

**HANDBOOK ADMINISTRATION (NO 19) INSTRUMENT 2010****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 6 October 2010.

**Amendments to the Handbook**

- D. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Threshold Conditions (COND)	Annex C
The Fit and Proper test for Approved Persons (FIT)	Annex D
General Provisions (GEN)	Annex E
General Prudential sourcebook (GENPRU)	Annex F
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex G
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex H
Supervision manual (SUP)	Annex I
Dispute Resolution: Complaints sourcebook (DISP)	Annex J
Collective Investment Schemes sourcebook (COLL)	Annex K
Listing Rules sourcebook (LR)	Annex L

**Amendments to material outside the Handbook**

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex M to this instrument.

**Citation**

- F. This instrument may be cited as the Handbook Administration (No 19) Instrument 2010.

By order of the Board  
23 September 2010

## Annex A

### Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical place. This text is not underlined.

*staff mortgage* a *regulated mortgage contract* between an employer, or an *undertaking* in the same *group* as the employer, as lender and the employee (alone or with another *person*) as borrower to defray money applied for any of the following purposes:

- (a) acquiring any residential land which was intended, at the time of the acquisition, for occupation by the employee as their home;
- (b) carrying out repairs or improvements to any residential land which was intended, at the time of taking out the loan, for occupation by the employee as their home; or
- (c) payments in respect of a loan (whether of interest or capital).

*work-related insurance* work-related insurance, including:

- (a) life assurance;
- (b) long term disability insurance (also known as *permanent health insurance*); and
- (c) accidental death, injury, critical illness, medical, dental, income protection or travel insurance.

Amend the following as shown.

*disclosure* disclosure of a *disclosable short position* which:

- (a) is made on a *RIS* by no later than 3.30pm on the *business day* following the day on which the position reaches, or exceeds ~~or falls below~~ a *disclosable short position* of 0.25% of the issued capital of a *company*; and
- (b) includes the name of the *person* who has the *disclosable short position*, the amount of the *disclosable short position* and the name of the *company* in relation to which the *person* has that position.

## Annex B

### Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

3.2.6D G A *firm* may also have separate obligations to comply with relevant legal requirements, including the Terrorism Act 2000, the Proceeds of Crime Act 2002 and the *Money Laundering Regulations*. SYSC 3.2.6R to SYSC 3.2.6JG are not relevant for the purposes of regulation ~~3(3)~~ 42(3) or 45(2) of the *Money Laundering Regulations*, section 330(8) of the Proceeds of Crime Act 2002 or section 21A(6) of the Terrorism Act 2000.

...

6.3.4 G A *firm* may also have separate obligations to comply with relevant legal requirements, including the Terrorism Act 2000, the Proceeds of Crime Act 2002 and the *Money Laundering Regulations*. SYSC 6.1.1R and SYSC 6.3.1R to SYSC 6.3.10G are not relevant for the purposes of regulation ~~3(3)~~ 42(3) or 45(2) of the *Money Laundering Regulations*, section 330(8) of the Proceeds of Crime Act 2002 or section 21A(6) of the Terrorism Act 2000.

...

6.3.9 R A *firm* (with the exception of a *sole trader* who ~~does not employ any person who is required to be approved under section 59 of the Act (Approval for particular purposes)~~ has no employees) must:

- (1) appoint an individual as *MLRO*, with responsibility for oversight of its compliance with the *FSA's rules* on systems and controls against *money laundering*; and
- (2) ensure that its *MLRO* has a level of authority and independence within the *firm* and access to resources and information sufficient to enable him to carry on that responsibility.

**Annex C****Amendments to the Threshold Conditions (COND)**

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

- 2.5.6 G In determining whether a *firm* will satisfy, and continue to satisfy, threshold condition 5 in respect of conducting its business with integrity and in compliance with proper standards, the relevant matters, as referred to in *COND* 2.5.4G(2), may include but are not limited to whether:
- ...
- (6) the *firm* has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system that apply to the *firm* and the *regulated activities* for which it has, or will have, *permission* (see *SYSC* 3.2.6R to *SYSC* 3.2.8R (Compliance) and *SYSC* 6.1.1R to *SYSC* 6.1.5R and *SYSC* 6.3);
- ...

