to enter into or vary the terms of an agreement that is subject to regulation. So, you will not need to seek authorisation for providing arranging services to the existing provider who wishes to dispose of his rights, obligations or interests but you are likely to be regulated if you are arranging for the transferee to enter into the agreement by acquiring the rights, obligations or interests.

**Q37K. What exclusions may be available to me if I am arranging regulated sale and rent back agreements?**

If you are an *unauthorised person* the following exclusions may be available to you:

- where you are arranging for a transaction to be entered into with or through an *authorised person* (article 29 of the *Regulated Activities Order*) (see Q37L); and
- where you have arranged for an authorised person to administer the agreement or are administering it yourself during the period of one month following the termination of your arrangement with the authorised person (article 29A(4) of the *Regulated Activities Order*).

Whether or not you are an unauthorised person, the other main exclusions that may apply include:

- introductions made with a view to the provision of regulated independent advice (article 33 of the *Regulated Activities Order*) (see Q37M);
- introductions made to a regulated person who carries on regulated sale and rent back agreement activities (article 33A of the *Regulated Activities Order*) (see Q37N);
- arrangements that are a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*);
- *overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39); and
- arrangements made by *local authorities* (article 72G of the *Regulated Activities Order*).

**Q37L. When will the exclusion in article 29 of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements?**

The exclusion will apply to you when, as an *unauthorised person*, you are arranging any of the following:

- for a homeowner (your client) to enter into an agreement with an authorised agreement provider or through an authorised intermediary;
- for an agreement provider (your client) to enter into an agreement with a homeowner or to transfer rights or obligations or an interest in land to an agreement transferee if either the agreement transferee is an authorised person or the transaction is to be effected through an authorised intermediary; or
- for an agreement transferee (your client) to acquire rights or obligations from an authorised agreement provider or through an authorised intermediary;
- for your client to vary the terms of a plan where the agreement purchaser is an authorised person or the variation is arranged through an authorised intermediary.

This is subject to your meeting certain conditions which are, broadly speaking, that:

- you must not advise your client on the merits of his entering into the transaction; and
- you must not be paid by anyone other than your client.

The requirement that you do not receive any payment other than from your client does not prevent you receiving payment from the *authorised person* but you must then treat the sums paid to you as belonging to your client. There is nothing to prevent you then using the sums to offset payments due to you from your client for services rendered to him. This is provided that you have your client's agreement to do so.

**Q37M. When will the exclusion in article 33 of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements?**

Broadly speaking, the exclusion will apply where:

- your arranging activity is limited to *making arrangements with a view to regulated sale and rent back agreements*;
- you make introductions of agreement sellers or agreement purchasers to an *authorised person*, an *exempt person* or an *overseas person*; and
- the introduction is made with a view to the provision of independent advice or the provision of independent discretionary services relating to *regulated sale and rent back agreements*.

**Q37N. When will the exclusion in article 33A of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements?**

Broadly speaking, the exclusion will apply where:

- your arranging activity is limited to *making arrangements with a view to regulated sale and rent back agreements*;
- you make introductions of agreement sellers, agreement purchasers or prospective agreement sellers or agreement purchasers (your client) to an *authorised person* or an *overseas person*;
- you do not receive any money paid by your client in relation to the transaction other than a sum that is due to you for your own account (for example, your fee for providing the introductory service); and

- you disclose to your client certain information about your relationship with the person to whom you are effecting introductions and about any reward you may receive for doing so.

**Q37O. When will I be carrying on the activity of advising on a regulated sale and rent back agreement?**

This will arise if:

- you are giving advice to a *person* who is or who is contemplating becoming an agreement seller, an agreement provider or an agreement transferee; and
- the advice relates to the merits of his entering into a regulated sale and rent back agreement in that capacity or varying the terms of an agreement that he has already entered into.

Advice on the merits of varying the terms of an agreement will only be regulated where the agreement was originally established on or after 1 July 2009. However, advice given to an agreement transferee on the merits of his entering into an agreement that was originally established before 1 July 2009 will be subject to regulation. See Q37Q for more detail about when activities are regulated if an agreement was originally established before 1 July 2009.

Advice given to a person on the merits of his transferring rights or obligations or interests in land under an agreement to another person is not regulated.

