

Chapter 8

Financial promotion and related activities



8.7A Engage in claims management activity

Controlled claims management activity

8.7A.1 **G** A communication must be an invitation or inducement to *engage in claims management activity* (or to *engage in investment activity* (see ■ PERG 8.7)) for the restriction in section 21 to apply. Section 21(10A) of the Act defines this phrase as “entering into or offering to enter into an agreement the making or performance of which by either party constitutes a controlled claims management activity”. And section 21(10B) of the Act provides that an activity is a “controlled claims management activity” if:

- it is an activity of a specified kind;
- it is, or relates to, *claims management services*; and
- it is carried on in *Great Britain*.

8.7A.2 **G** The activities which have been specified are those set out in Part 1A of the *Financial Promotion Order* (which are listed in the *Glossary* definition of “*controlled claims management activity*”). These are the same as the activities which have been specified in the *Regulated Activities Order* as *regulated claims management activities*; the exclusions set out in articles 89N to 89W of the *Regulated Activities Order* in relation to *regulated claims management activities* are set out as exemptions in articles 73A to 73J of the *Financial Promotions Order* in relation to *controlled claims management activity*.

8.7A.3 **G** The activity must be or relate to a *claims management service*. The drafting of the *Financial Promotions Order* has the effect that the *controlled claims management activities* all meet this condition.

8.7A.4 **G** The activity must be carried on in *Great Britain*: see ■ PERG 2.4A.

The distinction between controlled claims management activity and regulated claims management activity

8.7A.5 **G** The *regulated activity* of *seeking out, referrals and identification of claims or potential claims*, as specified in article 89G of the *Regulated Activities Order*, constitutes three activities one of which is seeking out *persons* who may have a *claim* unless that activity constitutes a *controlled claims management activity*.

8.7A.6 **G** For a communication to constitute a *financial promotion*, it must constitute an invitation or inducement to *engage in claims management activity* (or to *engage in investment activity*): see ■ PERG 8.4. Where a *person* advertises the services of a *firm* which carries on a *regulated claims management activity* with a view to seeking out *customers*, the *person* is likely to be communicating an invitation or inducement to *engage in claims management activity*: the *person* will therefore have to be an *authorised person* or the communication will have to be approved by an *authorised person*, if the *person* is not to breach the prohibition in section 21 of the Act.

8.7A.7 **G** It may be possible for a *person* (for example, for a *lead generator*) to seek out claimants or potential claimants without communicating an invitation or inducement to *engage in claims management activity*. Whether or not there is an invitation or inducement would depend on the facts and circumstances of the communication. Where there is no invitation or inducement, the seeking out would constitute the *regulated activity* of *seeking out, referrals and identification of claims or potential claims*, and the *person* would need to be an *authorised person* if they are not to breach the *general prohibition*, or to hold the necessary *permission* if they are not to breach the requirement for *permission* in section 20 of the Act.