

Chapter 2

Authorisation and regulated activities

2.2 Introduction

- 2.2.1** **G** Under section 23 of the *Act* (Contravention of the general prohibition or section 20 (1) or (1A)), a *person* commits a criminal offence if he carries on activities in breach of the *general prohibition* in section 19 of the *Act* (The general prohibition) . An *authorised person* also commits a criminal offence if he carries on a credit-related regulated activity in the *UK*, or purports to do so, otherwise than in accordance with his *permission* (unless the *person* is an *appointed representative* carrying on the activity in circumstances where, as a result of section 39 (1D) of the *Act*, sections 20(1) and (1A) and 23(1A) of the *Act* do not apply). For these purposes, *entering into a regulated credit agreement as lender*, exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement and *debt collecting* are credit-related regulated activities, except in so far as the activity relates to an agreement under which the obligation of the *borrower* to repay is secured on land. Although a *person* who commits the criminal offence is subject to a maximum of two years imprisonment and an unlimited fine, it is a defence for a *person* to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- 2.2.1A** **G** A *regulated credit agreement* that is made by an *authorised person* who does not have *permission* to do so, in contravention of section 20 of the *Act*, could be unenforceable against the *borrower* (see section 26A of the *Act*).
- 2.2.2** **G** Another consequence of a breach of the *general prohibition* is that certain agreements could be unenforceable (see sections 26 to 29 of the *Act*). This applies to agreements entered into by *persons* who are in breach of the *general prohibition*. It also applies to any agreement entered into by an *authorised person* if the agreement is made as a result of the activities of a *person* who is in breach of the *general prohibition*.
- 2.2.3** **G** Any *person* who is concerned that his proposed activities may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form in the decision tree in ■ PERG 2 Annex 1 G):
- (1) Will I be carrying on my activities by way of business (see ■ PERG 2.3)?
 - (2) Will I be managing the assets of an *occupational pension scheme* (see ■ PERG 2.3.2G (3))?
 - (3) If the answer is 'Yes' to (1) or (2), will my activities relate to *specified investments* (see ■ PERG 2.6)?

- (3A) Are my activities specified for the purposes of section 22(1)(b) of the Act (and, accordingly, when carried on by way of business, are a *regulated activity* when carried on in relation to property of any kind) or related to a *specified benchmark* (see ■ PERG 2.5.1A G)?
- (3B) Are my activities related to information about a *person's* financial standing (see ■ PERG 2.7.20K G)?
- (4) If the answer is 'Yes' to (3), (3A) or (3B), will my activities be, or include, *regulated activities* (see ■ PERG 2.7)?
- (5) If so, will I be carrying them on in the *United Kingdom* (see ■ PERG 2.4)?
- (6) If so, will my activities be excluded (see ■ PERG 2.8 and ■ PERG 2.9)?
- (7) If not, will I be exempt (see ■ PERG 2.10.5 G to ■ PERG 2.10.8 G)?
- (8) If not, am I allowed to carry on *regulated activities* without *authorisation* (see ■ PERG 2.10.9 G to ■ PERG 2.10.16 G)?
- (9) If not, do I benefit from the few provisions of the Act that *authorise* me without a *permission* under Part 4A of the Act (see ■ PERG 2.10.10 G (Members of Lloyds))?
- (10) If not, what is the scope of the *Part 4A permission* that I need to seek (see ■ PERG 2 Annex 2 G)?

2.2.4 **G** The rest of this chapter provides a high level guide through the questions set out in ■ PERG 2.2.3 G. It aims to give an overall picture but in doing so it necessarily relies on the reader referring to *UK* statutory provisions to fill in the detail (which can be extensive).

2.2.5 **G** The process of applying for *Part 4A permission* is available on the *FCA* website Apply for authorisation: www.fca.org.uk/firms/authorisation/apply-authorisation. But a list of the activities for which *permission* may be given is annexed to this chapter (see ■ PERG 2 Annex 2 G). You may find this helpful in providing an overview of the activities that are regulated. The list is included here because, with some exceptions, the *investments* and activities for which *permission* may be given are the same as the investments and activities specified in the *Regulated Activities Order*. This creates a few additional categories for which *permission* must be sought.