Much of the detailed guidance on *advising on regulated mortgage contracts* in ■ PERG 4.6 may be applied to the activity on a *regulated sale and rent back agreement*.

**Q37P. What exclusions may be available to me if I am advising on regulated sale and rent back agreements?**

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*);
- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); and
- advice given by *local authorities* (article 72G of the *Regulated Activities Order*).

Detailed guidance on the exclusion in article 54 is in ■ PERG 7.

**Q37Q. I can see that the fact that the regulated sale and rent back agreement was originally established before 1 July 2009 can affect whether the services that I provide to parties to the agreement after that date are regulated. Can you summarise the position in this respect?**

Yes. This all depends on the combination of the date of entry or variation and the capacity in which your customer enters or entered into the agreement. The following table clarifies when your services will be regulated activities and when they will not.



Potential regulated sale and rent back activity	Whether the activity is regulated if undertaken on or after 1 July 2009 when the agreement was originally established before 1 July 2009
Entering into an agreement as agreement provider (see Q37C)	N/A - this activity will only take place when the plan is first established
Entering into an agreement as agreement transferee (see Q37C)	Yes, any transfer of the agreement provider's interest in land will be caught
Administering an agreement (see Q37E)	No
Arranging (see Q37H) for a person to enter into an agreement as:	
(a) an agreement provider or an agreement seller	N/A - this activity will only take place when the agreement is first established
(b) an agreement transferee	Yes
Arranging variations (see Q37H) of an agreement	No
Advising (see Q37O) a person on entering into an agreement in his capacity as:	
(a) an agreement provider or an agreement seller	N/A - this activity will only take place when the agreement is first established
(b) an agreement transferee	Yes
Advising (see Q37O) a person on varying the terms of an agreement	No

**Q37R. Will changes involving the circumstances of the agreement seller that may take place after the agreement has been entered into (such as moving house, marriage or change of occupants) have any implications in terms of regulated activity?**

This depends on the facts and is a question of degree that requires an assessment against the criteria that make up the definition of a regulated sale and rent back agreement. There are two main issues that would need to be considered. These are:

- is the change likely to cause a new agreement to be entered into; and
- does the change involve a variation of the terms of the agreement (if it was originally entered into on or after 1 July 2009) such as to vary the obligations of the provider or the seller?

Broadly speaking, it would seem likely that if the occupier were to move house, the *regulated sale and rent back agreement* would cease as the tenancy agreement would come to an end and the agreement seller would no longer have the right of occupation.

Changes such as may occur due to marriage or change of occupants, change of other relevant details or drawdown of funds under a staggered payment arrangement may necessitate a new agreement or may involve a variation in the existing agreement depending on the extent to which they alter the obligations of the provider or the occupier. Where such changes do involve a variation, anyone arranging or advising on the variation would potentially



need to be authorised or exempt. But this applies only where the agreement was originally entered into on or after 1 July 2009.

**Q37S. I am an exempt professional firm. Do I need to be authorised in relation to regulated sale and rent back agreement activities?**

Yes, you may need to be authorised. See Q42 for more detail.

**Q37T. I am an estate agent. Do I need to be authorised where the vendor of a property has approached me to sell their property but has expressed a desire to remain in the property as tenant?**

Yes, it is likely that you will need to be authorised unless you are an exempt person or exclusions apply (see Q37K). This is because it is likely that you will be making arrangements with a view a person who participates in the arrangements entering into an agreement as *SRB agreement provider* and/or *SRB agreement seller*.

**Q37U. I am a receiver appointed under the Law of Property Act 1925. Will my activities need to be regulated by the FCA?**

Your activities in relation to properties subject to regulated sale and rent back agreements could amount to *administering a regulated sale and rent back agreement* where the agreements have been entered into on or after 1 July 2009. Accordingly you may need to be authorised unless you are an exempt person or exclusions apply (see Q37E for the relevant administering activities and Q37F and Q37G for the available exclusions).

**Q37V What happens when the agreement seller's right to occupy the land in question under an assured shorthold tenancy ('AST') ends?**

A regulated sale and rent back agreement must, at the time it is entered into, give the agreement seller, or related person, an entitlement to occupy at least 40% of the land in question. In the absence of such an entitlement there is no regulated sale and rent back agreement.

