

INTERIM PERMITTED MORTGAGE INTERMEDIARIES INSTRUMENT 2004

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in:
- (1) article 4(1) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (SI No 2004/2615) (“the Order”); and
 - (2) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 145 (Financial promotion rules);
 - (c) section 149 (Evidential provisions);
 - (d) section 156 (General supplementary powers);
 - (e) section 157(1) (Guidance);
 - (f) section 213 (The compensation scheme); and
 - (g) section 214 (General)
- B. Article 4(2) of the Order is relevant to the exercise of the powers set out in paragraph A(2) above because it provides that sections 155 (Consultation) and 157(3) (Guidance) of the Act do not apply to the rules and guidance set out in this instrument.
- C. The provisions listed above relevant to making rules are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- D. This instrument comes into force on 31 October 2004.

Citation

- E. This instrument may be cited as the Interim Permitted Mortgage Intermediaries Instrument 2004.
- F. The Annex to this instrument may be cited as the Directions, rules and guidance for Interim Permitted Mortgage Intermediaries.

Made under the authority of the Board and under article 4 of the Order

Clive Briault
Managing Director, Retail Markets

29 October 2004

Annex

Directions, rules and guidance for Interim Permitted Mortgage Intermediaries

In this annex, new provisions relevant to interim permitted mortgage intermediaries (“IPMI”) are being introduced and they are not underlined.

1. Handbook and other requirements for Interim Permitted Mortgage Intermediaries

1.1 Application and purpose

1.1.1 R *IPMI* applies to *interim permitted mortgage intermediaries*.

1.1.2 G The purpose of *IPMI* is:

- (1) to make *rules* relating to disclosure of their regulated status by *interim permitted mortgage intermediaries*;
- (2) to direct, in accordance with article 4(1) of the *Mortgages Transitional Order*, that certain provisions of the *Handbook* that would otherwise apply to *interim permitted mortgage intermediaries*:
 - (a) are not to apply; or
 - (b) are to apply to them as modified in *IPMI*; and
- (3) to give ancillary *guidance* to *interim permitted mortgage intermediaries* as to the application of the *Handbook* to them.

1.2 Disclosure of interim permitted mortgage intermediary status

1.2.1 G *IPMI* 1.2 makes special provision for *interim permitted mortgage intermediaries* in place of *GEN* 1.2 (Referring to approval by the FSA). The purpose is to prevent *clients* being misled about the extent to which the *FSA* has approved a *firm's* affairs.

1.2.2 D The *FSA* directs that *GEN* 1.2 (Referring to approval by the *FSA*) does not apply to an *interim permitted mortgage intermediary*.

1.2.3 R (1) Unless required to do so under the *regulatory system*, an *interim permitted mortgage intermediary* must ensure that neither it, nor anyone acting on its behalf claims, in a public statement or to a *client*, expressly or by implication, that its affairs, or any aspect of them, have the approval of the *FSA* or that it is an *authorised person* for the purposes of the *Act*.

- (2) Paragraph (1) does not apply to statements by or on behalf of an *interim permitted mortgage intermediary* who is an *interim authorised mortgage person* that explain, in a way that is fair, clear and not misleading, that:
- (a) the *firm* is an *interim permitted mortgage intermediary*;
 - (b) the *firm's approved persons* are deemed to be approved by the *FSA* for the purposes of section 59 of the *Act* (Approval for particular arrangements) pending determination of the *firm's* application for authorisation;
 - (c) the *firm* has been given express written approval by the *FSA* in respect of a specific aspect of the *firm's* affairs.
- (3) Paragraph (1) does not apply to any statement by or on behalf of an *interim permitted mortgage intermediary* who is not an *interim authorised mortgage person* that explains, in a way that is fair, clear and not misleading, that:
- (a) the *firm* is an *authorised person*;
 - (b) as appropriate:
 - (i) the *firm* has *permission* to carry on a specific activity; or
 - (ii) the *firm* has *interim permission* to carry out a specific activity;
 - (c) as appropriate:
 - (i) one or more of the *firm's approved persons* has been approved by the *FSA* for the purposes of section 59 of the *Act* (Approval for particular arrangements); or
 - (ii) one or more of the *firm's approved persons* is deemed to be approved by the *FSA* for the purposes of section 59 of the *Act* (Approval for particular arrangements) pending determination of the *firm's* application for *permission*; or
 - (d) the *firm* has been given express written approval by the *FSA* in respect of a specific aspect of the *firm's* affairs.
- (4) Paragraph (1) applies with respect to the carrying on of both *regulated activities* and *unregulated activities*.

