

## Chapter 2

# Authorisation and regulated activities

2.4 Link between activities and the United Kingdom

- 2.4.1

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Section 19 of the *Act* (The general prohibition) provides that the requirement to be *authorised* under the *Act* only applies in relation to activities that are carried on 'in the *United Kingdom*'. In many cases, it will be quite straightforward to identify where an activity is carried on. But when there is a cross-border element, for example because a client is outside the *United Kingdom* or because some other element of the activity happens outside the *United Kingdom*, the question may arise as to where the activity is carried on.
- 2.4.2

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Even with a cross-border element a *person* may still be carrying on an activity 'in the *United Kingdom*'. For example, a *person* who is situated in the *United Kingdom* and who is *safeguarding and administering investments* will be carrying on activities in the *United Kingdom* even though his *client* may be overseas.
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The *regulated funeral plan activities* only apply if the contract is for a funeral in the *United Kingdom*.
- 2.4.3

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Section 418 of the *Act* (Carrying on regulated activities in the United Kingdom) takes this one step further. It extends the meaning that 'in the *United Kingdom*' would ordinarily have by setting out additional cases. The *Act* states that, in these cases, a *person* who is carrying on a *regulated activity* but who would not otherwise be regarded as carrying on the activity in the *United Kingdom* is, for the purposes of the *Act*, to be regarded as carrying on the activity in the *United Kingdom*.

(1)

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(2)

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(3)

The case is where a *regulated activity* is carried on by a *UK-based person* and the day-to-day management of the activity is the responsibility of an establishment in the *United Kingdom*.

(4)

The case is where a *regulated activity* is carried on by a *person* who is not based in the *United Kingdom* but is carried on from an establishment in the *United Kingdom*. This might occur when each of the stages that make up a *regulated activity* (such as *managing investments*) takes place in different countries. For example, a *person's* management is in country A, the assets are held by a nominee in country B, all transactions take place in country B or
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country C but all decisions about what to do with the investments are taken from an office in the *United Kingdom*. Given that the investments are held, and all dealings in them take place, outside the *United Kingdom* there may otherwise be a question as to where the *regulated activity of managing investments* is taking place. For the purposes of the *Act*, it is carried on in the *United Kingdom*.

(5) [deleted]

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The application of the third and fourth cases will depend on how the activities carried on from the *UK* establishment are set up and operated.
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A *person* who is based outside the *United Kingdom* but who sets up an establishment in the *United Kingdom* must therefore consider the following matters. First, he must not, unless he is *authorised*, carry on *regulated activities* in the *United Kingdom*. Second, unless he is *authorised*, the day-to-day management of the carrying on of the *regulated activity* must not be the responsibility of the *UK* establishment. This may, for example, affect those *UK* establishments that in the context of *deposit-taking* activities were, before the *commencement* of the *Act*, treated as representative offices of overseas institutions. Such institutions will need to seek *authorisation* if the responsibility for the day-to-day management of the accepting of *deposits* by them outside the *United Kingdom* is nevertheless effectively that of their *UK* establishment. Third, such a *person* will need to ensure that he does not contravene other provisions of the *Act* that apply to *persons* who are not *authorised*. These include the controls on *financial promotion* (section 21 of the *Act* (Financial promotion)), and on giving the impression that a *person* is *authorised* (section 24).
- 2.4.6

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A *person* based outside the *United Kingdom* may also be carrying on activities in the *United Kingdom* even if he does not have a place of business maintained by him in the *United Kingdom* (for example, by means of the internet or other telecommunications system or by occasional visits). In that case, it will be relevant to consider whether what he is doing satisfies the business test as it applies in relation to the activities in question. In addition, he may be able to rely on the exclusions from certain *regulated activities* that apply in relation to *overseas persons* (see ■ PERG 2.9.15 G).
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Whether a *credit agreement* or *consumer hire agreement* is subject to the law of a country outside the *United Kingdom* is immaterial to whether an activity is *credit broking*, see ■ PERG 2.7.7E G.
- 2.4.10

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(1) The requirement to be authorised to carry on the *regulated activity of administering a benchmark* gives effect to the authorisation and registration regime under article 34 of the *benchmarks regulation*.

- (2) Article 34 only requires a *person* to be authorised or registered in the *UK* if that *person* is *located* in the *UK*.
- (3) Accordingly, the *FCA* considers that where a *person* (*P*) *administers a benchmark* in the *UK* but *P* is not *located* in the *UK*:
  - (a) *P* does not carry on the *regulated activity of administering a benchmark* from an establishment maintained by *P* in the *UK* for the purposes of section 418 of the *Act*; and
  - (b) *P* would not otherwise be regarded as carrying on that *regulated activity* in the *UK*.
- (4) *Located* is defined in the *Glossary* and has the same meaning as it does in the *benchmarks regulation*.