As the definition of a regulated sale and rent back agreement refers to 'an arrangement comprised in one or more instruments or agreements', in considering the effect of the end of the tenancy you should look at the arrangement as a whole rather than just any tenancy agreement that may comprise the arrangement. So -

- (1) if the arrangement expressly grants the agreement seller an entitlement to occupy the land in question for a specified period of time then the agreement seller retains this entitlement under the regulated sale and rent back agreement even where the AST ends before the specified period ends; and
- (2) if the regulated sale and rent back agreement is expressly stated to end after the termination of the AST then it ceases to be a regulated sale and rent back agreement at that point unless the arrangements are varied by, for example, granting the agreement seller a new AST.

## 14.5 The 'by-way-of-business' test

### Q38. How do I know if I am carrying on regulated activities by way of business?

A *person* will only need to be an *authorised person* or *exempt person* if he is carrying on a *regulated activity* 'by way of business' (see section 22 of the Act (Regulated activities)).

Whether or not any particular *person* will meet the requirement that he carries on a *regulated activity* by way of business and so needs to be an *authorised person* or *exempt person* will invariably depend on that person's individual circumstances. Generally speaking, a number of factors need to be taken into account in determining whether the test is met. These include:

- the degree of continuity;
- the existence of a commercial element;
- the scale of the activity;
- the proportion which the activity bears to other activities carried on by the same person but which are not regulated; and
- the nature of the particular regulated activity that is carried on.

However, there are in fact four different forms of business test that are applied to the *home finance transactions* (see Q38A). For example, the ordinary business test is significantly widened in scope in relation to *entering into a regulated sale and rent back agreement* (see Q38B).

Corporate plan providers and those who provide professional services to them or to home occupiers are likely to be carrying on their activities by way of business. Unpaid individuals who act as trustees for home occupiers are not likely to be.

### Q38A. What are the four different forms of business test referred to in Q38?

They are:

- (1) the 'by way of business' test in section 22 of the Act applies unchanged in relation to the activity of *entering into a home finance transaction* other than *entering into a regulated sale and rent back agreement*;
- (1A) in the case of *entering into a regulated sale and rent back agreement*, the effect of article 5 of the *Business Order* is that an *SRB agreement provider* is to be regarded as acting 'by way of business' unless that *person* is a *related party* in relation to the *SRB agreement seller*;
- (2) the 'by way of business' test in section 22 of the Act applies unchanged in relation to the activity of *administering a home finance transaction*, but another 'by way of business' test arises in relation to *administering a home purchase plan* because the plan being administered by way of business must itself have been entered into by way of business (see Q28); and
- (3) in the case of arranging and advising, the effect of articles 3B to 3D of the *Business Order* is that a *person* is not to be regarded as acting 'by way of

business' unless he is 'carrying on the business of engaging in one or more of those activities'.

**Q38B. How does the business test in the Business Order differ from the business test in section 22 of the Act?**

The 'by way of business' test in article 5 of the *Business Order* is wider than the 'by way of business' test in section 22 of the *Act* because, for example, it does not require any degree of continuity; entering into just one *regulated sale and rent back agreement* is enough.

On the other hand, the 'carrying on the business' test in articles 3B to 3D of the *Business Order* is a narrower test than that of carrying on *regulated activities* 'by way of business' in section 22 of the *Act* as it requires the *regulated activities* to represent the carrying on of a business in their own right.

**Q38C. Can you give me some examples where the business test is unlikely to be satisfied?**

Examples are:

- (1) when an individual enters into a *regulated sale and rent back agreement* as *SRB agreement provider* where that individual is a *related party* in relation to the *SRB agreement seller* whether at market interest rates or not; and
- (2) when a person provides a service without any expectation of reward or payment of any kind (but see ■ PERG 7.3.4 G for examples of when the giving of 'free' advice in relation to *home finance transactions* might still amount to a business).

