

## Chapter 1

# Introduction to the Perimeter Guidance manual

## 1.1 Application and purpose

### Application

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This manual applies to:

- (1) a *person* who is considering carrying on activities in the *United Kingdom* which may fall within the scope of the *Act* and is seeking *guidance* on whether he needs to be an *authorised person*;
- (2) a *person* who seeks to become an *authorised person* under the *Act* and who is, or is considering, applying for *Part 4A permission* to carry on *regulated activities* in the *United Kingdom*;
- (3) a *person* who is seeking *guidance* on whether any communication he may be seeking to make or cause to be made will be a *financial promotion* and be subject to the restriction in section 21 of the *Act*; and
- (4) *persons* generally.

### Purpose

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The purpose of this manual is to give *guidance* about the circumstances in which *authorisation* is required, or *exempt person* status is available, including *guidance* on the activities which are regulated under the *Act* and the exclusions which are available.

## 1.2 Introduction

- 1.2.1 **G**
- (1) The Financial Services and Markets Act 2000 (the *Act*) is the *UK* legislation under which *bodies corporate, partnerships*, individuals and unincorporated associations are permitted by the *FCA* or *PRA* to carry on various financial activities which are subject to regulation (referred to as *regulated activities*).
  - (2) The activities which are *regulated activities* are specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the *Regulated Activities Order*): for example, *accepting deposits, managing investments, effecting contracts of insurance, dealing in investments as agent*. In general terms, a *regulated activity* is an activity, specified in the *Regulated Activities Order*, carried on by way of business in relation to one or more of the *investments* specified in the *Regulated Activities Order*. ■ PERG 2 gives further general *guidance on regulated activities and specified investments*.
- 1.2.2 **G**
- (1) The *Act*, and the secondary legislation made under the *Act*, is complex. Although *PERG* gives *guidance* about *regulated activities* and *financial promotions*, it does not aim to, nor can it, be exhaustive.
  - (2) References have been made to relevant provisions in the *Act* or secondary legislation. However, since reproducing an entire statutory provision would sometimes require a lengthy quotation, or considerable further explanation, many provisions of the *Act*, or secondary legislation made under the *Act*, are summarised. For the precise details of the legislation, readers of the manual should, therefore, refer to the *Act* and the secondary legislation itself, as well as the manual.
  - (3) The *Act* and the secondary legislation made under it can be obtained from HMSO at <http://www.legislation.hmso.gov.uk/legislation/uk.htm> or can be accessed through the Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).
- 1.2.3 **G**
- PERG* uses words and phrases that have specific meanings in the *Handbook* or in legislation; these may be different from, or more precise than, their usual dictionary meanings. Defined terms used in the text of the *Handbook* are shown in italics (see Chapter 7 of the Reader's Guide to the *Handbook* at <http://www.fca.org.uk/your-fca/documents/handbook/handbook-readers-guide> ). For the meanings of defined terms used in *PERG*, see the *Glossary*. It is essential that readers refer to these definitions. In the case of those parts of *PERG* which take the form of Q&A, however, to ensure greater

accessibility of the text we have only italicised *Handbook* terms in those places where we think that it would be helpful to the majority of readers.

**1.2.3A** **G** Except in ■ PERG 2 and ■ PERG 7, where *PERG* uses the defined term of *advising on investments*, this term refers only to the *regulated activity* (in article 53(1) of the *Regulated Activities Order*) of *advising on investments (except P2P agreements)* and related text should be read and construed accordingly.

**1.2.4** **G** ■ PERG 1.4.1 G (General guidance to be found in PERG) summarises the general *guidance* contained in *PERG*. Readers should note that in a cross-reference, as explained in paragraph 40 of the Readers' Guide, the code letters of the manual or sourcebook immediately precede the chapter number. For example, ■ PERG 1 is the first chapter of the Perimeter Guidance manual. ■ PERG 1.5 provides details of and links to other general *guidance* on perimeter issues that is available on the *FCA* website.