Required disclosures

- 1.2.4 R (1) An *interim permitted mortgage intermediary* who is an *interim authorised mortgage person* and who, in order to comply or to provide evidence of complying with a provision (including a provision mentioned in *IPMI 1.2.6R*) of the *Handbook*, discloses that he is authorised or regulated by the *FSA*, must also disclose that he is authorised or regulated on an interim basis only.
- (2) An *interim permitted mortgage intermediary* who, in the course of carrying on *mortgage mediation activity*, discloses that he is authorised or regulated by the *FSA*, must as part of that disclosure, and with equal prominence, disclose that the *FSCS* does not apply to any *mortgage mediation activity* that he undertakes.
- 1.2.5 E (1) An *interim permitted mortgage intermediary* should, in the circumstances mentioned in *IPMI 1.2.4R*, disclose that:
- (a) he is 'interim authorised under the Financial Services and Markets Act 2000' or 'interim regulated by the Financial Services Authority' or 'regulated by the Financial Services Authority as an interim authorised person' or use words to that effect; and
- (b) 'no compensation will be available from the Financial Services Compensation Scheme in the event that we are unable to meet our obligations under our mortgage business' or use words to that effect.
- (2) Compliance with (1) may be relied on as tending to establish compliance with *IPMI 1.2.4R*.
- (3) Contravention of (1) may be relied on as tending to establish contravention of *IPMI 1.2.4R*.
- 1.2.6 R Table Non-exhaustive list of provisions about status disclosure

This table belongs to *IPMI 1.2.4R*.

Provision	Topic
<i>MCOB 4.4.1R(1)(c)</i>	Initial disclosure requirements
<i>MCOB 4 Ann 1R</i>	
<i>MCOB 4 Ann 2R</i>	
<i>MCOB 8.4.1R</i>	Initial disclosure requirements for <i>lifetime mortgages</i> and <i>home reversion schemes</i>
<i>MCOB 8 Ann 1R</i>	

1.3 Application of the handbook to interim permitted mortgage intermediaries

- 1.3.1 G The *Mortgages Transitional Order* provides broadly that *interim permitted mortgage intermediaries* are to be treated, unless otherwise provided, as *authorised persons* for the purposes of the *Act* and of any provision made under the *Act* (see paragraph 5 of the Schedule to the *Mortgages Transitional Order*). As a result, the *Handbook* applies to *interim permitted mortgage intermediaries* and any *regulated activity* for which they are seeking *permission* is *regulated activity* for the purposes of the *Handbook*.
- 1.3.2 G Annex 4G to *MCOB 1* contains a list of the parts of the *Handbook* and their application to *mortgage intermediaries*. This annex is also relevant to *interim permitted mortgage intermediaries*, with the modifications set out in *IPMI 1.3.3G*.
- 1.3.3 G Table Modifications to *MCOB 1 Ann 4G* where the firm concerned is an interim permitted mortgage intermediary

This table belongs to *IPMI 1.3.2G*.

Part of Handbook	Extent of modification
Statements of Principle and Code of Practice for Approved Persons (<i>APER</i>)	Under article 3 of the <i>Mortgages Transitional Order</i> , special provision is made for <i>approved persons</i> carrying on controlled functions for <i>interim permitted mortgage intermediaries</i> .
General provisions (<i>GEN</i>)	<i>GEN 1.2</i> (Referring to approval by the FSA) does not apply to <i>interim permitted mortgage intermediaries</i> : see <i>IPMI 1.2.2D</i> . Instead, <i>IPMI 1.2.3R</i> makes provision about <i>interim permitted mortgage intermediaries</i> referring to approval by the <i>FSA</i> or <i>authorisation</i> for the purposes of the <i>Act</i> .
Mortgages: Conduct of Business (<i>MCOB</i>)	<p>(1) This applies.</p> <p>(2) <i>IPMI 1.2.4R</i> makes special provision for required status disclosure by <i>interim permitted mortgage intermediaries</i>.</p> <p>(3) Paragraph 6 of the Schedule to the <i>Mortgages Transitional Order</i> provides broadly that an <i>interim permitted mortgage intermediary</i> is not authorised for the purposes of sections 21(1) (Restrictions on financial promotion) and 25(2)(a)</p>