**Q38D. Will I meet the business test if I only enter into one home purchase plan or home reversion plan a year?**

Yes, you might meet the business test. Whether or not you do will depend largely on the facts. The following issues may be helpful to bear in mind:

- the relevant business test here is not the narrower business test under the *Business Order* but the wider one under section 22 of the *Act*: that is whether the activity is being carried on by way of business (see Q38B);
- the expression "carrying on business" suggests the need for a degree of continuity in the activity. Hence, one-off or extremely infrequent acts would usually not be thought to be enough to satisfy the test. However, it is unlikely that a person could successfully claim that entering into a plan or agreement was a "one-off" or very infrequent act if, in all the circumstances, it cannot be shown that they intended this to be the case. This is because there is always a first time that any regular activity is carried on;
- some individuals are clearly in business as sole traders - they will represent themselves as running a business and be registered for VAT etc. Other individuals may not so clearly be in business. In the latter case, it is necessary to consider the scale of the potential regulated activity. Where a person expects to make a living, or a substantial part of their living, from entering into *home finance transactions* it is likely that they are carrying on such activities by way of business.

With this in mind, if you intend on entering into just one *home reversion plan* or *home purchase plan* each year this may be enough to meet the 'by way of business' test if the scale of this activity is likely to be significant in relation to your other activities.

**Q38E. Will I meet the business test if I only enter into one sale and rent back agreement?**

Yes, provided you are an *SRB agreement provider* that is not a *related party* in relation to the *SRB agreement seller*.

This is because of an amendment to the *Business Order* made by the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2014 (SI 2014/3340) which came into force on 31 December 2014. This Order also provides that the amendment will cease to have effect on 1 January 2022. The Treasury is required to review the operation and effect of the amendment and to publish a report before the end of 2017. Following the review, the Treasury will decide whether the amendment should be allowed to expire, be revoked early, or be maintained in force with or without amendments. A further instrument would be needed to maintain the amendment in force or to revoke the amendment early.



## 14.6 Carrying on a regulated activity in the United Kingdom

**Q39. Does a person who acts as provider, administrator, arranger or adviser in relation to home reversion plans, home purchase plans or regulated sale and rent back agreements from overseas and without maintaining an office in the UK need to be an authorised or exempt person?**

The position on territorial application is complex. Detailed guidance on this aspect is provided in relation to regulated mortgage activities in ■ PERG 4.11 and that guidance may generally be applied to home finance activities.

But, briefly, there are two issues to be considered by such a person:

- am I carrying on a home finance activity in the *United Kingdom*? and
- if so, does the exclusion for *overseas persons* in article 72 of the *Regulated Activities Order* apply to me?

Whether you are carrying on the activity in the UK depends on a combination of factors. In very broad terms, however, as an overseas person, you are more likely than not to be carrying on a home finance activity in the UK if the home occupier, reversion occupier or agreement seller is normally resident in the UK at the time that he enters into the plan. The table that follows applies this broad principle to the various permutations taking account of the conditions applying to the exclusions for home finance activities under article 72.

**Table indicating whether authorisation or exemption is likely to be needed by a person who is carrying on home finance activities from overseas.**

Activity carried on by overseas person	Where the reversion occupier, home purchaser or agreement seller is or was normally resident in the UK at the time he enters or entered into the plan			Where the reversion occupier, home purchaser or agreement seller is or was not normally resident in the UK at the time he enters or entered into the plan		
	Home reversion plan	Home purchase plan	Regulated sale and rent back agreement	Home reversion plan	Home purchase plan	Regulated sale and rent back agreement
Entering into or administering	Yes	Yes	Yes	No	No	No
Arranging for	Yes	Yes	Yes	No, provided	No	No, provided

persons to enter into plans.				the reversion purchaser or the reversion transferee, as the case may be, is or was also not normally resident in the UK.		the agreement provider or agreement transferee, as the case may be, is or was also not normally resident in the UK.
Arranging variations	Yes	Yes	Yes	No	No	No
Advising	Yes	Yes	Yes	No, unless the reversion occupier, reversion provider or reversion transferee is located in the UK at the time the advice is given to him.	No, unless the home purchaser is located in the UK at the time the advice is given.	No, unless the regulated sale and rent back agreement adviser is located in the UK at the time the advice is given.

## 14.7 Exemptions

### Q40. Am I an exempt person in relation to home finance activities?

Yes, if you are:

- a *person* who is specifically exempt under the Financial Services and Markets Act 2000 (Exemption) Order 2001, such as a registered social landlord; or
- an *appointed representative* whose agreement with his principal permits him to carry on the activities in question; or
- an *exempt professional firm*.