## 1.3 Status of guidance

### 1.3.1

**G** This *guidance* is issued under section 139A of the *Act* (*Guidance*). It represents the *FCA's* views and does not bind the courts. For example, it would not bind the courts in an action for damages brought by a *private person* for breach of a *rule* (see section 138D of the *Act* (*Actions for damages*)), or in relation to the enforceability of a contract where there has been a breach of sections 19 (The general prohibition) or 21 (Restrictions on financial promotion) of the *Act* (see sections 26 to 30 of the *Act* (*Enforceability of agreements*)). Although the *guidance* does not bind the courts, it may be of persuasive effect for a court considering whether it would be just and equitable to allow a contract to be enforced (see sections 28(3) and 30(4) of the *Act*). Anyone reading this *guidance* should refer to the *Act* and to the relevant secondary legislation to find out the precise scope and effect of any particular provision referred to in the *guidance* and any reader should consider seeking legal advice if doubt remains. If a *person* acts in line with the *guidance* in the circumstances mentioned by it, the *FCA* will proceed on the footing that the *person* has complied with the aspects of the requirement to which the *guidance* relates.

## 1.4 General guidance to be found in PERG

1.4.1 **G** ■ PERG 1.4.2 G has a table setting out the general *guidance* to be found in *PERG*.

1.4.2 **G** Table: list of general guidance to be found in *PERG*.

Chapter:	Applicable to:	About:
PERG 2: Authorisation and regulated activities	<ul style="list-style-type: none"> <li>an <i>unauthorised person</i> wishing to find out whether he needs to be <i>authorised</i> or <i>exempt</i></li> <li>an <i>authorised person</i> wishing to know whether he needs to vary his <i>Part 4A permission</i></li> </ul>	<ul style="list-style-type: none"> <li>the regulatory scope of the <i>Act</i></li> <li>the <i>Regulated Activities Order</i></li> <li>the <i>Exemption Order</i></li> <li>the <i>Business Order</i></li> </ul>
PERG 3A: Guidance on the scope of the <i>Electronic Money Regulations</i>	<p>a <i>person</i> who needs to know</p> <ul style="list-style-type: none"> <li>whether a particular electronic payment product is <i>electronic money</i> and whether the <i>person</i> issuing it needs to be authorised or registered under the <i>Electronic Money Regulations</i></li> </ul>	<ul style="list-style-type: none"> <li>the scope of the <i>Electronic Money Regulations</i></li> </ul>
PERG 4: Regulated activities connected with mortgages	<p>any <i>person</i> who needs to know whether the activities he conducts in relation to mortgages are subject to <i>FCA</i> regulation. This is likely to include:</p> <ul style="list-style-type: none"> <li>lenders</li> <li>administration service providers</li> <li>mortgage brokers and advisers</li> </ul>	<p>the scope of relevant orders (in particular, the <i>Regulated Activities Order</i>) as respects activities concerned with mortgages</p>
PERG 5: Insurance distribution activities	<p>any <i>person</i> who needs to know whether they carry on <i>insurance distribution activities</i> and are, thereby, subject to <i>FCA</i></p>	<p>the scope of relevant orders (in particular, the <i>Regulated Activities Order</i>) as respects activities concerned with the sale or administra-</p>

Chapter:	Applicable to:	About:
	<p>regulation. This is likely to include:</p> <ul style="list-style-type: none"> <li>insurance brokers</li> <li>insurance advisers</li> <li><i>insurance undertakings</i></li> <li>other <i>persons</i> involved in the sale or administration of <i>contracts of insurance</i>, where these activities are secondary to their main business. </li></ul>	<p>tion of insurance</p>
<p>PERG 6: Identification of contracts of insurance</p>	<p>any <i>person</i> who needs to know whether a contract with which he is involved is a <i>contract of insurance</i></p>	<p>the general principles and range of specific factors that the <i>FCA</i> regards as relevant in deciding whether any arrangement is a <i>contract of insurance</i></p>
<p>PERG 7: Periodical publications, news services and broadcasts: application for certification</p>	<p>any <i>person</i> who needs to know whether he will be regulated for providing advice about investments through the medium of a periodical publication, a broadcast or a news service</p>	<ul style="list-style-type: none"> <li>the circumstances in which such <i>persons</i> will be carrying on the <i>regulated activities</i> of <i>advising on investments</i> or <i>advising on regulated mortgage contracts</i> (including where a request for a certificate may be appropriate)</li> <li>how the <i>FCA</i> will exercise its power to grant certificates</li> </ul>
<p>PERG 8: Financial promotion and related activities</p>	<p>any <i>person</i> who needs to know</p> <ul style="list-style-type: none"> <li>whether his communications are <i>financial promotions</i> or are subject to the restriction in section 21 of the <i>Act</i> or both</li> <li>whether his activities in making or helping others to make <i>financial promotions</i> are <i>regulated activities</i>.</li> <li>whether he is <i>marketing</i> an <i>AIF</i>.</li> </ul>	<ul style="list-style-type: none"> <li>the scope of the restriction on <i>financial promotion</i> under section 21 of the <i>Act</i> and the main exemptions provided</li> <li>the circumstances in which <i>persons</i> who are primarily involved in making or helping others to make <i>financial promotions</i> may themselves be conducting <i>regulated activities</i> requiring <i>authorisation</i> or exemption</li> <li>the <i>marketing</i> of an <i>AIF</i>.</li> </ul>
<p>PERG 9: Meaning of open-ended investment company</p>	<p>any <i>person</i> who needs to know whether a <i>body corporate</i> is an <i>open-ended investment company</i> as defined in section 236 of the <i>Act</i> (Open-ended investment companies) and is</p>	<p>the circumstances in which a <i>body corporate</i> will be an <i>open-ended investment company</i></p>

