

**PERIMETER GUIDANCE (HOME REVERSION AND HOME PURCHASE
ACTIVITIES) INSTRUMENT 2006**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of its powers under section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (“the Act”).

Commencement

- B. Annex A of this instrument comes into force on 6 November 2006.
- C. Annex B of this instrument comes into force on 6 April 2007.

Amendments to the Perimeter Guidance manual (PERG)

- D. PERG is amended in accordance with Annex A and Annex B. The general guidance in PERG does not form part of the Handbook.

Citation

- E. This instrument may be cited as the Perimeter Guidance (Home Reversion and Home Purchase Activities) Instrument 2006.

By order of the Board
25 October 2006

Annex A

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text. With the exception of Chapter 14 which represents new text.

1.4.2 G Table: list of general guidance to be found in *PERG*.

Chapter:	Applicable to:	About:
...		
<u><i>PERG 13: Guidance on the scope of the Markets in Financial Instruments Directive and the recast Capital Adequacy Directive</i></u> <u>[to be issued]</u>		
<u><i>PERG 14:</i></u> <u>Home reversion and home finance activities</u>	<u><i>Any person who needs to know whether his activities in relation to home reversion plans or home purchase plans will amount to regulated activities or whether the restriction in section 21 of the Act will apply to any financial promotions he may make.</i></u>	<ul style="list-style-type: none"> • <u><i>the regulated activities that arise in connection with home reversion plans and home purchase plans and any exclusions that may be relevant</i></u> • <u><i>the circumstances in which financial promotions about home reversion plans and home purchase plans may be made without breaching the restriction in section 21 of the Act</i></u>

New text to be added as Chapter 14

14 Guidance on home reversion and home purchase activities

14.1 Background

Q1. What is the purpose of these questions and answers (“Q&As”) and who should be reading them?

These Q&As are aimed at *persons* involved in the provision or promotion of financial arrangements involving the acquisition or disposal of land for the purpose of enabling an individual:

- to purchase a property; or
- to raise funds from the equity in a property that he already owns,

other than by means of a traditional mortgage.

They are intended to help such persons understand whether they will, as a result of the Regulation of Financial Services (Land Transactions) Act 2005 and secondary legislation made following that Act:

- be carrying on a *regulated activity* and need *authorisation* or exemption under section 19 of the Financial Services and Markets Act 2000; or
- be subject to the restriction on *financial promotions* in section 21 of the Financial Services and Markets Act 2000.

The Q&As complement the general *guidance* on regulated activities, which is in Chapter 2 of our Perimeter Guidance Manual (PERG 2), the general guidance on regulated mortgage activities in Chapter 4 (PERG 4), the general guidance on financial promotions in Chapter 8 (PERG 8) and the relevant legislation.

The Q&As that follow are set out in sections:

- general issues (PERG 14.2);
- activities relating to home reversion plans (PERG 14.3);
- activities relating to home purchase plans (PERG 14.4);
- the ‘by way of business’ test (PERG 14.5);
- carrying on a regulated activity in the United Kingdom (PERG 14.6);
- exemptions (PERG 14.7);
- financial promotions (PERG 14.8); and
- transitional provisions (PERG 14.9).

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 FSA 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 (often termed 'equity release 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'); and
- 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').

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 by the FSA 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; 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 will be 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 are made in the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No2) Order 2006 (SI 2006/2383) which comes into effect on 6 April 2007. The new regulated home finance activities are:

- *entering into a home reversion plan or entering into a home purchase plan as the provider of the plan or, in the case of home reversion plans only, as a person to whom rights or obligations acquired by the provider are transferred or who, during the currency of the plan, acquires all or part of the interest in land bought by the provider;*
- *administering a home reversion plan or administering a home purchase plan;*
- *arranging (bringing about) a home reversion plan or arranging (bringing about) a home purchase plan;*
- *making arrangements with a view to home reversion plans or making arrangements with a view to home purchase plans;*
- *advising on a home reversion plan or advising on a home purchase plan; and*
- agreeing to do any of the above.

But some activities are specifically excluded from regulatory scope.

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 mortgage-to-rent scheme be a home reversion plan?

No. This is most unlikely as mortgage-to-rent schemes do not usually provide for the homeowner (having sold his property to the scheme provider), or a related person as the case may be, to occupy the property until he dies or enters a care home or for a fixed period of at least twenty years.

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, or a related person (article 66(6B) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

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 IV 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 IV 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 or a related person (article 66(6B) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

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); and
- *overseas persons* (article 72 of the Regulated Activities Order) (see Q39).

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
- *overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39).

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
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 on or after 6 April 2007; 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 on or after 6 April 2007, 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.

14.4 Activities relating to home purchase plans

Q23. What is a home purchase plan?

Broadly speaking, a *home purchase plan* is an arrangement under which, at the time it is entered into:

- a *person* (the ‘home purchase provider’) buys a qualifying interest, or an undivided share of a qualifying interest, in land (other than timeshare accommodation) in the *United Kingdom*;
- an individual or a trustee whose beneficiary is an individual (the ‘home purchaser’) is obliged to buy that interest over the course of or at the end of a specified period; and
- the individual or a related person is entitled to use at least 40% of the land as a dwelling during that fixed period and intends to do so.

Where an undivided share of a qualifying interest is bought, the interest must be held on trust for the home purchase provider and the individual or trustee as beneficial tenants in common.

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

- the home purchaser is not an individual or trustees;
- the land is used for the purpose of letting as a dwelling to someone other than a related person of the individual who is obliged to buy it;
- 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.

Q24. Are home purchase plans limited to arrangements designed to comply with Islamic principles?

There is nothing in the definition of a *home purchase plan* to suggest that this is the case. However, it is clear from the comments made by HM Treasury in relation to the introduction of the Regulation of Financial Services (Land Transactions) Act 2005 that the definition is primarily directed at arrangements of this kind.

Q25. Will all Islamic home financing arrangements be home purchase plans?

No. Murabaha arrangements involve the homeowner buying the property from the provider on deferred payment terms. These types of arrangement will be *regulated*

mortgage contracts assuming that they meet the necessary conditions including that there is a first legal charge over the property (see PERG 4).

Ijara arrangements (where the provider buys the land and allows the customer to occupy it whilst also making regular payments towards eventually buying the land) and diminishing Musharaka arrangements (where the provider and the customer share an interest in the land and the customer gradually acquires a greater interest in the land over a period of time) will be *home purchase plans* provided they meet the necessary conditions (see Q23).

A home purchase plan may also satisfy the requirements for a *regulated mortgage contract*. Where this arises, the plan is treated as a home purchase plan and not a regulated mortgage contract.

Q26. When will I be carrying on the activity of entering into a home purchase plan?

You will carry on this activity by entering into a *home purchase plan* as the home purchase provider. Unlike a reversion transferee under a *home reversion plan*, you will not be carrying on a regulated activity purely as a result of acquiring rights, obligations or interests in land from the provider.

Q27. What exclusions may be available to me if I am entering into home purchase plans as a provider?

The main exclusions are:

- for trustees who enter into a plan where the home purchaser is an individual who is a beneficiary under the trust or a related person (article 66(6C) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

Q28. When will I be carrying on the activity of administering a home purchase plan?

This will arise if you carry out either or both of the following functions in relation to a plan that was entered into by the home purchase provider by way of business on or after 6 April 2007:

- notifying the home purchaser of changes in payments due under the plan, or of other matters of which the plan requires him to be notified; and
- taking any necessary steps for the purposes of collecting or recovering payments due under the plan from the home purchaser.

But you will not be treated as *administering a home purchase plan* merely because you have, or you exercise, a right to take action for the purposes of enforcing the plan (or to require that such action is or is not taken).

Q29. I propose to administer home purchase plans. How will I know if the plan I propose to administer has been entered into by way of business?

In most cases, this will be obvious because the provider will be a body corporate whose business involves being a provider under such plans and, in the majority of cases, should be an *authorised person*. We understand that this is the usual situation with Islamic home financing arrangements. However, if the plan were to have been entered into by an investor, the factors set out in Q38 will need to be considered to determine whether it was entered into by way of business. A typical example of a plan not entered into by way of business would be where the provider is a friend or relative who does not seek to profit from acting as the provider. Another example might be a plan entered into by a charitable organisation that occasionally purchases interests in land with sums derived from charitable donations and that does so on non-commercial terms.