### Q41. What home finance activities can I carry on as an appointed representative?

You will be able to carry on any of the following *regulated activities*:

- *arranging (bringing about) a home reversion plan or arranging (bringing about) a home purchase plan; or*
- *making arrangements with a view to home reversion plans or making arrangements with a view to home purchase plans; or*
- *advising on a home reversion plan or advising on a home purchase plan; or*
- agreeing to do any of the above.

You will not be able to carry on any of the following regulated activities:

- *entering into a home reversion plan, entering into a home purchase plan or entering into a regulated sale and rent back agreement; or*
- *administering a home reversion plan, administering a home purchase plan or administering a regulated sale and rent back agreement; or*
- *arranging (bringing about) a regulated sale and rent back agreement; or*
- *making arrangements with a view to a regulated sale and rent back agreement; or*
- *advising on a regulated sale and rent back agreement; or*
- agreeing to do any of the above.

### Q42. I am an exempt professional firm. Will I be able to carry on any of the regulated activities relating to home reversion plans, home purchase plans and regulated sale and rent back agreements without needing FCA authorisation?

This depends on the activity in question. Subject to your being able to satisfy the general requirements of Part XX of the Financial Services and Markets Act 2000 you will be able:

- to carry on the *regulated activities* of:
  - *entering into a home reversion plan; or*
  - *entering into a home purchase plan; or*
  - *entering into a regulated sale and rent back agreement; or*
  - *administering a home reversion plan; or*

- administering a home purchase plan; or
  - administering a regulated sale and rent back agreement; or
  - agreeing to do any of these things,
- but only where you are acting as a trustee or personal representative and the *reversion occupier, home purchaser or SRB agreement seller* is a beneficiary under the trust, will or intestacy;
- to carry on the *regulated activities* of:
    - arranging (bringing about) a home reversion plan; or
    - arranging (bringing about) a home purchase plan; or
    - arranging (bringing about) a regulated sale and rent back agreement; or
    - making arrangements with a view to home reversion plans; or
    - making arrangements with a view to home purchase plans; or
    - making arrangements with a view to regulated sale and rent back agreements; or
  - agreeing to do any of these things,
- without any further restriction; and
- to carry on the *regulated activities* of:
    - advising on a home reversion plan; or
    - advising on a home purchase plan; or
    - advising on a regulated sale and rent back agreement; or
  - agreeing to do any of these things,
- but only provided that:
- the advice is given to a trustee or a reversion provider or agreement purchaser who, in either case, is not an individual; or
  - the advice is given to an individual but does not amount to a recommendation to enter into a plan as reversion provider, *reversion occupier, home purchaser* or agreement seller; or
  - the advice is given to an individual and does amount to a recommendation to enter into a plan as reversion provider, *reversion occupier, agreement seller, agreement provider or home purchaser* with a reversion provider, agreement provider or a *home purchase provider* but only if the advice endorses a corresponding recommendation that has been given to the individual by a suitably authorised or exempt person.





## 14.8 Financial promotions

### Q43. Are there any restrictions if I wish to promote my home finance activities?

Yes. The restriction in section 21 of the Financial Services and Markets Act 2000 will apply, broadly speaking, to any communication which:

- is made in the course of business; and
- invites or induces persons to:
  - become a *reversion occupier, SRB agreement seller or home purchaser*; or
  - become a *reversion provider or SRB agreement provider*; or
  - vary the terms of a *home reversion plan or a home purchase plan* that was originally established on or after 6 April 2007 or a *regulated sale and rent back agreement* that was originally established on or after 1 July 2009; or
  - be provided, as a *reversion occupier, SRB agreement seller or home purchaser* or as a *reversion provider or SRB agreement provider*, with arranging or advisory services.

Communications of this kind are termed *financial promotions*.

Promotions of *home finance administration* services or promotions intended to dissuade persons from entering into or varying the terms of regulated plans will not be financial promotions and so no restriction will apply to them.

The following table summarises when the restriction will apply.

