

Chapter 14

Guidance on home reversion and home purchase activities

14.3 Activities relating to home reversion plans

Q5. What is a home reversion plan?

Broadly speaking, this is an arrangement under which, at the time it is entered into, a *person* (the 'reversion purchaser') buys all or part of an interest in land (other than timeshare accommodation) in the UK from a homeowner (being an individual or a trustee whose beneficiary is an individual) (the 'reversion occupier') on the basis that the individual or a related person is entitled under the arrangement, and intends, to use at least 40% of the land as a dwelling until:

- the end of a fixed period of at least twenty years; or
- the individual dies; or
- the individual enters a care home.

It should be noted that an arrangement will be a *home reversion plan* if the intention is for the land to be used as a dwelling until any one of the above eventualities arises. It is not necessary for the arrangement to provide for all three eventualities, merely one or more of them.

This means that an arrangement is not a home reversion plan if:

- the occupier is not an individual; or
- the land is to be used for the purpose of letting as a dwelling to someone other than a related person of the individual (or beneficiary under the trust) who owns it; or
- the land is used primarily for business purposes; or
- the land is overseas.

A related person, in relation to an individual, means:

- that person's spouse or civil partner; or
- a person (whether or not of the same sex) whose relationship with that person has the characteristics of a husband and wife relationship; or
- that person's:
 - parent or grandparent;
 - child or grandchild; or
 - sibling.

Q6. Will a sale and rent back agreement be a home reversion plan?

Where an arrangement meets the requirements for both a *regulated sale and rent back agreement* and a *home reversion plan*, it will be treated as a *home reversion plan* only and will not be a *regulated sale and rent back agreement*. Guidance on the meaning of a *regulated sale and rent back agreement* is in ■ PERG 14.4A (Activities relating to regulated sale and rent back agreements).

Q7. Can an arrangement that was established before 6 April 2007 be a home reversion plan?

Yes. An arrangement may still be a *home reversion plan* even though it was established before 6 April 2007. However, regulated activities carried on in relation to a home reversion plan established before 6 April 2007 will only be subject to regulation:

- when carried on on or after 6 April 2007; and
- in certain circumstances (see Q21 for a summary).

Q8. When will I be carrying on the activity of entering into a home reversion plan?

This will occur when you enter into the plan at the outset as the reversion purchaser. It can also occur at a later stage if all or part of the rights or obligations of the reversion purchaser are transferred to you or if you acquire all or part of the interest in land bought by the reversion purchaser (where you become a 'reversion transferee'). This is so, whether you are acquiring the rights or obligations from the reversion purchaser or from an existing reversion transferee. This includes acquiring the rights or obligations or the interest in land purely as an investment. However, investors will only be regulated if they satisfy the 'by way of business test' (see Q38). We refer to reversion purchasers and reversion transferees collectively in this guidance as 'reversion providers'.

So, if you are a reversion transferee under a plan that was established before 6 April 2007, you will only be subject to regulation for carrying on the regulated activity of entering into the plan if you do so on or after 6 April 2007.

Q9. What exclusions may be available to me if I am entering into home reversion plans?

The main exclusions are those:

- for trustees who enter into a plan where the reversion occupier is an individual who is a beneficiary under the trust (article 66(6B) of the *Regulated Activities Order*);
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for *local authorities* (article 72G of the *Regulated Activities Order*).

Q10. When will I be carrying on the activity of administering a home reversion plan?

This will arise if you carry out any one or more of the following functions for a reversion provider or a reversion occupier in relation to a plan that was originally established on or after 6 April 2007:

- taking necessary steps to make payments to the reversion occupier; or
- taking necessary steps to collect or recover payments due from the reversion occupier; or
- notifying the reversion occupier of changes in payments due under the plan, or of other matters of which the plan requires him to be notified.

One effect of this is that you will not become subject to regulation if you are administering a plan that was originally established before 6 April 2007 and a reversion transferee enters into the plan after that date. See Q21 for more detail about when activities are regulated if a plan was originally established before 6 April 2007.

It is irrelevant, for the purposes of determining if you are administering a home reversion plan, whether or not the plan was entered into by way of business. In this respect, the activity is different to the regulated activities of

administering a regulated mortgage contract or administering a home purchase plan.

Q11. What exclusions may be available to me if I am administering home reversion plans?

Specific exclusions may apply if you are not an *authorised person* and:

- you arrange for an authorised person with the appropriate *Part 4A permission* to administer the plan - this includes where you administer the plan for a period of up to one month following the termination of such an arrangement; or
- you administer the plan under an agreement with an authorised person who has Part 4A permission to administer such a plan.