Q30. What exclusions may be available to me if I am administering home purchase plans?

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

- you arrange for an authorised person with the appropriate *Part IV 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 IV permission to administer such a plan.

The other main exclusions are those:

- for trustees who administer a plan where the home purchaser is an individual who is a beneficiary under the trust or a related person (article 66(6C) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

Q31. When will I be carrying on the activity of arranging home purchase 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 home purchaser;
- (2) for another person being a home purchaser to vary the terms of a plan entered into by him 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 home purchaser.

But none of these arranging activities will apply to you if they relate to a plan to which you are or will, as a result of your arranging activities, 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 home purchaser 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 prospective home purchasers to a provider or intermediary.

Unlike home reversion plans, arranging for a person to enter into, or vary, a plan as a provider is not, itself, a regulated activity.

Q32. What exclusions may be available to me if I am arranging home purchase 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 Q33);
- 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(3) 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 which applies equally to *home purchase plans*);
- introductions made to a regulated person who carries on home reversion plan activities (article 33A of the *Regulated Activities Order*) (see Q34);
- 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*); and
- *overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39).

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

The exclusion will apply to you when, as an *unauthorised person*, you are arranging for a prospective home purchaser (your client) to enter into a plan with an authorised home purchase provider or 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.

Q34. When will the exclusion in article 33A of the Regulated Activities Order be available to me if I am arranging home purchase plans?

Broadly speaking, the exclusion will apply where:

- the arranging activity you carry on is limited to *making arrangements with a view to home purchase plans*;
- you make introductions of prospective home purchasers (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.

Q35. When will I be carrying on the activity of advising on home purchase plans?

This will arise if you are:

- giving advice to a person who is or who is contemplating becoming a home purchaser; and
- the advice relates to the merits of his entering into a *home purchase 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 is only regulated when the plan was entered into on or after 6 April 2007.

This differs from the position in relation to *home reversion plans* where advice given to the provider is also 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 purchase plan*.

Q36. What exclusions may be available to me if I am advising on home purchase 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
- *overseas persons* (article 72 of the Regulated Activities Order) (see Q39).

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

Q37. Will changes involving the circumstances of the home purchaser 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 purchase 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 on or after 6 April 2007? 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 home purchaser?

Broadly speaking, it would seem likely that, if the home purchaser 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 on or after 6 April 2007, the person who enters into the new plan as provider and anyone arranging, or advising the home purchaser on, the new plan will potentially need to be authorised or exempt. Changes such as may occur due to marriage or change of occupants or of other relevant details may necessitate a new plan. Alternatively, they may involve a variation in the existing plan, depending on the extent to which they alter the obligations of the home purchaser. Where such changes do involve a variation, anyone advising the home purchaser on, or arranging, 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.

14.5 The ‘by-way-of-business’ test

Q38. How do I know if I am carrying on regulated activities by way of business?

Whether or not any particular *person* will meet the requirement that he carries on a *regulated activity* by way of business and so needs *authorisation* or exemption will invariably depend on that person’s individual circumstances. A number of factors need to be taken into account in determining whether the test is met. These include:

- the degree of continuity;
- the existence of a commercial element;
- the scale of the activity;
- the proportion which the activity bears to other activities carried on by the same person but which are not regulated; and
- the nature of the particular regulated activity that is carried on.

Corporate plan providers and those who provide professional services to them or to home occupiers are likely to be carrying on their activities by way of business. Unpaid individuals who act as trustees for home occupiers are not likely to be.

With *home reversion plans*, it is quite possible that the reversion provider may be an individual who is acting purely in the capacity of investor. Such a person may not be acting by way of business when the criteria listed above are applied to his particular circumstances.

14.6 Carrying on a regulated activity in the United Kingdom

Q39. Does a person who acts as provider, administrator, arranger or adviser in relation to home reversion plans or home purchase plans from overseas and without maintaining an office in the UK need to be an authorised or exempt person?

The position on territorial application is complex. Detailed guidance on this aspect is provided in relation to regulated mortgage activities in PERG 4.11 and that guidance may generally be applied to home finance activities.

But, briefly, there are two issues to be considered by such a person:

- am I carrying on a home finance activity in the *United Kingdom*? and
- if so, does the exclusion for *overseas persons* in article 72 of the *Regulated Activities Order* apply to me?

Whether you are carrying on the activity in the UK depends on a combination of factors. In very broad terms, however, as an overseas person, you are more likely than not to be carrying on a home finance activity in the UK if the home occupier or reversion provider is normally resident in the UK at the time that he enters into the plan. The table that follows applies this broad principle to the various permutations taking account of the conditions applying to the exclusions for home finance activities under article 72.

Table indicating whether authorisation or exemption is likely to be needed by a person who is carrying on home finance activities from overseas.

Activity carried on by overseas	Where the reversion occupier or home purchaser is or was normally resident in the UK at	Where the reversion occupier or home purchaser is or was not normally resident in the
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person	the time he enters or entered into the plan		UK at the time he enters or entered into the plan	
	Home reversion plan	Home purchase plan	Home reversion plan	Home purchase plan
Entering into or administering.	Yes	Yes	No	No
Arranging for persons to enter into plans.	Yes	Yes	No, provided the reversion purchaser or the reversion transferee, as the case may be, is or was also not normally resident in the UK.	No
Arranging variations.	Yes	Yes	No	No
Advising.	Yes	Yes	No, unless the reversion occupier, reversion provider or reversion transferee is located in the UK at the time the advice is given to him.	No, unless the home purchaser is located in the UK at the time the advice is given.

14.7 Exemptions

Q40. Am I an exempt person in relation to home finance activities?

Yes, if you are:

- a *person* who is specifically exempt under the Financial Services and Markets Act 2000 (Exemption) Order 2001, such as a local authority or a registered social landlord; or
- an *appointed representative* whose agreement with his principal permits him to carry on the activities in question; or
- an *exempt professional firm*.

Q41. What home finance activities can I carry on as an appointed representative?

You will be able to carry on any of the following *regulated activities*:

- *arranging (bringing about) a home reversion plan* or *arranging (bringing about) a home purchase plan*; or
- *making arrangements with a view to home reversion plans* or *making arrangements with a view to home purchase plans*; or
- *advising on a home reversion plan* or *advising on a home purchase plan*; or
- agreeing to do any of the above.

You will not be able to carry on any of the following *regulated activities*:

- *entering into a home reversion plan* or *entering into a home purchase plan*; or
- *administering a home reversion plan* or *administering a home purchase plan*; or
- agreeing to do either of the above.

Q42. I am an exempt professional firm. Will I be able to carry on any of the regulated activities relating to home reversion plans and home purchase plans without needing FSA authorisation?

This depends on the activity in question. Subject to your being able to satisfy the general requirements of Part XX of the Financial Services and Markets Act 2000 you will be able:

- to carry on the regulated activities of:
 - *entering into a home reversion plan*; or
 - *entering into a home purchase plan*; or
 - *administering a home reversion plan*; or
 - *administering a home purchase plan*; or
 - agreeing to do any of these things,

but only where you are acting as a trustee or personal representative and the *reversion occupier* or *home purchaser* is a beneficiary under the trust, will or intestacy;

- to carry on the regulated activities of:

- *arranging (bringing about) a home reversion plan; or*
- *arranging (bringing about) a home purchase plan; or*
- *making arrangements with a view to home reversion plans; or*
- *making arrangements with a view to home purchase plans; or*
- agreeing to do any of these things,

without any further restriction; and

- to carry on the regulated activities of:
 - *advising on a home reversion plan; or*
 - *advising on a home purchase plan; or*
 - agreeing to do either of these things,

but only provided that:

- the advice is given to a trustee or a reversion provider who, in either case, is not an individual; or
- the advice is given to an individual but does not amount to a recommendation to enter into a plan as reversion provider, *reversion occupier* or *home purchaser*; or
- the advice is given to an individual and does amount to a recommendation to enter into a plan as reversion provider, *reversion occupier* or *home purchaser* with a reversion provider or a *home purchase provider* but only if the advice endorses a corresponding recommendation that has been given to the individual by a suitably authorised or exempt person.

