

Chapter 4

Guidance on regulated activities connected with mortgages

4.12 Appointed representatives

What is an appointed representative?

4.12.1 **G** Section 39 of the *Act* makes provision exempting *appointed representatives* from the need to obtain *authorisation*. An *appointed representative* is a *person* who is a party to a contract with an *authorised person* which permits or requires the *appointed representative* to carry on certain regulated activities. ■ SUP 12 (Appointed representatives) contains *guidance* relating to *appointed representatives*.

4.12.2 **G** Unless a person has only a *limited permission* for certain *credit-related regulated activities*, a *person* who is an *authorised person* cannot be an *appointed representative* (see section 39(1) of the *Act* (Exemption of appointed representatives)).

Business for which an appointed representative is exempt

4.12.3 **G** An *appointed representative* can carry on only those *regulated activities* which are specified in the *Appointed Representatives Regulations*. As respects *regulated mortgage contracts*, these are *arranging (bringing about)*, *making arrangements with a view to* and *advising on regulated mortgage contracts* (as well as agreeing to do so).

Persons who are not already appointed representatives

4.12.4 **G** A *person* who is not already an *appointed representative* for *designated investment business* activities, and who may wish to become one in relation to the *regulated activities* of *arranging (bringing about)*, *making arrangements with a view to* or *advising on regulated mortgage contracts*, can do so. He must be appointed under a written contract by an *authorised person*, who has *permission* to carry on those *regulated activities*, and who accepts responsibility for the *appointed representative's* actions when acting for him. ■ SUP 12.4 (What must a firm do when it appoints an appointed representative?) and ■ SUP 12.5 (Contracts: required terms) set out the detailed requirements that must be met for an appointment to be made.

Persons who are already appointed representatives

4.12.5 **G** Where a *person* is already an *appointed representative* (in relation to any non-mortgage activities) and he proposes to carry on any *regulated mortgage activities*, he will need to consider the following matters.

- (1) He must become *authorised* if his proposed mortgage activities include either *entering into a regulated mortgage contract* or

administering a regulated mortgage contract. These activities may not be carried on by *appointed representatives* and the Act does not permit any *person* to be exempt for some activities and *authorised* for others. Once *authorised*, the *person* may only carry on the *regulated activities* that are covered by his *permission*. He will therefore need to apply for a *permission* to cover all the *regulated activities* that he proposes to carry on.

- (2) If he proposes to carry on the *regulated activities* of *arranging (bringing about), making arrangements with a view to or advising on regulated mortgage contracts*, he may be able to do so as an *appointed representative*. But this will depend on a number of issues.
 - (a) He will need to be appointed by an *authorised person* who is prepared to accept responsibility for the *appointed representative's regulated mortgage activities* when acting for him. The *authorised person* must have *permission* to carry on these *regulated mortgage activities*.
 - (b) If these *regulated mortgage activities* are to be carried on for the same *authorised person* who has already appointed him for his non-mortgage regulated activities, the contract between them will need to be amended to reflect the additional activities. Other amendments to the contract may be required.
 - (c) It may be that these *regulated mortgage activities* are to be carried on for a different *person*.
 - (d) If the *regulated mortgage activities* relating to *arranging* are to be limited to making introductions, he may be able to operate within the exclusion for introducers described at ■ PERG 4.5.10 G. This is different from the exclusions for introductions relating to *securities* and *contractually based investments*, which are described at ■ PERG 8.33.

The mortgage register

4.12.6

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■ SUP 12.4.10A R to ■ SUP 12.4.10C G explain some special requirements that apply to an *appointed representative* for an *MCD mortgage lender* or *MCD mortgage credit intermediary*. For example, it may be necessary for the *appointed representative* to be included in the *Financial Services Register*.