The other main exclusions are those:

- for trustees who administer a plan where the reversion occupier is an individual who is a beneficiary under the trust (article 66(6B) of the *Regulated Activities Order*);
- for *overseas persons* who satisfy certain conditions (see Q39); and
- for *local authorities* (article 72G of the *Regulated Activities Order*).

Q12. When will I be carrying on the activity of arranging home reversion plans?

There are three types of arranging activity that are regulated. These are making arrangements:

- (1) for another *person* to enter into a plan as a reversion occupier or as a reversion provider;
- (2) for another person, being a reversion occupier or a reversion provider, to vary the terms of a plan that was originally established on or after 6 April 2007, in such a way as to vary his obligations under that plan; and
- (3) with a view to a person who participates in the arrangements entering into a plan as a reversion occupier or as a reversion provider.

But none of these arranging activities will apply to you if they relate to a plan to which, as a result of your arranging activities, you are or will become a party (article 28A of the *Regulated Activities Order*).

You will only be making arrangements under (1) or (2) if your actions are such as to bring about the entry into the plan or the variation as the case may be (article 26 of the *Regulated Activities Order*). This means that your involvement must be material to whether the transaction occurs. For example, assisting a person by completing the necessary application forms on their behalf or acting as their agent or attorney in negotiating entry will amount to bringing about the transaction.

Arranging activities under (3) will typically include making regular introductions of homeowners to reversion providers or of reversion transferees to reversion purchasers or vice versa or of any of these to a *reversion intermediary*.

Q13. I understand that any transaction that I have arranged before 6 April 2007 is not subject to regulation. But am I regulated if I arrange for a reversion transferee to enter into or vary a home reversion plan on or after 6 April 2007?

This depends on the type of arranging you are carrying on. If you are arranging variations, this will only be regulated if the plan was originally established on or after 6 April 2007. But, if you are arranging for a reversion

transferee to enter into a plan and the arrangements are being made on or after 6 April 2007, you will be regulated for that arranging activity. See Q21 for more detail about when activities are regulated if a plan was originally established before 6 April 2007.

Q14. Will I be regulated for arranging for a reversion provider to dispose of his rights and obligations or his interest in land under a home reversion plan to a reversion transferee?

It is only arranging for a person to enter into or vary the terms of a plan that is subject to regulation. So, you will not be regulated for providing arranging services to the existing provider who wishes to dispose of his rights, obligations or interests but you are likely to be regulated if you are arranging for the transferee to enter into the plan by acquiring the rights, obligations or interests.

Q15. What exclusions may be available to me if I am arranging home reversion plans?

If you are an *unauthorised person* the following exclusions may be available to you:

- where you are arranging for a transaction to be entered into with or through an *authorised person* (article 29 of the *Regulated Activities Order*) (see Q16); and
- where you have arranged for an authorised person to administer the plan or are administering it yourself during the period of one month following the termination of your arrangement with the authorised person (article 29A(2) of the *Regulated Activities Order*).

Whether or not you are an unauthorised person, the other main exclusions that may apply include:

- introductions made with a view to the provision of regulated independent advice (article 33 of the *Regulated Activities Order*) (see Q17);
- introductions made to a regulated person who carries on home reversion plan activities (article 33A of the *Regulated Activities Order*) (see Q18);
- arrangements that are a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*);
- *overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39); and
- arrangements made by *local authorities* (article 72G of the *Regulated Activities Order*).

Q16. When will the exclusion in article 29 of the Regulated Activities Order be available to me if I am arranging home reversion plans?

The exclusion will apply to you when, as an *unauthorised person*, you are arranging any of the following:

- for a homeowner (your client) to enter into a plan with an authorised reversion provider or through an authorised intermediary;
- for a reversion provider (your client) to enter into a plan with a homeowner or to transfer rights or obligations or an interest in land to a reversion transferee if either the reversion transferee is an authorised person or the transaction is to be effected through an authorised intermediary; or

- for a reversion transferee (your client) to acquire rights or obligations from an authorised reversion provider or through an authorised intermediary;
- for your client to vary the terms of a plan where the reversion provider is an authorised person or the variation is arranged through an authorised intermediary.

This is subject to your meeting certain conditions which are, broadly speaking, that:

- you must not advise your client on the merits of his entering into the transaction; and
- you must not be paid by anyone other than your client.

The requirement that you do not receive any payment other than from your client does not prevent you receiving payment from the *authorised person* but you must then treat the sums paid to you as belonging to your client. There is nothing to prevent you then using the sums to offset payments due to you from your client for services rendered to him. This is provided that you have your client's agreement to do so.

Q17. When will the exclusion in article 33 of the Regulated Activities Order be available to me if I am arranging home reversion plans?