14.8 Financial promotions

Q43. Are there any restrictions if I wish to promote my home finance activities?

Yes. The restriction in section 21 of the Financial Services and Markets Act 2000 will apply, broadly speaking, to any communication which:

- is made in the course of business; and
- invites or induces persons to:
 - become a *reversion occupier* or *home purchaser*; or
 - become a reversion provider; or
 - vary the terms of a *home reversion plan* or a *home purchase plan* that was originally established on or after 6 April 2007; or
 - be provided, as a reversion occupier or home purchaser or as a reversion provider, with arranging or advisory services.

Communications of this kind are termed *financial promotions*.

Promotions of home finance administration services or promotions intended to dissuade persons from entering into or varying the terms of regulated plans will not be financial promotions and so no restriction will apply to them.

The following table summarises when the restriction will apply.

Table indicating when the financial promotion restriction will apply to communications about home finance plans.

A communication inviting or inducing ...	To...	Will be a financial promotion?
...potential reversion occupiers or home purchasers	...enter into a home reversion plan or a home purchase plan	Yes
...potential home reversion purchasers or transferees	...enter into a home reversion plan	Yes (in the case of transferees, regardless of whether the plan was originally established before 6 April 2007)
...potential home purchase providers	...enter into a home purchase plan	No
...potential or existing: <ul style="list-style-type: none"> • reversion occupiers or home purchasers; or • reversion or home purchase providers 	...be provided with administration services	No
...potential or existing: <ul style="list-style-type: none"> • reversion occupiers or home purchasers; or • reversion purchasers or transferees 	...be provided with arranging or advisory services	Yes (but where the promotion relates to such a person varying the terms of a plan, this is only where the plan was originally established on or after 6 April 2007)
...potential or existing home purchase providers	...be provided with arranging or advisory services	No
...potential or existing: <ul style="list-style-type: none"> • reversion occupiers or home purchasers; or • reversion or home purchase providers 	...decline from entering into or varying the terms of a plan	No
...potential or existing: <ul style="list-style-type: none"> • reversion occupiers or home purchasers; or 	...dispose of rights, obligations or interests in land that they have under a	No

<ul style="list-style-type: none"> • reversion or home purchase providers 	plan	
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Q44. What are the restrictions that apply if I am making a financial promotion about home finance plans or activities?

The *financial promotion* will need either to be communicated or approved by an *authorised person* or to be exempt under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the *Financial Promotion Order*).

If you are an authorised person who is communicating or approving the financial promotion and it is not exempt you will need to comply with the provisions of the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB 3 for financial promotions of home reversion plans and MCOB 2.2.6R for financial promotions of home purchase plans).

Q45. What exemptions may be likely to be available to me when I communicate financial promotions about home finance plans or activities?

A number of exemptions may be available. Those most likely to apply are summarised below.

(1) Introductions (article 15 of the *Financial Promotion Order*). This applies, broadly speaking, where you introduce clients to an *authorised person* or an *exempt person* in the circumstances covered by the exclusion in article 29 of the *Regulated Activities Order* (see Q17). But this is provided the person to whom you make the introduction is not your close relative or a member of your *group*. In addition, there is an exemption for promotions concerning introductions relating specifically to home finance plans – see (5).

(2) Exempt persons (article 16 of the *Financial Promotion Order*). This applies, subject to certain conditions, if you are an exempt person such as a local authority, a registered social landlord or an *appointed representative*.

(3) Generic promotions (article 17 of the *Financial Promotion Order*). This applies to a general promotion that does not identify any particular persons as being either providers of, or as offering arranging or advisory services relating to, home finance plans.

(4) One-off promotions (articles 28 and 28A of the *Financial Promotion Order*). These apply to promotions that are intended for a particular recipient (or group of connected recipients).

(5) Introductions relating to home finance plans (article 28B of the *Financial Promotion Order*). This applies to real time financial promotions relating to home finance plans for the purpose of making introductions. This exemption is subject to the same conditions as apply to the exclusion in article 33A of the *Regulated Activities Order* (see Q18 and Q34); and

(6) Advice centres (article 73 of the Financial Promotion Order). This applies to bodies such as citizens' advice bureaux when they make promotions about home finance plans in the course of their business of providing free advice about debt matters.

Further guidance on these and other exemptions from the financial promotion restriction is in Chapter 8 of PERG (PERG 8).

14.9 Transitional provisions

Q46. I will need to obtain authorisation to carry on home finance activities. What will happen to me if I do not obtain authorisation by 6 April 2007?

Transitional arrangements have been put in place. The broad effect of these arrangements is that you will be able to benefit from interim authorisation as respects any of the new regulated activities that relate to home reversion plans or home purchase plans pending the final determination of your application. This is provided:

- you were carrying on the regulated activities, for which you are seeking authorisation, before 6 November 2006; and
- your application for authorisation was received by the FSA on or before 23 March 2007.

An interim authorisation granted under these transitional arrangements will lapse:

- in the case of the regulated activities involving providing or administering home reversion or home purchase plans, when the application has been finally determined; and
- in the case of the regulated activities involving arranging or advising on home reversion or home purchase plans, on the earlier of the date on which the application is finally determined or 6 April 2008.

Q47. I am already an authorised person. Will I need to extend the scope of my existing permission?

Yes, you will need to apply for a variation of permission in the normal way if you wish to carry on any of the new regulated activities. As with applications for authorisation (see Q46), you will benefit from interim permission if your application is not finally determined by 6 April 2007 provided:

- you were carrying on the regulated activities, for which you are seeking to vary your permission, on or before 6 November 2006; and
- your application to vary your permission was received by the FSA on or before 23 March 2007.

Your interim permission will lapse in the same circumstances as an application for authorisation (see Q46).

Q48. Can I avoid the need to be authorised by becoming an appointed representative of an authorised person?

You cannot be an *appointed representative* for the purpose of providing or administering home reversion or home purchase plans. But you can be an appointed representative for advising on or arranging such plans.

If you are an appointed representative prior to 6 April 2007 and you intend to carry on any of the new regulated activities, you will need to consider whether your existing agreement with your principal will cover those activities that an appointed representative is permitted to undertake or whether it will need to be amended to do so.

You may currently be an appointed representative of a life office for the purpose of advising on or arranging deals in its investment products and also undertake unregulated activities in relation to home reversion or home purchase plans offered by third parties. If those unregulated activities include activities that will become regulated from 6 April 2007, you will need either to become the appointed representative of another appropriately authorised firm or to seek authorisation yourself. This is because an appointed representative of a life office can only undertake regulated activities that arise directly from the life office's insurance business.

Remember also that a person cannot generally be authorised and exempt as an appointed representative at the same time. However, this rule is waived if you obtain interim authorisation to carry on the new regulated activities and wish, pending determination of your application for authorisation, to continue to conduct existing regulated activities as an appointed representative.

Annex B

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

...

2.3.2 G There is power in the *Act* for the Treasury.....

- (2) Except as stated in *PERG* 2.3.2G (2A) and *PERG* 2.3.2G (3), the business element is not to be regarded as satisfied for any of the *regulated activities* carried on in relation to *securities* or *contractually based investments* (or for those *regulated activities* carried on in relation to 'any property') unless a *person* carries on the business of engaging in one or more of the activities. This also applies to the *regulated activities* of ~~arranging in relation to a regulated mortgage contract and advising on a home finance transaction~~ regulated mortgage contracts and arranging a home finance transaction. This is a narrower test than that of carrying on *regulated activities* by way of business (as required by section 22 of the *Act*), as it requires the *regulated activities* to represent the carrying on of a business in their own right.

...

- (4) The business element for all other *regulated activities* is that the activities are carried on by way of business. This applies to the activities of *effecting* or *carrying out contracts of insurance*, certain activities relating to the Lloyd's market, *entering as provider into a funeral plan contract* and *entering into a home finance transaction* or *administering a home finance plan* ~~regulated mortgage contracts~~ (see *PERG* 2.7.20 G).

...

