

Chapter 14

Guidance on home reversion and home purchase activities

14.2 General issues

Q2. What is the purpose of the Regulation of Financial Services (Land Transactions) Act 2005?

This Act makes clear that the potential regulatory scope of the Financial Services and Markets Act 2000 enables the FCA to regulate activities that are similar to those that are already regulated when carried on in relation to traditional mortgages but which involve the provider acquiring land rather than simply providing finance for its purchase by the homeowner. This typically includes:

- schemes where a provider buys an interest in a homeowner's property and allows the homeowner to continue to reside in the property ('home reversion plans');
- certain types of Islamic financing arrangements designed to enable the purchase of a home in a way that is acceptable under Islamic law, such as Ijara or diminishing Musharaka ('home purchase plans'); and
- schemes where a provider buys an interest in a homeowner's property and allows the homeowner to continue to reside in the property in return for payment of rent ('sale and rent back agreement').

Q3. I propose to carry on activities in relation to home finance arrangements of the kind mentioned in Q2. In what circumstances will I need to be authorised under FSMA or be an exempt person?

You will need to be an authorised or exempt person if you will:

- be carrying on *regulated activities*;
- be doing so by way of business;
- be doing so on or after 6 April 2007 in relation to home purchase plans and home reversion plans or on or after 1 July 2009 in relation to sale and rent back agreements; and
- be doing so in the *United Kingdom*.

Q4. How will I know if my proposed home finance activities are regulated?

Regulated activities are specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ('the *Regulated Activities Order*'). This was amended, following the enactment of the Regulation of Financial Services (Land Transactions) Act 2005, to extend its scope to cover certain home finance activities. These amendments were made in the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No2) Order 2006 (SI 2006/2383) which came into effect on 6 April 2007 and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) which came into effect on 1 July 2009. Regulated home finance activities are:

- *entering into a home reversion plan, entering into a home purchase plan or entering into a regulated sale and rent back agreement* as the provider

of the plan/agreement or, in the case of *home reversion plans* and *regulated sale and rent back agreements* only, as a *person* to whom rights or obligations acquired by the provider are transferred or who, during the currency of the plan or agreement, acquires all or part of the interest in land bought by the provider;

- *administering a home reversion plan, administering a home purchase plan or administering a regulated sale and rent back agreement;*
- *arranging (bringing about) a home reversion plan, arranging (bringing about) a home purchase plan or arranging (bringing about) a regulated sale and rent back agreement;*
- *making arrangements with a view to home reversion plans, making arrangements with a view to home purchase plans or making arrangements with a view to regulated sale and rent back agreements;*
- *advising on a home reversion plan, advising on a home purchase plan or advising on a regulated sale and rent back agreement; and*
- *agreeing to do any of the above.*

But some activities are specifically excluded from regulatory scope.