Broadly speaking, the exclusion will apply where:

- your arranging activity is limited to *making arrangements with a view to home reversion plans*;
- you make introductions of homeowners, reversion purchasers or reversion transferees to an *authorised person*, an *exempt person* or an *overseas person*; and
- the introduction is made with a view to the provision of independent advice or the provision of independent discretionary services relating to home reversion plans.

Q18. When will the exclusion in article 33A of the Regulated Activities Order be available to me if I am arranging home reversion plans?

Broadly speaking, the exclusion will apply where:

- your arranging activity is limited to *making arrangements with a view to home reversion plans*;
- you make introductions of homeowners or of prospective reversion providers (your client) to an *authorised person*, an *appointed representative* or an *overseas person*;
- you do not receive any money paid by your client in relation to the transaction other than a sum that is due to you for your own account (for example, your fee for providing the introductory service); and
- you disclose to your client certain information about your relationship with the person to whom you are effecting introductions and about any reward you may receive for doing so.

Q19. When will I be carrying on the activity of advising on a home reversion plan?

This will arise if:

- you are giving advice to a *person* who is or who is contemplating becoming a reversion occupier, a reversion purchaser or a reversion transferee; and
- the advice relates to the merits of his entering into a home reversion plan in that capacity or varying the terms of a plan that he has already entered into.

Advice on the merits of varying the terms of a plan will only be regulated where the plan was originally established on or after 6 April 2007. However, advice given to a reversion transferee on the merits of his entering into a plan that was originally established before 6 April 2007 will be subject to regulation. See Q21 for more detail about when activities are regulated if a plan was originally established before 6 April 2007.

Advice given to a person on the merits of his transferring rights or obligations or interests in land under a plan to another person is not regulated.

Much of the detailed guidance on *advising on regulated mortgage contracts* in ■ PERG 4.6 may be applied to the activity of *advising on a home reversion plan*.

Q20. What exclusions may be available to me if I am advising on home reversion plans?

- The main exclusions that are available include:
- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*);
 - advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); and
 - advice given by *local authorities* (article 72G of the *Regulated Activities Order*).

Detailed guidance on the exclusion in article 54 is in ■ PERG 7.

Q21. I can see that the fact that the home reversion plan was originally established before 6 April 2007 can affect whether the services that I provide to parties to the plan after that date are regulated. Can you summarise the position in this respect please?

Yes. This all depends on the combination of the date of entry or variation and the capacity in which your customer enters or entered into the plan. The following table clarifies when your services will be regulated activities and when they will not.

| Potential home reversion plan activity | Whether the activity is regulated if undertaken on or after 6 April 2007 when the plan was originally established before 6 April 2007 |
|---|---|
| Entering into a plan as reversion purchaser (see Q8) | N/A - this activity will only take place when the plan is first established |
| Entering into a plan as reversion transferee (see Q8) | Yes |
| Administering a plan (see Q10) | No |
| Arranging (see Q12) for a person to enter into a plan as: | |
| (a) a reversion purchaser or a reversion occupier | N/A - this activity will only take place when the plan is first established |
| (b) a reversion transferee | Yes |
| Arranging variations (see Q12) of a plan | No |

| Potential home reversion plan activity | Whether the activity is regulated if undertaken on or after 6 April 2007 when the plan was originally established before 6 April 2007 |
|---|---|
| Advising (see Q19) a person on entering into a plan in his capacity as: | |
| (a) a reversion purchaser or a reversion occupier | N/A - this activity will only take place when the plan is first established |
| (b) a reversion transferee | Yes |
| Advising (see Q19) a person on varying the terms of a plan | No |

Q22. Will changes involving the circumstances of the reversion occupier that may take place after the plan has been entered into (such as moving house, marriage or change of occupants) have any implications in terms of regulated activity?

This depends on the facts and is a question of degree that requires an assessment against the criteria that make up the definition of a home reversion plan. There are two main issues that would need to be considered. These are:

- is the change likely to cause a new plan to be entered into; and
- does the change involve a variation of the terms of the plan (if it was originally entered into on or after 6 April 2007) such as to vary the obligations of the provider or the occupier?

Broadly speaking, it would seem likely that, if the occupier were to move house, there would be a need for the existing plan to be terminated and a new plan to be entered into. Where this happens, the person who enters into the new plan as provider and anyone arranging or advising on the new plan will potentially need to be authorised or exempt. Changes such as may occur due to marriage or change of occupants, change of other relevant details or drawdown of funds under a staggered payment arrangement may necessitate a new plan or may involve a variation in the existing plan depending on the extent to which they alter the obligations of the provider or the occupier. Where such changes do involve a variation, anyone arranging or advising on the variation would potentially need to be authorised or exempt. But this applies only where the plan was originally entered into on or after 6 April 2007.