Chapter 14

Guidance on home reversion and home purchase activities

14.4A Activities relating to regulated sale and rent back agreements

Q37A. What is a regulated sale and rent back agreement?

Broadly speaking, this is an arrangement under which, at the time it is entered into, a person (the "agreement provider") buys all or part of an interest in land (other than time share accommodation) in the *United Kingdom* from a homeowner (being an individual or a trustee whose beneficiary is an individual) ("the agreement seller") 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. However such an arrangement is not a *regulated sale and rent back agreement* if it is a *home reversion plan*.

This means that an arrangement is not a *regulated sale and rent back agreement* if:

- the agreement seller 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; or
- if it is a *home reversion plan* (see Q5).

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

- that person's spouse or civil partner;
- 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.

As regards the requirement that the conditions need to be met 'at the time the arrangement was entered into', it should be noted that a *regulated sale and rent agreement* is an arrangement that may actually comprise several agreements. For example, a *regulated sale and rent back agreement* may include an agreement for the sale of a freehold interest in land and a subsequent tenancy agreement relating to the occupation of that land. Just because the tenancy agreement was not completed at the same time as the sale of the freehold interest does not mean there is no *regulated sale and rent back agreement*.

Q37B. Can an arrangement that was established before 1 July 2009 be a regulated sale and rent back agreement?

Yes it can be. An arrangement may still be a *regulated sale and rent back agreement* even if it was established before 1 July 2009. However, regulated activities carried on in relation to a sale and rent back agreement established before 1 July 2009 will only be subject to regulation:
- when carried on on or after 1 July 2009; and
- in certain circumstances (see Q37Q for a summary).

Q37C. When will I be carrying on the activity of entering into a regulated sale and rent back agreement?

This will occur when you enter into the agreement at the outset as the agreement provider even if you do so only once. It can also occur at a later stage if all or part of the rights or obligations of the agreement provider are transferred to you or if you acquire all or part of the interest in land bought by the agreement provider (where you become an 'agreement transferee'). This is so, whether you are acquiring the rights or obligations from the agreement provider or from an existing agreement 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 14.5). We refer to agreement providers and agreement transferees collectively in this guidance as 'agreement purchasers'.

So, if you are an agreement transferee under a plan that was established before 1 July 2009, 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 1 July 2009.

Q37D. What exclusions may be available to me if I am entering into regulated sale and rent back agreements as agreement provider?

The main exclusions are those:
- for trustees who enter into a plan where the agreement seller is an individual who is a beneficiary under the trust (article 66(6D) 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*).

Q37E. When will I be carrying on the activity of administering a regulated sale and rent back agreement?

This will arise if you carry out any one or more of the following functions for an agreement purchaser or an agreement seller in relation to an agreement that was originally entered into on or after 1 July 2009:
- taking necessary steps to make payments to the agreement seller; or
- taking necessary steps to collect or recover payments due from the agreement seller; or
- notifying the agreement seller of changes in payments due under the agreement, or of other matters of which the agreement requires him to be notified.

One effect of this is that you will not become subject to regulation if you are administering an agreement that was originally established before 1 July 2009 and an agreement transferee enters into the plan after that date. See Q37Q for more detail about when activities are regulated if an agreement was originally entered into before 1 July 2009.

It is irrelevant for the purposes of determining if you are administering a regulated sale and rent back agreement whether or not the agreement was entered into by way of business. In this respect the activity is similar to the regulated activity of *administering a home reversion plan*.

Q37F. If I collect rent due to an agreement purchaser under a regulated sale and rent back agreement or help the agreement seller set up a direct debit in favour of the agreement purchaser do I need to be regulated?

Yes, it is likely that you will need to be authorised to carry out the *regulated activity* of *administering a regulated sale and rent back agreement*. However the following exclusions may be available:

- where you arrange for an authorised person with the appropriate *Part 4A permission* to administer the agreement - this includes where you administer the agreement 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 which has a *Part 4A permission* to administer such an agreement.

Q37G. Are there any other exclusions available in relation to administering a regulated sale and rent back agreement?