Chapter:	Applicable to:	About:
<p>PERG 10: Activities related to pension schemes</p>	<p>therefore a <i>collective investment scheme</i>.</p> <p>Any <i>person</i> who needs to know whether his activities in relation to pension schemes will amount to <i>regulated activities</i> or whether the restriction in section 21 of the <i>Act</i> will apply to any <i>financial promotions</i> he may make.</p>	<ul style="list-style-type: none"> <li>• the <i>regulated activities</i> that arise in connection with the establishment and operation of pension schemes and any exclusions that may be relevant</li> <li>• the circumstances in which <i>financial promotions</i> about pension schemes may be exempt from the restriction in section 21 of the <i>Act</i></li> </ul>
<p>PERG 11: Property investment clubs and land investment schemes</p>	<p>Any <i>person</i> who needs to know whether his activities in relation to property investment clubs and land investment schemes will amount to <i>regulated activities</i> or whether the restriction in section 21 of the <i>Act</i> will apply to any <i>financial promotions</i> he may make.</p>	<ul style="list-style-type: none"> <li>• the <i>regulated activities</i> that may arise in connection with the establishment and operation of property investment clubs and land investment schemes and any exclusions that may be relevant</li> <li>• the extent to which the <i>financial promotion</i> restriction in section 21 of the <i>Act</i> applies</li> </ul>
<p>PERG 12: Running or advising on personal pension schemes</p>	<p>any <i>person</i> who needs to know whether his activities in relation to establishing, running, advising on or marketing personal pension schemes will amount to <i>regulated activities</i></p>	<p>the <i>regulated activities</i> that arise in connection with establishing, running, advising on or marketing personal pension schemes and any exclusions that may be relevant</p>
<p>PERG 13: Guidance on the scope of MiFID and CRD IV</p>	<p>Any <i>UK person</i> who needs to know whether <i>MiFID</i> or the <i>CRD</i> and <i>EU CRR</i> (which allow the recast <i>CAD</i> to continue to apply to certain firms) as implemented in the UK apply to him</p>	<p>the scope of <i>MiFID</i> and the <i>CRD</i> and <i>EU CRR</i>.</p>
<p>PERG 14: Home reversion, home finance and regulated sale and rent back activities</p>	<p>Any <i>person</i> who needs to know whether his activities in relation to <i>home reversion plans</i>, <i>home purchase plans</i> or <i>regulated sale and rent back agreements</i> will amount to <i>regulated activities</i> or whether the restriction in section 21 of the <i>Act</i> will apply to</p>	<ul style="list-style-type: none"> <li>• the <i>regulated activities</i> that arise in connection with <i>home reversion plans</i>, <i>home purchase plans</i> and <i>regulated sale and rent back agreements</i> and any exclusions that may be relevant</li> <li>• the circumstances in which <i>financial promo-</i></li> </ul>