	<p>(Contravention of section 21) unless the communication invites an agreement the making or performance of which constitutes a <i>controlled activity</i> corresponding to a <i>regulated activity</i> covered by his <i>interim mortgage permission</i>.</p>
<p>Authorisation manual (<i>AUTH</i>)</p>	<p>(1) Paragraph 2 of the Schedule to the <i>Mortgages Transitional Order</i> provides that for the purposes of section 20 (Authorised persons acting without permission) a person's <i>interim mortgage permission</i> is treated as having been given to him under Part IV of the <i>Act</i>.</p> <p>(2) Paragraph 3 of the Schedule to the <i>Mortgages Transitional Order</i> provides that an applicant's <i>interim mortgage permission</i> is to be disregarded for the purposes of sections 38(2) (Exemption orders), 40(2) (Application for permission), 42 (Giving permission), 43 (Imposition of requirements) and 44(1), (4) and (5) (Variation etc. at request of authorised person) of the <i>Act</i>.</p> <p>(3) Under article 3 of the <i>Mortgages Transitional Order</i>, special provision is made for <i>approved persons</i> carrying on controlled functions for <i>interim permitted mortgage intermediaries</i>.</p> <p>(4) The Schedule to the <i>Mortgages Transitional Order</i> provides broadly that <i>interim permitted mortgage intermediaries</i>:</p> <p>(a) are to be treated, unless otherwise provided, as <i>authorised persons</i> for the purposes of the <i>Act</i> (see paragraph 5); and</p>

	(b) may still be <i>appointed representatives</i> (and hence may be treated as exempt from the <i>general prohibition</i> as a result of section 39(1) for the purposes of section 42(3)(a) of the <i>Act</i> (see paragraph 7).
Supervision manual (<i>SUP</i>)	See notes (2), (3) and (4)(b) to <i>AUTH</i> which are relevant to <i>SUP 6</i> , <i>SUP 7</i> , <i>SUP 10</i> and <i>SUP 12</i> .
Compensation sourcebook (<i>COMP</i>)	This does not apply: (1) to an <i>interim permitted mortgage intermediary</i> who is an <i>interim authorised mortgage person</i> ; and (2) to an <i>interim permitted mortgage intermediary</i> who is not an <i>interim authorised mortgage person</i> in respect of his <i>mortgage mediation activities</i> .

1.3.4 D The *FSA* directs that any special application or disapplication provisions in the *Handbook* are to apply to *interim permitted mortgage intermediaries* as nearly as possible as if the application for *permission* which gives rise to the *interim mortgage permission* has been granted in the terms applied for, including as if the *requirements* and *limitations* applied for (or otherwise required to give effect to the terms of the application) have already been included in that *permission*.

1.3.5 D The *FSA* directs that *COMP*:

- (1) does not apply to an *interim authorised mortgage person*;
- (2) does not apply to an *interim permitted mortgage intermediary* who is not an *interim authorised mortgage person* in respect of his *mortgage mediation activities*.

1.3.6 R In *COMP*, *relevant person* does not include:

- (1) an *interim authorised mortgage person*;
- (2) in respect of his *mortgage mediation activities*, an *interim permitted mortgage intermediary* who is not an *interim authorised mortgage person*.

- 1.3.7 G Where the *FSA* has given an *interim permitted mortgage intermediary* a *waiver* from a provision of the *Handbook*, the terms of that *waiver* are to be taken into account in determining the provisions of the *Handbook* that apply to that *interim permitted mortgage intermediary*.

2. Interpretation

2.1 GEN and Glossary apply

- 2.1.1 R The General provisions (*GEN*) of the *Handbook* and the *Glossary* made under the *Act* apply in the interpretation of *IPMI*, unless *IPMI* 1.2.2D applies.
- 2.1.2 R The terms in *IPMI* 2.1.3R are also defined for the purposes of *IPMI*.
- 2.1.3 R Terms defined for the purposes of *IPMI*

This table belongs to *IPMI* 2.1.2R.

Defined expression	Definition
<i>interim authorised mortgage person</i>	an <i>interim permitted mortgage intermediary</i> who is an <i>authorised person</i> only because he has an <i>interim mortgage permission</i> .
<i>interim mortgage permission</i>	a <i>Part IV permission</i> conferred by article 2 of the <i>Mortgages Transitional Order</i> .
<i>interim permitted mortgage intermediary</i>	a person who has an <i>interim mortgage permission</i> .
<i>IPMI</i>	Directions, rules and guidance for Interim Permitted Mortgage Intermediaries forming the Annex to the Interim Permitted Mortgage Intermediaries Instrument 2004 (FSA 2004/84).
<i>Mortgages Transitional Order</i>	The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (SI 2004/2615).