

Chapter 4

Guidance on regulated activities connected with mortgages

4.4A Mortgage contracts entered into before 21 March 2016

4.4A.1 G [deleted]

4.4A.1A G Prior to 21 March 2016, the definition of ‘regulated mortgage contract’ in article 61(3)(a) of the *Regulated Activities Order* was limited to mortgage contracts secured by a first legal mortgage (but not a second charge mortgage or an equitable mortgage) of *land* in the *United Kingdom* (rather than *land* in the *EEA*), and the regulated activity of *administering a regulated mortgage contract* was limited to mortgage contracts entered into on or after 31 October 2004, being the date on which mortgage regulation under the *Act* began. Accordingly, prior to 21 March 2016 some mortgage contracts were *regulated mortgage contracts* regulated under *MCOB*; some mortgage contracts were *regulated credit agreements* regulated under the *CCA* and, from 1 April 2014, *CONC*; and some mortgage contracts were outside regulation.

4.4A.1B G When the *Regulated Activities Order* was amended to implement the *MCD*, the limitations mentioned in ■ PERG 4.4A.1AG were removed: the legislative intention was to provide a single regulatory regime for mortgage contracts under *MCOB* from 21 March 2016, subject to a six month transitional period for first charge mortgages entered into before 31 October 2004. Mortgage contracts that were *regulated mortgage contracts* before that date did not cease to be *regulated mortgage contracts*. But many mortgage contracts that were not *regulated mortgage contracts* immediately before 21 March 2016 became *regulated mortgage contracts* on that date provided that they met the conditions set out in ■ PERG 4.4.1G(1) to (3), even though these conditions did not apply in that form at the time the contract was entered into.

4.4A.1C G

(1) Mortgage contracts that potentially became *regulated mortgage contracts* on 21 March 2016 include, for example:

- (a) mortgages entered into before 31 October 2004;
- (b) second charge mortgages; and
- (c) equitable mortgages.

(2) However:

- (a) a mortgage contract entered into before 21 March 2016, which was not already a *regulated mortgage contract* only became a *regulated mortgage contract* if it was a ‘consumer credit back book mortgage contract’ within the meaning of article 2 of the *MCD Order* (and see paragraph (a)(iii) of the *Glossary* definition

of regulated mortgage contract). Briefly, this means a regulated credit agreement that would have been a regulated mortgage contract if it had been entered into on or after 21 March 2016, with the exception of certain buy-to-let mortgages (which will remain regulated credit agreements if they were regulated credit agreements at the time they were entered into);

- (b) the exclusions set out in article 61A of the *Regulated Activities Order* and reflected in paragraph (a)(ii) of the *Glossary* definition of regulated mortgage contract replicate various consumer credit exemptions, for example equitable mortgage bridging loans; and
- (c) the regulated activities of administering a regulated mortgage contract, advising on regulated mortgage contracts and arranging (bringing about) regulated mortgage contracts are limited, in their application to mortgage contracts entered into before 21 March 2016, to mortgage contracts which were already regulated mortgage contracts or which are 'consumer credit back book mortgage contracts' within the meaning of article 2 of the *MCD Order* (see (a)).

4.4A.2 G [deleted]

4.4A.3 G [deleted]

4.4A.4 G [deleted]

4.4A.5 G
(2) [deleted]

4.4A.6 G [deleted]

4.4A.7 G [deleted]

4.4A.8 G
(3) [deleted]

4.4A.9 G [deleted]

4.4A.10 G [deleted]

(3) [deleted]