Rights under a home reversion plan

2.6.27A G In accordance with article 63B(3)(a) of the *Regulated Activities Order*, a home reversion plan is an arrangement under which, at the time it is entered into:

- (1) a person (the "reversion purchaser") buys all or part of a qualifying interest in land (other than timeshare accommodation) in the *United Kingdom* from an individual or trustees (the "*reversion occupier*");
- (2) the reversion occupier (or, where trustees are concerned, an individual who is a beneficiary of the trust), or a related *person* of either, is entitled, and intends, to use at least 40% of that land as or in

connection with a dwelling; and

- (3) the entitlement to occupy ends on the occurrence of any one or more of the following events:
 - (a) the end of a specified period of at least twenty years; or
 - (b) the death of the individual; or
 - (c) the individual enters a care home.

Detailed guidance on this is set out in PERG 14.3(Guidance on home reversion and home purchase activities).

Rights under a home purchase plan

2.6.27B G In accordance with article 63F(3)(a) of the *Regulated Activities Order*, a *home purchase plan* is an arrangement under which, at the time it is entered into:

- (1) a person (the “*home purchase provider*”) buys a qualifying interest in land or an undivided share of a qualifying interest in land (other than timeshare accommodation) in the *United Kingdom*;
- (2) where an undivided share of a qualifying interest is bought, the interest is held on trust for the home purchase provider and the individual or trustee as beneficial tenants in common;
- (3) an individual or trustees (the “*home purchaser*”) is obliged to buy the interest bought by the *home purchase provider* over the course of or at the end of a specified period; and
- (4) the *home purchaser* (or, where trustees are concerned, by an individual who is a beneficiary of the trust), or a related person of either, is entitled, and intends, to use at least 40% of that land as or in connection with a dwelling.

Detailed guidance on this is set out in PERG 14.4 (Guidance on home reversion and home purchase activities).

2.6.28 G Rights to, or interests in, all the *specified investments* in PERG 2.6 (except rights to, or interests in, rights under a ~~*regulated mortgage contract*~~ *home finance transaction*) are themselves treated as *specified investments*.....

...

Arranging deals in investments and arranging a ~~regulated mortgage activities~~ home finance transaction

2.7.7 G ...

2.7.7A G There are eight ~~four~~ arranging activities that are *regulated activities* under

the *Regulated Activities Order*. These are:

...

- (3) *arranging (bringing about) regulated mortgage contracts*, which includes arranging for another *person* to vary the terms of a *regulated mortgage contract* entered into by him as borrower after 31 October 2004 (article 25A(1)); ~~and~~
- (4) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (5) *arranging (bringing about) a home reversion plan*, which includes arranging for another person to vary the terms of a home reversion plan entered into by him as the original reversion provider (and not merely as a person to whom the rights or obligations or the interest in land may be transferred) or as reversion occupier on or after 6 April 2007 (article 25B(1));
- (6) *making arrangements with a view to a home reversion plan* (article 25B(2));
- (7) *arranging (bringing about) a home purchase plan*, which includes arranging for another person to vary the terms of a home purchase plan entered into by him as home purchaser on or after 6 April 2007 (article 25C(1)); and
- (8) *making arrangements with a view to a home purchase plan* (article 25C(2)).

...

- 2.7.7C **G** Further *guidance* on the arranging activities as they relate to *regulated mortgage contracts* home finance transactions and *contracts of insurance* is in *PERG 4.5* (Arranging regulated mortgage contracts), *PERG 14.3* and *PERG 14.4* (Guidance on home reversion and home purchase activities) and *PERG 5.6* (The *regulated activities*: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance) respectively.

...

Advising on home reversion plans

- 2.7.16C **G** Under article 53B of the *Regulated Activities Order*, giving advice to a person in his capacity as reversion occupier or reversion provider is a regulated activity if it is advice on the merits of the person:

- (1) entering into a particular home reversion plan; or

(2) varying the terms of a *home reversion plan*.

Advice on varying terms as referred to in (2) only comes within article 53B where the plan was entered into by the *person* on or after 6 April 2007 and the variation varies his obligations under the plan. Where a *person* is entering into the plan as reversion provider purely as a result of rights or obligations, or the interest in land, being transferred to him, advice given to him on the merits of the transaction is only regulated where the plan was originally entered into on or after 6 April 2007. Further *guidance* on the scope of the *regulated activity* under article 53B is in PERG 14.3 (Guidance on home reversion and home purchase activities).

Advising on a home purchase plan

2.7.16D G Under article 53C of the *Regulated Activities Order*, giving advice to a *person* in his capacity as *home purchaser* is a *regulated activity* if it is advice on the merits of the *person*:

(1) entering into a particular *home purchase plan*; or

(2) varying the terms of a *home purchase plan*.

Advice on varying terms as referred to in (2) only comes within article 53C where the plan is entered into by the *person* on or after 6 April 2007 and the variation varies the *person's* obligations under the plan. Further *guidance* on the scope of the *regulated activity* under article 53C is in PERG 14.4 (Guidance on home reversion and home purchase activities).

...

Entering into and administering a home reversion plan

2.7.20A G *Entering into a home reversion plan* and *administering a home reversion plan* are *regulated activities* under article 63B of the *Regulated Activities Order* (Regulated home reversion plans). *Guidance* on these *regulated activities* is in PERG 14.3 (Guidance on home reversion and home purchase activities).

Entering into and administering a home purchase plan

2.7.20B G *Entering into a home purchase plan* and *administering a home purchase plan* are *regulated activities* under article 63F of the *Regulated Activities Order* (Regulated home purchase plans). *Guidance* on these *regulated activities* is in PERG 14.4 (Guidance on home reversion and home purchase activities).

...

Arranging deals in investments and arranging a regulated mortgage

contracts home finance transaction

2.8.6 G The various activities that involve *arranging* fall into two general types. These are:

- (1) those relating to arranging a particular transaction or a contract or plan variation (articles 25(1), 25A(1), 25B(1) and 25C(1) of the *Regulated Activities Order*); and
- (2) those relating to making arrangements with a view to persons entering into certain transactions (articles 25(2), 25A(2), 25B(2) and 25C(2) of the *Regulated Activities Order*).

The exclusions in relation to the *regulated activities* of *arranging* under articles 25(1) and (2) are of particular relevance in the context of raising corporate finance. ~~Many~~ Some of the exclusions outlined ~~below in PERG 2.8.6A~~ relate to all of the arranging activities but most relate only to certain of those activities as indicated. ~~both the elements of the activity referred to in (1) and (2); that is, *arranging (bringing about) deals in investments* (under article 25(1) of the *Regulated Activities Order*) and *making arrangements with a view to transactions in investments* (under article 25(2) of the *Regulated Activities Order*).~~ But several exclusions relate only to one of those activities.

2.8.6A G The exclusions in the *Regulated Activities Order* that relate to the various *arranging* activities are as follows.

- (1) Under article 26, arrangements that do not or would not bring about the transaction to which they relate are excluded from the *arranging* activities that relate to a particular transaction (see *PERG 2.8.6G(1)*) only. A *person* will bring about a transaction or a contract or plan variation only if his involvement in the chain of events leading to a transaction or contract or plan variation is of sufficient importance that, without that involvement, it would not take place. This will require something more than the mere giving of advice (although giving such advice may be the *regulated activity* of *advising on investments* or *advising on home finance transactions*).
- (2) Under article 27, simply providing the means by which parties to a transaction (or possible transaction) are able to communicate with each other is excluded from arrangements made with a view to persons entering into certain transactions (see *PERG 2.8.6G(2)*) only. This will ensure that *persons* such as Internet service providers or telecommunications networks are excluded if all they do is provide communication facilities (and these would otherwise be considered to be arrangements made with a view to the participants entering into transactions). If a *person* makes arrangements that go beyond providing the means of communication, and add value to what is provided, he will lose the benefit of this exclusion.

(3) Under article 28, arranging investment transactions to which the arranger is to be a party is excluded from both article 25(1) and (2). The main purpose is to ensure that a person is not regarded as arranging deals for another when the transaction in question is one to which he intends to be a party. As a result, a person cannot both be engaging in a dealing activity (as principal or agent) and arranging deals for another as regards any particular transaction. But where the transaction involves a contract of insurance, article 28 will not apply if the person making the arrangements:

(a) is the only policyholder; or

(b) as a result of the transaction, would become the only policyholder.