Chapter:	Applicable to:	About:
	any <i>financial promotions</i> he may make.	<i>tions about home reversion plans, home purchase plans and regulated sale and rent back agreements</i> may be made without breaching the restriction in section 21 of the Act
PERG 15: Guidance on the scope of the Payment Services Regulations 2009	Any person with an establishment in the UK who needs to know whether the Payment Services Directive, as transposed in UK legislation by the Payment Services Regulations 2009, applies to him.  Q46 applies specifically to persons providing payment services from an establishment outside the EEA to persons located in the UK.	the scope of the PSD Regulations 2009.
PERG 16: Scope of the Alternative Investment Fund Managers Directive	any <i>person</i> who needs to know whether a collective investment undertaking is an <i>AIF</i> .	the scope of the <i>regulated activities</i> of <i>managing an AIF</i> and <i>acting as trustee or depositary of an AIF</i> .
PERG 17: Consumer credit debt counselling	Any <i>person</i> who needs to know whether his activities in relation to debts will amount to <i>debt counselling</i> .	The scope of the <i>regulated activities</i> relating to consumer credit debt counselling.

## 1.5 What other guidance about the perimeter is available from the FCA?

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General *guidance* on the perimeter is also contained in various *FCA* documents (mainly fact sheets and frequently asked questions) that are available on the *FCA* website at [www.fca.org.uk](http://www.fca.org.uk). These documents, and the URL on which they may be accessed, include:

- (1) [deleted]
- (2) [deleted]
- (3) [deleted]
- (4) [deleted]
- (5) [deleted]
- (6) [deleted]
- (7) *guidance* about the position under the *Insurance Mediation Directive* and the *Regulated Activities Order* of the company appointed to manage a PPP or similar construction and operation project - <http://www.fca.org.uk/your-fca/documents/fsa-ppp-forum-letter> ;
- (8) [deleted]
- (9) *guidance* for employers about how to provide advice and information to their employees on pension matters without contravening the *Act* - <http://www.fca.org.uk/your-fca/documents/fsa-promoting-pensions-employees> ;
- (10) *FCA "Factsheet for Broker-arranged premium finance plans: General insurance brokers acting for commercial customers"* which includes, discussion about whether arranging premium finance is a *regulated activity* ( [www.fca.org.uk/your-fca/documents/broker-arranged-premium-finance-plans](http://www.fca.org.uk/your-fca/documents/broker-arranged-premium-finance-plans) );
- (11) joint guidance by the *FSA* and the Office of Fair Trading titled "*Payment protection products*" (January 2013) which includes discussion whether debt freezes and debt waivers are *contracts of*

*insurance* (<https://www.fca.org.uk/publication/finalised-guidance/fsa-fg13-02.pdf>);

(12) the FSA's views on whether members of the NHBC who provide insurance to buyers of properties in accordance with the Buildmark scheme carry out *insurance mediation*, contained in a letter to NHBC's solicitors and put onto the FSA's Freedom of Information Act register in December 2012 (<https://www.fca.org.uk/publication/foi/fsa-foi2707-info.pdf>).

1.5.1A **G** The *guidance* under ■ PERG 1.5.1G(7) and ■ (12) relates to the *Insurance Mediation Directive*, which has been repealed and replaced by the Insurance Distribution Directive (*IDD*). The *guidance* relates to whether the *regulated activities* in question are carried on for remuneration and by way of business under the *Insurance Mediation Directive*. The FCA does not view the changes under the *IDD* as having affected the analysis of remuneration and the 'by way of business' test set out in this *guidance* and so it continues to be relevant (see also ■ PERG 5.4).

1.5.2 **G** Any person who, having read relevant general *guidance* and, where appropriate, taken legal advice, remains uncertain about whether his activities amount to *regulated activities* or his communications will be subject to the restriction in section 21 of the Act, may seek individual *guidance* from the FCA. Requests for individual *guidance* should be made in line with ■ SUP 9.

1.5.3 **G** In addition, the FCA has established a team to provide general assistance and guidance to persons generally about the scope of the Act. Enquiries of this kind may be made:

(1) by authorised firms, to either the Contact Centre (email [firm.queries@fca.org.uk](mailto:firm.queries@fca.org.uk) , Tel 0300 500 0597) or their normal supervisory contact; or

(2) by individuals or non-authorised firms, to the Consumer Contact Centre (email [ccc@fca.org.uk](mailto:ccc@fca.org.uk) , Tel 0800 111 6768 ).

1.5.4 **G** The FCA will review its general *guidance* from time to time and may need to amend or withdraw published or written *guidance* in the light of changing circumstances, developing business practices, or case law. For the status of *guidance* issued by the FCA, see ■ PERG 1.3.1 G.