The other main exclusions are those:

- for trustees who administer a plan where the agreement seller is an individual who is a beneficiary under the trust (article 66(6D) 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*).

Q37H. When will I be carrying on the activity of arranging regulated sale and rent back agreements?

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

(1) for another *person* to enter into a plan as an agreement purchaser or as an agreement seller;

(2) for another *person*, being an agreement seller or an agreement purchaser, to vary the terms of an agreement that was originally established on or after 1 July 2009, in such a way as to vary his obligations under that agreement; and

(3) with a view to a *person* who participates in the arrangements entering into an agreement as an agreement seller or as an agreement purchaser.

But none of these arranging activities will apply to you if they relate to an agreement 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 agreement 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 agreement providers or of agreement

transferees to agreement providers or vice versa or any of these to a *firm* with *permission* (or which ought to have *permission*) to carry on a *regulated sale and rent back mediation activity*.

Q37I. I understand that any transaction that I have arranged before 1 July 2009 is not subject to regulation. But do I need permission if I arrange for an agreement transferee to enter into or vary a regulated sale and rent back agreement on or after 1 July 2009?

This depends on the type of arranging you are carrying on. If you are arranging variations, this will only be regulated if the agreement was originally established on or after 1 July 2009. But, if you are arranging for an agreement transferee to enter into an agreement and the arrangements are being made on or after 1 July 2009, you will be regulated for that arranging activity. See Q39Q for more detail about when activities are regulated if a plan was originally established before 1 July 2009.

Q37J. Will I need to be regulated for arranging for an agreement provider to dispose of his rights and obligations or his interest in land under a regulated sale and rent back agreement to an agreement transferee?

It is only arranging for a person to enter into or vary the terms of an agreement that is subject to regulation. So, you will not need to seek authorisation 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 agreement by acquiring the rights, obligations or interests.

Q37K. What exclusions may be available to me if I am arranging regulated sale and rent back agreements?

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 Q37L); and
- where you have arranged for an authorised person to administer the agreement or are administering it yourself during the period of one month following the termination of your arrangement with the authorised person (article 29A(4) 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 Q37M);
- introductions made to a regulated person who carries on regulated sale and rent back agreement activities (article 33A of the Regulated Activities Order) (see Q37N);
- 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*).

Q37L. When will the exclusion in article 29 of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements?

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 an agreement with an authorised agreement provider or through an authorised intermediary;
- for an agreement provider (your client) to enter into an agreement with a homeowner or to transfer rights or obligations or an interest in land to an agreement transferee if either the agreement transferee is an authorised person or the transaction is to be effected through an authorised intermediary; or
- for an agreement transferee (your client) to acquire rights or obligations from an authorised agreement provider or through an authorised intermediary;
- for your client to vary the terms of a plan where the agreement purchaser 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.

Q37M. When will the exclusion in article 33 of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements?

Broadly speaking, the exclusion will apply where:

- your arranging activity is limited to *making arrangements with a view to regulated sale and rent back agreements*;
- you make introductions of agreement sellers or agreement purchasers 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 *regulated sale and rent back agreements*.

Q37N. When will the exclusion in article 33A of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements?

Broadly speaking, the exclusion will apply where:

- your arranging activity is limited to *making arrangements with a view to regulated sale and rent back agreements*;
- you make introductions of agreement sellers, agreement purchasers or prospective agreement sellers or agreement purchasers (your client) to an *authorised person* 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.

Q37O. When will I be carrying on the activity of advising on a regulated sale and rent back agreement?

This will arise if:
- you are giving advice to a *person* who is or who is contemplating becoming an agreement seller, an agreement provider or an agreement transferee; and
- the advice relates to the merits of his entering into a regulated sale and rent back agreement in that capacity or varying the terms of an agreement that he has already entered into.

Advice on the merits of varying the terms of an agreement will only be regulated where the agreement was originally established on or after 1 July 2009. However, advice given to an agreement transferee on the merits of his entering into an agreement that was originally established before 1 July 2009 will be subject to regulation. See Q37Q for more detail about when activities are regulated if an agreement was originally established before 1 July 2009.