Under article 28A, a person is excluded from any of the arranging activities that relate to home finance transactions (2) if he is to enter into the contract or plan to which the arrangements relate or if he is or is to become a party to a contract or plan that is varied or to be varied.

(4) Under article 29, an unauthorised person who, on behalf of a client, arranges transactions or contract or plan variations, with or through an authorised person, is excluded from each of the arranging activities if specified conditions as to advice and remuneration are satisfied. For example, the exclusion is dependent on the client not receiving any advice on the transactions or variations from the unauthorised person making the arrangements. The exclusion does not apply where the investment is a contract of insurance.

(5) Under article 29A, an unauthorised person is excluded from the regulated activity of arranging for another person to vary the terms of a regulated mortgage contract entered into on or after 31 October 2004 (article 25A(1)(b)) or a home reversion plan or home purchase plan entered into on or after 6 April 2007 (articles 25B(1)(b) and 25C(1)(b)). This is if the arranging is the result of:

(a) anything done in the course of the administration, by an authorised person:

(i) of a regulated mortgage contract in the way set out in article 62(a);

(ii) of a home reversion plan in the way set out in article 63C(a);

(iii) of a home purchase plan in the way set out in article 63G(a); or

(b) anything done by the unauthorised person in connection with the administration:

- (i) of a regulated mortgage contract in the way set out in article 62(b);
 - (ii) of a home reversion plan in the way set out in article 63C(b);
 - (iii) of a home purchase plan in the way set out in article 63G(b).
- (6) Under article 30, arranging investment transactions in connection with lending on the security of contracts of insurance is excluded, from article 25(1) and (2) but only where a person is not carrying on insurance mediation or reinsurance mediation.
- (7) Under article 31, making arrangements for finance (in whatever form) to be supplied to a person by a third party is excluded from article 25(1) and (2) if the finance is given in exchange for an instrument acknowledging the debt. This mirrors the exclusion from dealing in investments as principal in similar circumstances (see PERG 2.8.4G (3)).
- (8) Under article 32, arrangements the only purpose of which is to provide finance to enable persons to enter into investment transactions are excluded from article 25(2) only. There is no equivalent exemption from article 25(1). But arrangements for the provision of finance will only be caught by that provision if the arrangements actually bring about the transaction.
- (9) Under article 33, making arrangements under which persons will be introduced to third parties who will provide independent services (consisting of advice or the exercise of discretion in relation to certain investments) is excluded from articles 25(2), 25A(2), 25B(2) and 25C(2) only. The party to whom the introduction is made must be of a specified standing (including that of an authorised person). The exclusion does not apply where the arrangements relate to a contract of insurance.
- (10) Under article 33A, making arrangements for introducing persons to:
 - (a) an authorised person who has permission to carry on certain regulated activities concerned with home finance transactions;
or
 - (b) an appointed representative who is able to carry on any of those activities without breaching the general prohibition; or
 - (c) an overseas person who carries on any of those activities;is excluded from articles 25A(2), 25B(2) and 25C(2) subject to certain conditions related to the receipt of client money and the

disclosure of certain information.

- (11) Under article 34, a company is not carrying on a regulated activity under article 25(1) or (2) of the Regulated Activities Order (Arranging deals in investments) by arranging for the issue of its own shares or share warrants and a person is not doing so by arranging for the issue of his own debentures or debenture warrants.
- (12) Under article 35, a body carrying out international securities business of a specified type can apply to the Treasury for approval as an international securities self-regulating organisation (ISSRO). Arrangements made in order to carry out the functions of an ISSRO are excluded from article 25(1) and (2). The exclusion applies whether the arrangements are made by the ISSRO or by a person acting on its behalf.
- (13) The following exclusions from both article 25(1) and (2) (outlined in PERG 2.9) apply in specified circumstances where a *person* makes arrangements:
- (a) while acting as trustee or personal representative (see PERG 2.9.3 G);
 - (b) in connection with the carrying on of a profession or of a business not otherwise consisting of regulated activities (see PERG 2.9.5 G);
 - (c) in connection with the sale of goods or supply of services (see PERG 2.9.7 G);
 - (d) in connection with certain transactions by a group member or by a participator in a joint enterprise (see PERG 2.9.9 G);
 - (e) in connection with the sale of a body corporate (see PERG 2.9.11 G);
 - (f) in connection with an employee share scheme (see PERG 2.9.13 G);
 - (g) as an overseas person (see PERG 2.9.15 G);
 - (h) as an incoming ECA provider (see PERG 2.9.18 G);
 - (i) as a provider of non-motor goods or services related to travel (see PERG 2.9.19 G);
 - (j) involving the provision, on an incidental basis, of information to policyholders or potential policyholders about contracts of insurance (see PERG 2.9.19 G);
 - (k) that involve a contract of insurance covering large risks situated

outside the EEA (see PERG 2.9.19 G) ;1

- (l) for or with a view to transactions to be entered into by or on behalf of the participants of a business angel-led enterprise capital fund and that person is a body corporate as specified in article 72E(7) of the Regulated Activities Order.

More detailed guidance on the exclusions that relate to contracts of insurance is in PERG 5 (Insurance mediation activities).

The exclusions referred to in (a), (b), (g) and (h) also apply to arranging activities related to home finance transactions. More detailed guidance on the exclusions that relate to contracts of insurance is in PERG 5 (Insurance mediation activities).

- 2.8.6AB G The exclusions referred to in PERG 2.8.6G (4) and PERG 2.8.6G (13)(c), (d), (e) and (l) will not be available to *persons* who, in carrying on an *arranging* activity, are *investment firms* (see PERG 2.5.4 G (Investment services and activities)).

...

- 2.8.12 G In certain circumstances, advice that takes the form of a regularly updated news or information service and advice which is given in one of a range of different media (for example, newspaper or television) is excluded from the *regulated activities* of:

- (1) advising on investments; and
- (2) advising on regulated mortgage contracts;
- (3) advising on a home reversion plan; and
- (4) advising on a home purchase plan.

See (see PERG 7 (Periodical publications: news services and broadcasts: applications for certification)) for further guidance on this exclusion.

- 2.8.12A G Advice given by an *unauthorised person* in ~~the course of the administration of relation to a regulated mortgage contract~~ home finance transaction in the circumstances referred to in PERG 2.8.6AG(5)(a) or (b) (Arranging deals in investments and arranging a home finance transaction) by an ~~authorised person~~ is also excluded ~~subject to certain conditions~~. In addition:

- (1) the following exclusions apply in specified circumstances where a *person* is *advising on investments* or advising on regulated mortgage contracts a home finance transaction:

- (a)

(2) the following exclusions apply in specified circumstances where a *person* is ~~advising on~~ advising on investments:

(a)

More detailed *guidance* on certain of these exclusions is in *PERG* 4 (~~*Regulated activities*~~ Regulated activities connected with mortgages), and *PERG* 5 (Insurance mediation activities) and *PERG* 14.3 and *PERG* 14.4 (Guidance on home reversion and home purchase activities).

...

2.8.14A G Exclusions from the *regulated activities* ~~activity~~ of that involve administering a regulated mortgage contract home finance transaction are provided where an unauthorised persons; arrange for administration by an authorised person and where ~~unauthorised persons~~ administer under an agreement with an *authorised person*.

(1) arranges for administration by an authorised person who has permission for carrying on that regulated activity;

(2) carries out the administration for up to one month after an arrangement of the kind mentioned in (1) comes to an end; or

(3) carries out the administration under an agreement with an authorised person who has permission for carrying on that regulated activity.

These exclusions are subject to certain conditions and are explained in greater detail in *PERG* ~~Auth~~ 4.8 (Administering a regulated mortgage contract); and *PERG* 14.3 and *PERG* 14.4 (Guidance on home reversion and home purchase activities).

2.8.14B G The following exclusions apply in specified circumstances where a person is administering a home finance plan:

(1) while acting as trustee or personal representative (see *PERG* 2.9.3 G);

(2) in connection with the carrying on of a profession or of a business not otherwise consisting of regulated activities (see *PERG* 2.9.5 G); and

(3) as an incoming ECA provider (see *PERG* 2.9.18 G).

...