**Table indicating when the financial promotion restriction will apply to communications about home finance plans.**

A communication inviting or inducing...	To...	Will be a financial promotion?
...potential reversion occupiers, <i>SRB agreement sellers</i> or home purchasers	...enter into a home reversion plan, <i>regulated sale and rent back agreement</i> , or a home purchase plan	Yes
...potential home reversion purchasers or transferees or <i>SRB agreement providers</i> or transferees	...enter into a home reversion plan or <i>regulated sale and rent back agreement</i>	Yes (in the case of transferees, regardless of whether the plan was originally established before 6 April 2007 in the case of <i>home reversion</i> transferees and 1 July 2009 in the case of <i>regulated sale and rent</i>

A communication inviting or inducing...	To...	Will be a financial promotion?
		<i>back agreement transferees</i> )
...potential home purchase providers	...enter into a home purchase plan	Yes
...potential or existing: <ul style="list-style-type: none"> <li>• reversion occupiers, <i>SRB agreement sellers</i> or home purchasers; or</li> <li>• reversion or home purchase providers or <i>SRB agreement providers</i></li> </ul>	...be provided with administration services	No
...potential or existing: <ul style="list-style-type: none"> <li>• reversion occupiers, <i>SRB agreement sellers</i> or home purchasers; or</li> <li>• reversion purchasers or transferees or <i>SRB agreement providers</i> or transferees</li> </ul>	...be provided with arranging or advisory services	Yes (but where the promotion relates to such a person varying the terms of a plan or agreement, this is only where the plan or agreement was originally established on or after 6 April 2007 in the case of <i>home reversion plans</i> or <i>home purchase plan</i> and 1 July 2009 in the case of <i>regulated sale and rent back agreements</i> )
...potential or existing home purchase providers	...be provided with arranging or advisory services	No in relation to advisory services Yes in relation to arranging services
...potential or existing: <ul style="list-style-type: none"> <li>• reversion occupiers, <i>SRB agreement sellers</i> or home purchasers; or</li> <li>• reversion or home purchase providers or <i>SRB agreement providers</i></li> </ul>	...decline from entering into or varying the terms of a plan or agreement	No
...potential or existing: <ul style="list-style-type: none"> <li>• reversion occupiers, <i>SRB agreement sellers</i> or home purchasers; or</li> <li>• reversion or home purchase providers or <i>SRB agreement providers</i></li> </ul>	...dispose of rights, obligations or interests in land that they have under a plan or agreement	No

**Q44. What are the restrictions that apply if I am making a financial promotion about home finance plans or activities?**

The *financial promotion* will need either to be communicated or approved by an *authorised person* or to be exempt under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the *Financial Promotion Order*).

If you are an authorised person who is communicating or approving the financial promotion and it is not exempt, you will need to comply with the provisions of the Mortgages and Home Finance: Conduct of Business Sourcebook ■ MCOB 3A for financial promotions of qualifying credit, a *home reversion plan*, a *home purchase plan* or a *regulated sale and rent back agreement*).

### **Q45. What exemptions may be likely to be available to me when I communicate financial promotions about home finance plans or activities?**

A number of exemptions may be available. Those most likely to apply are summarised below.

- (1) Introductions (article 15 of the *Financial Promotion Order*). This applies, broadly speaking, where you introduce clients to an *authorised person* or an *exempt person* in the circumstances covered by the exclusion in article 29 of the *Regulated Activities Order* (see Q17). But this is provided the person to whom you make the introduction is not your close relative or a member of your *group*. In addition, there is an exemption for promotions concerning introductions relating specifically to home finance plans - see (5).
- (2) Exempt persons (article 16 of the *Financial Promotion Order*). This applies, subject to certain conditions, if you are an exempt person such as a registered social landlord or an *appointed representative*.
- (3) Generic promotions (article 17 of the *Financial Promotion Order*). This applies to a general promotion that does not identify any particular persons as being either providers of, or as offering arranging or advisory services relating to, home finance plans.
- (4) One-off promotions (articles 28 and 28A of the *Financial Promotion Order*). These apply to promotions that are intended for a particular recipient (or group of connected recipients).
- (5) Introductions relating to home finance plans (article 28B of the *Financial Promotion Order*). This applies to real time financial promotions relating to home finance plans for the purpose of making introductions. This exemption is subject to the same conditions as apply to the exclusion in article 33A of the *Regulated Activities Order* (see Q18 and Q34); and
- (6) Advice centres (article 73 of the *Financial Promotion Order*). This applies to bodies such as citizens' advice bureaux when they make promotions about home finance plans in the course of their business of providing free advice about debt matters.

Further guidance on these and other exemptions from the financial promotion restriction is in Chapter 8 of PERG (■ PERG 8).