Advice given to a person on the merits of his transferring rights or obligations or interests in land under an agreement 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 on a *regulated sale and rent back agreement*.

Q37P. What exclusions may be available to me if I am advising on regulated sale and rent back agreements?

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.

Q37Q. I can see that the fact that the regulated sale and rent back agreement was originally established before 1 July 2009 can affect whether the services that I provide to parties to the agreement after that date are regulated. Can you summarise the position in this respect?

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 agreement. The following table clarifies when your services will be regulated activities and when they will not.

Potential regulated sale and rent back activity	Whether the activity is regulated if undertaken on or after 1 July 2009 when the agreement was originally established before 1 July 2009
Entering into an agreement as agreement provider (see Q37C)	N/A - this activity will only take place when the plan is first established
Entering into an agreement as agreement transferee (see Q37C)	Yes, any transfer of the agreement provider's interest in land will be caught
Administering an agreement (see Q37E)	No
Arranging (see Q37H) for a person to enter into an agreement as:	
(a) an agreement provider or an agreement seller	N/A - this activity will only take place when the agreement is first established
(b) an agreement transferee	Yes
Arranging variations (see Q37H) of an agreement	No
Advising (see Q37O) a person on entering into an agreement in his capacity as:	
(a) an agreement provider or an agreement seller	N/A - this activity will only take place when the agreement is first established
(b) an agreement transferee	Yes
Advising (see Q37O) a person on varying the terms of an agreement	No

Q37R. Will changes involving the circumstances of the agreement seller that may take place after the agreement 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 regulated sale and rent back agreement. There are two main issues that would need to be considered. These are:

- is the change likely to cause a new agreement to be entered into; and
- does the change involve a variation of the terms of the agreement (if it was originally entered into on or after 1 July 2009) such as to vary the obligations of the provider or the seller?

Broadly speaking, it would seem likely that if the occupier were to move house, the *regulated sale and rent back agreement* would cease as the tenancy agreement would come to an end and the agreement seller would no longer have the right of occupation.

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 agreement or may involve a variation in the existing agreement 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 agreement was originally entered into on or after 1 July 2009.

Q37S. I am an exempt professional firm. Do I need to be authorised in relation to regulated sale and rent back agreement activities?

Yes, you may need to be authorised. See Q42 for more detail.

Q37T. I am an estate agent. Do I need to be authorised where the vendor of a property has approached me to sell their property but has expressed a desire to remain in the property as tenant?

Yes, it is likely that you will need to be authorised unless you are an exempt person or exclusions apply (see Q37K). This is because it is likely that you will be making arrangements with a view a person who participates in the arrangements entering into an agreement as *SRB agreement provider* and/or *SRB agreement seller*.

Q37U. I am a receiver appointed under the Law of Property Act 1925. Will my activities need to be regulated by the FCA?

Your activities in relation to properties subject to regulated sale and rent back agreements could amount to *administering a regulated sale and rent back agreement* where the agreements have been entered into on or after 1 July 2009. Accordingly you may need to be authorised unless you are an exempt person or exclusions apply (see Q37E for the relevant administering activities and Q37F and Q37G for the available exclusions).

Q37V What happens when the agreement seller's right to occupy the land in question under an assured shorthold tenancy ('AST') ends?

A regulated sale and rent back agreement must, at the time it is entered into, give the agreement seller, or related person, an entitlement to occupy at least 40% of the land in question. In the absence of such an entitlement there is no regulated sale and rent back agreement.

As the definition of a regulated sale and rent back agreement refers to 'an arrangement comprised in one or more instruments or agreements', in considering the effect of the end of the tenancy you should look at the arrangement as a whole rather than just any tenancy agreement that may comprise the arrangement. So -

(1) if the arrangement expressly grants the agreement seller an entitlement to occupy the land in question for a specified period of time then the agreement seller retains this entitlement under the regulated sale and rent back agreement even where the AST ends before the specified period ends; and

(2) if the regulated sale and rent back agreement is expressly stated to end after the termination of the AST then it ceases to be a regulated sale and rent back agreement at that point unless the arrangements are varied by, for example, granting the agreement seller a new AST.