2.9.1 G The various exclusions outlined below deal with a range of different circumstances.

(1) Each set of circumstances described in *PERG* 2.9.3 G to *PERG* 2.9.17 G has some application to several *regulated activities* relating to *securities, relevant investments* or ~~regulated mortgage contracts~~ home finance transactions. They have no effect.....

...

2.9.3 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal;*
- (2) *arranging (bringing about) deals in investments; ~~arranging (bringing about) regulated mortgage contracts; and making arrangements with a view to transactions in investments and making arrangements with a view to regulated mortgage contracts;~~*

(2A) arranging a home finance transaction;

...

- (7) *advising on investments or advising on ~~regulated mortgage contracts~~ a home finance transaction;*
- (8) *entering into ~~regulated mortgage contracts~~ a home finance transaction; and*
- (9) *administering a ~~regulated mortgage contracts~~ home finance transaction.*

...

2.9.4 G A person carrying on certain *regulated activities* does not require *authorisation* in specified circumstances if he by reference to time spent). The exclusions for *entering into a home finance transaction* and for *administering a home finance transaction* ~~*regulated mortgage contracts*~~, however, work on a different basis. They apply where the activity relates to a *home finance transaction* ~~*regulated mortgage contract*~~ under which the borrower, reversion occupier or home purchaser as the case may be is a beneficiary.

2.9.5 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as agent;*
- (2) *arranging (bringing about) deals in investments; ~~arranging (bringing about) regulated mortgage contracts; and making arrangements with a view to transactions in investments and making arrangements with a view to regulated mortgage contracts;~~*

(2A) arranging a home finance transaction;

...

- (5) *advising on investments or advising on ~~regulated mortgage~~*

~~contracts~~ a home finance transaction.

...

- 2.9.15 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:
- (1) *dealing in investments as principal;*
 - (2) *dealing in investments as agent;*
 - (3) *arranging (bringing about) deals in investments; ~~arranging (bringing about) regulated mortgage contracts; and making arrangements with a view to transactions in investments and making arrangements with a view to regulated mortgage contracts;~~*
 - (3A) *arranging a home finance transaction;*
 - (4) *advising on investments;*
 - (5) *entering into ~~regulated mortgage contracts~~ a home finance transaction;*
 - (6) *administering ~~a regulated mortgage contracts~~ home finance transaction; and*
 - (7) ...

...

- 2.9.17 G The exclusions are available, for *regulated activities* other than those that relate to ~~regulated mortgage contracts~~ home finance transactions in the two broad cases set out below. For some of these *regulated activities*, the exclusions apply in each case. In others, they apply in only one.

- (1) ...

...

- 2.9.17A G The exclusions for *overseas persons* who carry on certain *regulated activities* related to ~~regulated mortgage contracts~~ home finance transactions work in a different way. They depend on the residency of the borrower or borrowers, the reversion occupier or reversion occupiers or the home purchaser or home purchasers as the case may be. In addition, some of the exclusions also depend on the residency of the reversion provider. Guidance on these exclusions is in PERG 4.11 (Link between activities and the United Kingdom) and PERG 14.6 (Guidance on home reversion and home purchase activities).

...

- 2.10.15 G In addition, there are restrictions on carrying on (or agreeing to carry on)

certain other *regulated activities*. These relate to *managing investments*, *advising on investments*, ~~or *advising on regulated a home finance transaction mortgage contracts*~~, *advising on syndicate participation at Lloyd's*, ~~and entering into a *regulated mortgage contract home finance transaction* or administering a *home finance transaction regulated mortgage contract*~~.

...

PERG 2 Annex 2 Regulated activities and the permission regime

2 Table

Table 1: Regulated Activities [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
Accepting deposits	
(a) <i>accepting deposits ...</i>	...
...	
Regulated mortgage <u>home finance</u> activity	
(v) <i>arranging (bringing about) regulated mortgage contracts</i> (article 25(A)(1))	<i>regulated mortgage contract</i> (article 88)
(w) <i>making arrangements with a view to regulated mortgage contracts</i> (article 25(A)(2))	
(x) ...	
(y) ...	
(z) ...	

<p><u>(za) arranging (bringing about) a home reversion plan (article 25B(1))</u></p> <p><u>(zb) making arrangements with a view to a home reversion plan (article 25B(2))</u></p> <p><u>(zc) advising on a home reversion plan (article 53B)</u></p> <p><u>(zd) entering into a home reversion plan (article 63B(1))</u></p> <p><u>(ze) administering a home reversion plan (article 63B(2))</u></p>	<p><u>rights under a home reversion plan (article 88A)</u></p>
<p><u>(zf) arranging (bringing about) a home purchase plan (article 25C(1))</u></p> <p><u>(zg) making arrangements with a view to a home purchase plan (article 25C(2))</u></p> <p><u>(zh) advising on a home purchase plan (article 53C)</u></p> <p><u>(zi) entering into a home purchase plan (article 63F(1))</u></p> <p><u>(zj) administering a home purchase plan (article 63F(2))</u></p>	<p><u>rights under a home purchase plan (article 88B)</u></p>

...

- 4.1.6 G A person may be intending to carry on activities related to other forms of investment in connection with mortgages, such as advising on and arranging an endowment policy or ISA to repay an interest-only mortgage. Such a person should also consult the *guidance* in *PERG 2 (Authorisation and regulated activities)* ~~regulated activities) and PERG 8 (Financial promotion and related activities)~~, and *PERG 5 (Mediation of general and pure protection Guidance on insurance mediation activities)* and *PERG 8 (Financial promotion and related activities)*. In addition, PERG 14 (Guidance on home reversion and home purchase activities) has guidance on regulated activities relating to home reversion plans and home purchase plans.

...

- 4.4.1 G Article 61(3)(a) of the ...
- (1) ...

...

PERG 4.4.2 G to PERG 4.4.9 G set out the FSA's understanding of some key concepts contained in article 61(3)(a). It should be noted that, where a contract meets the necessary requirements for both a regulated mortgage contract and a home purchase plan, it will be treated as a home purchase plan only and will not be a regulated mortgage contract. Guidance on the meaning of a home purchase plan is in PERG 14.4 (Guidance on home reversion and home purchase activities).

...

7.1.1 G This chapter applies to anyone involved in publishing periodicals, or in providing news services or broadcasts, who gives (or proposes to give) advice about *securities, relevant investments* or ~~*regulated mortgage contracts*~~ *home finance transactions* and who wishes to determine whether he will be carrying on the *regulated activities* of *advising on investments* or *advising on* ~~*regulated mortgage contracts*~~ *a home finance transaction*.

7.1.2 G The purpose of this chapter is to provide *guidance* as to:

(1) when a *person* involved in publishing periodicals, or in providing news services or broadcasts, requires *authorisation* to carry on the *regulated activities* of *advising on investments* or *advising on* ~~*regulated mortgage contracts*~~ *a home finance transaction* (see *PERG 7.3* (Does the activity require authorisation));

(2) ...

...

7.2.1 G Advice is excluded by article 54 of the *Regulated Activities Order* from the *regulated activities* of *advising on investments* and *advising on* ~~*regulated mortgage contracts*~~ *a home finance transaction* if:

...

7.2.2 G If a *person* would, but for the exclusion, be carrying on the *regulated activities* of *advising on investments* or *advising on* ~~*regulated mortgage contracts*~~ *a home finance transaction*, or any or each of them both, and will be doing so.....

...

