

Chapter 4

Guidance on regulated activities connected with mortgages

4.17 Interaction with the Consumer Credit Act and consumer credit regulated activities

Entering into and administering a regulated mortgage contract

- 4.17.1** G The cumulative effect of article 20(3) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (the 2013 Order) and Chapter 14A of Part 2 of the *Regulated Activities Order* is to essentially carve out *regulated mortgage contracts* from regulation under the CCA and from regulation as a *credit-related regulated activity*.
- 4.17.2** G Section 126(2) of the CCA (as inserted by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014) provides, however, that for the purposes of section 126(1) of the CCA (a land mortgage securing a *regulated credit agreement* is enforceable (so far as provided in relation to the agreement) on an order of the court only) and Part 9 of the CCA (judicial control) a *regulated mortgage contract* which would, but for the exemption in PERG 2.7.19CG(1), be a *regulated credit agreement* is to be treated as if it were a *regulated credit agreement*. This is subject to section 140A(5) of the CCA (unfair relationships between creditors and debtors), which provides that an order under section 140B of the CCA (powers of court in relation to unfair relationships) shall not be made in connection with a *credit agreement* which is an exempt agreement under ■ PERG 2.7.19C G. It therefore follows that, for example, the CCA provisions relating to time orders apply to *regulated mortgage contracts*.
- 4.17.3** G [deleted]
- 4.17.4** G Unsecured loans are not subject to carve-out described above and may be *regulated credit agreements* for the purposes of the CCA and the *credit-related regulated activities* for which a *person* may need *permission*.
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Financial Promotion and advertisements

4.17.15 **G** Article 17 of the 2013 Order has the effect that the *controlled activity* of providing relevant consumer credit for the purposes of the *financial promotion* regime does not include *regulated mortgage contracts*.

4.17.16 **G** For more detailed *guidance* concerning the application of the *financial promotion* regime to *qualifying credit* and relevant consumer credit, see ■ PERG 8.17.17 G.

Consumer credit regulated activities

4.17.17 **G** Whether a business decides that this chapter does or does not apply to its mortgage activities, it should go on to consider whether the activities are consumer credit *regulated activities*. ■ PERG 2 has *guidance* on consumer credit *regulated activities*.

4.17.18 **G** A number of *Regulated Activities Order* exclusions from the consumer credit *regulated activities* are relevant to lenders under loans secured on land. These include:

- (1) article 60C(2) (*regulated mortgage contract* is an exempt *credit agreement*, as summarised in ■ PERG 2.7.19CG (1));
- (2) article 60C(3) (commercial lending, as summarised in ■ PERG 2.7.19CG (2));
- (3) article 60D (loans secured on non-residential property, as summarised in ■ PERG 2.7.19E G);
- (4) article 60F (loans with a limited number of repayments, as summarised in ■ PERG 2.7.19G G);

- (5) article 60H (high net worth borrowers, as summarised in ■ PERG 2.7.19J G); and
- (6) articles 36E and 39H (exclusions for lenders in relation to *credit broking, debt adjusting, debt counselling, debt collecting and debt administration*, as summarised in ■ PERG 2.8.6C G and ■ PERG 2.8.7C G).