**Annex D****Amendments to the Fit and Proper test for Approved Persons (FIT)**

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

- 1.2.4A G Under Article 5(1)(d) of the *MiFID Implementing Directive* and Article 31 and 32 of *MiFID*, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the *firm's Home State*. Therefore, in assessing the fitness and propriety of a *person* to perform a *controlled function* solely in relation to the *MiFID business* of an *incoming EEA firm*, the *FSA* will not have regard to that *person's* competence and capability. Where the *controlled function* relates to matters outside the scope of *MiFID*, for example ~~money laundering~~ money laundering responsibilities (see CF11), or to business outside the scope of the *MiFID* business of an *incoming EEA firm*, for example *insurance mediation activities* in relation to *life policies*, the *FSA* will have regard to a *candidate's* competence and capability as well as his honesty, integrity, reputation and financial soundness.

**Annex E**

**Amendments to the General Provisions (GEN)**

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

**Sch 4 Powers exercised**

...

4.2

G

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>GEN</i> :	
	...
	Section 118(8) ...
	<u>Section 131B (Short selling rules)</u>
	...
	Section 223 ...
	<u>Section 223C (Payments in error)</u>
	<u>Section 224F (Rules about relevant schemes)</u>
	...

...

4.5

G

The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FSA</i> to issue the parts of the statements in <i>GEN</i> :	
	...
	Section 124 ...
	<u>Section 165B(6) (Safeguards etc in relation to exercise of power under section 165A)</u>
	...

## Annex F

### Amendments to the General Prudential sourcebook (GENPRU)

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

[*Editor's Note:* The change to GENPRU 2 Annex 3R shown below confirms an amendment which has already been made administratively.]

#### 2 Annex 3R Capital resources table for a building society

<b>The capital resources calculation for a building society</b>		
<b>Type of capital</b>	<b>Related text</b>	<b>Stage</b>
...	...	...
<b>Hybrid capital</b>		
Stage B1	<i>GENPRU <u>2.2.115AR</u> to <i>GENPRU</i> 2.2.117BR</i>	(B1)
...		
...		

## Annex G

### Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

[*Editor's Note:* The change to BIPRU 5.5.7R(2) shown below confirms an amendment which has already been made administratively.]

- 5.5.7      R    (1)    ...
- (2)    In case of a currency mismatch, the current *surrender value* must be reduced according to *BIPRU 5.7.17R* and *BIPRU ~~5.5.18R~~ 5.7.18R*, the value of the credit protection being the current *surrender value* of the life insurance policy.
- ...



## Annex H

## Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

- 2.2.8B G The following guidance may be relevant to a *firm* that *communicates* or *approves a financial promotion* of a home purchase plan:
- ...
- ~~Note: A comparative *financial promotion* will need to comply with regulation 4A of the Control of Misleading Advertisements Regulations 1988.~~
- ...
- 3.5.3 G A *firm communicating a financial promotion* may also be subject to other regulations and guidelines, outside the remit of the *FSA*, such as:
- ...
- (5) ~~the Consumer Protection Act 1987~~ Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277), ~~or Consumer Protection (Northern Ireland) Order 1987 (SI 1987/2049 (N.I.20))~~.
- ...
- 3.8A.2 G The guidance on the clear, fair and not misleading standard at *MCOB* 3.6.5G, *MCOB* 3.6.10G and *MCOB* 3.6.14G may be relevant.
- ~~Note: A comparative *financial promotion* will need to comply with regulation 4A of the Control of Misleading Advertisements Regulations 1988.~~
- ...
- 3.8B.2 G The guidance on the clear, fair and not misleading standard at *MCOB* 3.6.5G, *MCOB* 3.6.10G and *MCOB* 3.6.14G may be relevant.
- ~~[Note: A comparative *financial promotion* will need to comply with regulation 4A of the Business Protection from Misleading Marketing Regulations 2008.]~~

**Annex I**

**Amendments to the Supervision manual (SUP)**

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

10.7.13B G ~~A firm's obligations in respect of its money laundering reporting officer are set out in SYSC 3.2.61 R and SYSC 6. [deleted]~~

...