Advising on investments and advising on ~~regulated mortgage contracts~~ home finance transactions

7.3.1 G ...

7.3.1B G Under article 53B of the *Regulated Activities Order* (Advising on regulated home reversion plans), advising a *person* is a specified kind of activity if:

- (1) the advice is given to the *person* in his capacity as a *reversion occupier* or reversion provider or as a potential *reversion occupier* or reversion provider; and
 - (2) it is advice on the merits of his doing any of the following:
 - (a) entering into a particular *home reversion plan*; or
 - (b) varying the terms of a *home reversion plan* entered into by him as *reversion occupier* or as reversion provider (but only where the plan was originally entered into on or after 6 April 2007) in such a way as to vary his obligations under that plan.
- 7.3.1C G Under article 53C of the *Regulated Activities Order* (Advising on regulated home purchase plans), advising a *person* is a specified kind of activity if:
- (1) the advice is given to the *person* in his capacity as a *home purchaser* or potential *home purchaser*; and
 - (2) it is advice on the merits of his doing any of the following:
 - (a) entering into a particular *home purchase plan*; or
 - (b) varying the terms of a *home purchase plan* entered into by him on or after 6 April 2007 in such a way as to vary his obligations under that plan.
- 7.3.2 G Articles 53, ~~and 53A, 53B and 53C~~ of the *Regulated Activities Order* contain a number of elements, all of which must be present before a *person* will require *authorisation*. For *guidance* on whether a *person* is carrying on these *regulated activities*, see *PERG* 8 (Financial promotion and related activities), ~~and~~ *PERG* 4 (Guidance on ~~*regulated activities*~~ regulated activities connected with mortgages) and *PERG* 14.3 and *PERG* 14.4 (Guidance on home reversion and home purchase activities).
- 7.3.3 G Under section 22 of the *Act* (~~*Regulated activities*~~ Regulated activities), for an activity has been amended by article 18 of the Financial Services and Markets Act 2000 (Regulated A activities) (Amendment) (No 2) Order 2003 (SI 2003/1476) and by article 28 of the Financial Services and Markets Act 2000 (Regulated activities) (Amendment) (No 2) Order 2006 (SI 2006/2383) as explained in *PERG* 7.3.3A G.
- 7.3.3A G The result of the amendments made to the meaning of the business test in section 22 of the *Act* is that the test differs depending on the activity in question. Where the *regulated activities* of *advising on investments* and *advising on* ~~*regulated mortgage contracts*~~ a home finance transaction are concerned, the business test is not to be regarded as satisfied unless
- 7.3.4 G In the *FSA's* view, for a *person* to be carrying on the business of *advising on investments* or *advising on* ~~*regulated mortgage contracts*~~ a home finance transaction he will usually need to be doing so if advice on *securities*,

relevant investments or ~~regulated home finance transactions mortgage contracts~~ is given, then, in the FSA's view, the business of advising on investments or advising on ~~regulated mortgage contracts a home finance transaction~~ is being carried on. In addition the journal or journalist would not be regarded as carrying on the business of advising on investments or advising on ~~regulated mortgage contracts a home finance transaction~~ as he would be acting to prevent crime rather than in the carrying on of a business.

...

7.3.7 G But even if advice is given in the *United Kingdom*, the *general prohibition* will not be contravened if the giving of advice does not amount to the carrying on, in the *United Kingdom*, of the business of *advising on investments or advising on ~~regulated mortgage contracts a home finance transaction~~*. Also, the *general prohibition* will not be contravened if the exclusions in article 72 ~~only do not~~ apply to the *regulated activities of that involve advising on a home finance transaction mortgage contracts where both the lender and the borrower are outside the United Kingdom*. The effect of this is that, where the ~~principal~~ *principal* purpose of an overseas periodical publication is to offer advice on *securities or relevant investments and home finance transactions mortgage contracts*, the exclusion for an *overseas person* who provides advice to *persons* in the *United Kingdom* as a result of a legitimate approach will not apply to the advice concerning *home finance transactions mortgage contracts*.

7.3.8 G If a *person* is carrying on the business of *advising on investments or advising on a home finance transaction* in the *United Kingdom*, he will not require *authorisation* if:

(1) ...

(2) he is an *exempt person* (see *PERG 2.11 (What to do n Now?)*); since *persons* are exempt only in relation to specified *regulated activities*, his exemption must apply to the *regulated activity* of *advising on investments or advising on a home finance transaction* as the case may be.

7.3.9 G Many people may be involved in the production of a periodical publication, news service or broadcast. But if the *regulated activity* of *advising on investments or advising on a home finance transaction* is being carried on

.....

...

7.4.2 G But the exclusion applies only if the principal purpose of the publication or service is not:

(1) to advise on *securities or relevant investments or home finance transactions mortgage contracts*: or

- (2) to lead or enable *persons*:
 - (a) to *buy, sell*, subscribe for or underwrite *securities* or *relevant investments*; or ~~(as the case may be)~~;
 - (b) to enter as borrower into *regulated mortgage contracts*, or vary the terms of *regulated mortgage contracts* entered into by ~~the persons to whom the advice is given~~ them as borrower on or after 31 October 2004 ; or
 - (c) to enter as *reversion occupier* or reversion provider into *home reversion plans* or to vary the terms of *home reversion plans* entered into by them as *reversion occupier* or as *reversion provider* where the plan was originally established on or after 6 April 2007; or
 - (d) to enter as *home purchaser* into *home purchase plans* or to vary the terms of *home purchase plans* entered into by them as *home purchaser* on or after 6 April 2007.

7.4.3 G (1) ...

- (3) since this would not generally constitute the *regulated activity* of *advising on investments* (see *PERG* 8.28 (Advice or information)), ~~or *advising on regulated mortgage contracts* (see *PERG* 4.6.13 G to *PERG* 4.6.16 G (Advice or information))~~, *advising on a home reversion plan* or *advising on a home purchase plan*. So the exclusion applies to services providing material in addition to news or information, such as comment or advice.

...

7.4.5 G The exclusion applies only if the principal purpose of the publication or service is not:

- (1) to give advice on *securities, relevant investments* or ~~*regulated home finance transactions*~~ ~~*mortgage contracts*~~ (see *PERG* 7.3.1 G); or
- (2) to lead or enable *persons* to:
 - (a) *buy, sell*, subscribe for or underwrite *securities* or *relevant investments*; or
 - (b) to enter as borrower into *regulated mortgage contracts*, or vary the terms of *regulated mortgage contracts* entered into by ~~persons to whom the advice is given~~ them as borrower on or after 31 October 2004 ; or
 - (c) to enter as *reversion occupier* or reversion provider into *home reversion plans* or to vary the terms of *home reversion plans* entered into by them as *reversion occupier* or as *reversion provider* where the plan was originally established

on or after 6 April 2007; or

- (d) to enter as home purchaser into home purchase plans or to vary the terms of home purchase plans entered into by them as home purchaser on or after 6 April 2007.

...

7.4.8 G Looking at the first disqualifying purpose set out in the exclusion, all the matters relevant to whether the *regulated activities* of *advising on investments* or *advising on a home finance transaction* ~~*mortgage contracts*~~ are being carried on must be taken into account (see *PERG* 8.24 (Advising on investments)). If the principal purpose of a publication or service is to give to *persons*, in their capacity as investors (or potential investors), ~~or as borrowers, as reversion occupiers or reversion providers or as home purchasers~~ (as the case may be), advice as referred to in *PERG* 7.4.5G (1), then the publication or service will not be able to benefit from this exclusion.

7.4.9 G ...

- (1) material in a publication or service that invites or seeks to procure *persons* to engage in a relevant transaction can be said to "lead" to those transactions even if it would not constitute the *regulated activities* of *advising on investments* or *advising on regulated a home finance transaction* ~~*mortgage contracts*~~; this includes, for example, material

- (2) ...

In the *FSA's* view, material will not lead or enable a *person* to engage in a relevant transaction where the material is intended merely to raise people's awareness of matters relating to *securities*, *relevant investments* or ~~*regulated home finance transactions mortgage contracts*~~.

...

8.4.22 G (7) Article 15 (Introductions) may apply provided certain conditions are met (see *PERG* 8.12.11 G). In addition, article 28B (Real time communications: introductions ~~in connection with qualifying credit~~) may apply where an introduction is a *real time financial qualifying credit promotion about home finance transactions and home finance activities* (see *PERG* 8.17.12 G).

...

8.14.40B G Article 73 exempts any *financial promotion* made by a *person* in the course of carrying out his duties as an adviser for, or employee of, an advice centre. This is provided the *financial promotion* relates to:

- (1) ~~*qualifying credit*~~ *a home finance transaction*; or

(2) ...

...

8.17.1 G ~~[not used]~~ Section 21 applies to financial promotions concerning agreements for qualifying credit. PERG 8.17.1AG to PERG 8.17.18G has guidance about the treatment of such financial promotions. Section 21 applies not only to financial promotions about regulated mortgage contracts but also to financial promotions about certain other types of credit agreement. This is explained in more detail in PERG 8.17.2 G. to PERG 8.17.3 G.

8.17.1A G ~~Section 21 applies to financial promotions concerning agreements for qualifying credit (qualifying credit promotions). In this respect, it not only covers financial promotions about regulated mortgage contracts but also financial promotions about certain other types of credit agreement. This is explained in more detail in PERG 8.17.2 G. to PERG 8.17.3 G. Section 21 also applies to financial promotions concerning home reversion plans and home purchase plans. Guidance on these activities and related financial promotions is given in PERG 14 (Guidance on home reversion and home purchase activities).~~

...

8.17.9 G The exemptions in Part IV of the *Financial Promotion Order* (Exempt communications: all controlled activities) will apply to *financial promotions* about *qualifying credit* (~~*qualifying credit promotions*~~). Some of the exemptions ...

...

8.17.12 G Article 28B (Real time communications: introductions ~~in connection with qualifying credit~~) exempts a *real time financial promotion* that relates to one or more of the *controlled activities* about *regulated mortgage contracts*, as well as *home reversion plans* and *home purchase plans*. The exemption is subject to the following conditions being satisfied:

(1) ...

(a) ...

(c) an overseas person who carries on the *controlled activity* to which the communication relates; for this purpose, an 'overseas person' is a *person* who carries on any of the *controlled activities* about ~~*qualifying credit*~~ *home finance transactions* but does not do so, or offer to do so, from a permanent place of business maintained by him in the *United Kingdom*; and

...

8.23.3 G The *regulated activities* which are likely to be conducted in the

circumstances referred to in *PERG* 8.23.2 G are:

- (1) giving advice on certain investments (articles 53 (Advising on investments), 53A (Advising on regulated mortgage contracts), 53B (Advising on regulated home reversion plans), 53C (Advising on regulated home purchase plans) and 56 (Advice on syndicate participation at Lloyd's) of the *Regulated Activities Order*) - for example, where the *financial promotion* is the advice;
- (2) *making arrangements with a view to transactions in investments* (article 25(1 2) of the *Regulated Activities Order* (Arranging deals in investments)); ~~or~~
- (2A) *making arrangements with a view to regulated mortgage contracts* (article 25A(2) of the *Regulated Activities Order* (Arranging regulated mortgage contracts));
- (2B) *making arrangements with a view to a home reversion plan* (article 25B(2) of the *Regulated Activities Order* (Arranging regulated home reversion plans));
- (2C) *making arrangements with a view to a home purchase plan* (article 25C(2) of the *Regulated Activities Order* (Arranging regulated home purchase plans) for example, where the *person* concerned makes arrangements that are intended to lead to a transaction by a third party; and
- (3) ...

8.23.4 G The *guidance* that follows is concerned with the *regulated activities* of *making arrangements with a view to transactions in investments* ~~and~~ and *advising on investments*. *Guidance* on the *regulated activities* of *making arrangements with a view to regulated mortgage contracts* ~~and~~ and *advising on regulated mortgage contracts* is in *PERG* 4 (Guidance on regulated activities ~~regulated activities~~ connected with mortgages). *Guidance* on the *regulated activities* of *making arrangements with a view to a home reversion plan* and *advising on a home reversion plan* and *making arrangements with a view to a home purchase plan* and *advising on a home purchase plan* is in *PERG* 14 (Guidance on home reversion and home purchase activities).

...

8.36.3 G Table Controlled activities

1.	...
...	
10.	Providing qualifying credit

10A. <u>11.</u>	Arranging qualifying credit etc
10B. <u>12.</u>	Advising on qualifying credit etc
<u>13</u>	<u>Providing a home reversion plan</u>
<u>14</u>	<u>Arranging a home reversion plan</u>
<u>15</u>	<u>Advising on a home reversion plan</u>
<u>16</u>	<u>Providing a home purchase plan</u>
<u>17</u>	<u>Arranging a home purchase plan</u>
<u>18</u>	<u>Advising on a home purchase plan</u>
11. <u>19.</u>	Agreeing to do anything in 3 to 10B <u>18</u> above

8.36.4 G Table Controlled investments

1.	...
...	
15.	Agreements for qualifying credit.
<u>16.</u>	<u>Rights under a home reversion plan.</u>
<u>17.</u>	<u>Rights under a home purchase plan.</u>
16. <u>18.</u>	Rights to or interests in anything falling under 1 to 15-14 above.

14 Guidance on home reversion and home purchase activities

14.1 Background

Q1. What is the purpose of these questions and answers (“Q&As”) and who should be reading them?

These Q&As are aimed at *persons* involved in the provision or promotion of financial arrangements involving the acquisition or disposal of land for the purpose of enabling an individual ...

- exemptions (PERG 14.7); and
- financial promotions (PERG 14.8); ~~and~~
- ~~transitional provisions (PERG 14.9).~~

...

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 ~~will be~~ 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~~ are made in the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No2) Order 2006 (SI 2006/2383) which came ~~comes~~ into effect on 6 April 2007. ~~The new~~ Regulated home finance activities are:

...

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 ~~on or after 6 April 2007~~; 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 ~~on or after 6 April 2007~~, the person who enters into the plan

...

...

Q37. Will changes involving the circumstances of the home purchaser 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 purchase 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 ~~on or after 6 April 2007?~~ 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 purchaser?

Broadly speaking, it would seem likely that, if the home purchaser were to move house, there would be a need for the existing plan to be terminated and a new plan to be entered. Where this happens ~~on or after 6 April 2007~~, the person who enters the plan as provider...

...

14.9 Transitional provisions

~~Q46. I will need to obtain authorisation to carry on home finance activities. What will happen to me if I do not obtain authorisation by 6 April 2007?~~

~~Transitional arrangements have been put in place. The broad effect of these arrangements is that you will be able to benefit from interim authorisation as respects any of the new regulated activities that relate to home reversion plans or home purchase plans pending the final determination of your application. This is provided:~~

- ~~you were carrying on the regulated activities, for which you are seeking permission, before 6 November 2006; and~~
- ~~your application for authorisation was received by the FSA on or before 23 March 2007.~~

~~An interim authorisation granted under these transitional arrangements will lapse:~~

- ~~in the case of the regulated activities involving providing or administering home reversion or home purchase plans, when the application has been finally determined; and~~
- ~~in the case of the regulated activities involving arranging or advising on home reversion or home purchase plans, on the earlier of the date on which the application is finally determined or 6 April 2008.~~

~~Q47. I am already an authorised person. Will I need to extend the scope of my existing permission?~~

~~Yes, you will need to apply for a variation of permission in the normal way if you wish to carry on any of the new regulated activities. As with applications for authorisation (see Q46), you will benefit from interim permission if your application is not finally determined by 6 April 2007 provided:~~

- ~~• you were carrying on the regulated activities, for which you are seeking to vary your permission, on or before 6 November 2006; and~~
- ~~• your application to vary your permission was received by the FSA on or before 23 March 2007.~~

~~Your interim permission will lapse in the same circumstances as an application for authorisation (see Q46).~~

Q48. ~~Can I avoid the need to be authorised by becoming an appointed representative of an authorised person?~~

~~You cannot be an *appointed representative* for the purpose of providing or administering home reversion or home purchase plans. But you can be an appointed representative for advising on or arranging such plans.~~

~~If you are an appointed representative prior to 6 April 2007 and you intend to carry on any of the new regulated activities, you will need to consider whether your existing agreement with your principal will cover those activities that an appointed representative is permitted to undertake or whether it will need to be amended to do so.~~

~~You may currently be an appointed representative of a life office for the purpose of advising on or arranging deals in its investment products and also undertake unregulated activities in relation to home reversion or home purchase plans offered by third parties. If those unregulated activities include activities that will become regulated from 6 April 2007, you will need either to become the appointed representative of another appropriately authorised firm or to seek authorisation yourself. This is because an appointed representative of a life office can only undertake regulated activities that arise directly from the life office's insurance business.~~

~~Remember also that a person cannot generally be authorised and exempt as an appointed representative at the same time. However, this rule is waived if you obtain interim authorisation to carry on the new regulated activities and wish, pending determination of your application for authorisation, to continue to conduct existing regulated activities as an appointed representative.~~