15.7.1 R A notification required from a *firm* under any *notification rule* must be given in writing, and in English, and must be submitted on the form specified for that *notification rule*, or if no form is specified, on the form in SUP 15 Ann ~~3RR~~ 4R (Notification form), and must give the *firm's FSA* Firm Reference Number unless:

...

**16 Annex 19AR Mortgage Lending and Administration Return ('MLAR')**

**Summary of Contents**

**Table**

...

Sale & Rent Back (SRB Business)

K

...

<b>K SALE &amp; RENT BACK (SRB) BUSINESS</b>		<u>Regulated</u>	
		<b>Regulated Number</b>	<b>Amount</b>
K1	<b>Overall business summary</b> (opening & closing stocks with key transactions )		
K1.1	SRB agreements at start of quarter	_____	_____
K1.2	New sales in quarter	_____	_____
K1.3	Disposals in quarter	_____	_____
K1.4	Business transfer: acquisitions	_____	_____
K1.5	Business transfer: sales	_____	_____
K1.6	Other	_____	_____
K1.7	SRB agreements at end of quarter	_____	_____
K1.8	SRB agreements arranged for unauthorised <del>person</del> <u>persons</u>	_____	_____

**K SALE & RENT BACK (SRB) BUSINESS**


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		<u>Regulated</u> Regulated Number	<u>Regulated</u> Amount
K2	<b>New business in Quarter</b>		
	Sales : analysed by discount on open market value (OMV)		
K2.1	0% – 30%	_____	_____
K2.2	30% – 40%	_____	_____
K2.3	> 40%	_____	_____
K2.4	<del>Weighted average</del> <u>Average</u> of all sales		<input type="text"/>
	Sales : analysed by provider fees charged		
K2.5	Over £1000	_____	_____
K2.6	Under £1000	_____	_____
K2.7	<del>Weighted average</del> <u>Average</u> fees charged		<input type="text"/>
	Sales : analysed by annual rent as % sale value		
K2.8	<del>Average annual</del> <u>Total new agreements and average</u> rent per month	_____	_____
K2.9	Average rental yield ( <u>shown as a %</u> )		<input type="text"/>

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**SALE & RENT BACK (SRB) BUSINESS**

**K3 SRB agreements terminated or transferred in the quarter:**

<u>Total agreements terminated</u>		<b>Agreements Terminated by Firm</b>	<b>Agreements Terminated by Seller</b>
K3.1	< 12 Months	_____	_____
K3.2	12 - 36 Months	_____	_____
K3.3	36 - 60 Months	_____	_____
K3.4	60 - 72 Months	_____	_____
K3.5	> 72 Months	_____	_____
K3.6	Avg Duration of Agreement	<input type="text"/>	<input type="text"/>

<u>Total Sales (Transfers &amp; Disposals)</u>	<u>Transfers</u>		<u>Disposals</u>	
	<b>Transfers Number</b>	<b>Amount</b>	<b>Number</b>	<b>Amount</b>
K3.7	Original SRB values	_____	_____	_____
K3.8	Current SRB book values	_____	_____	_____
K3.9	Actual disposal/transfer values	_____	_____	_____

**SALE & RENT BACK (SRB) BUSINESS**

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**K4 SRB agreements at end of quarter: cases 10% or more in arrears**

		<b>Regulated</b>	<b>Regulated</b>	
		<b>Cases in arrears at end quarter</b>		
<b>Arrears categorisation</b>		<b>Number</b>	<b>Amount of arrears</b>	<b>Annual rentals</b>
K4.1	10 < 20 %	_____	_____	_____
K4.2	20 < 30 %	_____	_____	_____
K4.3	30 < 40 %	_____	_____	_____
K4.4	40 < 50 %	_____	_____	_____
K4.5	50 < 75 %	_____	_____	_____
K4.6	75% or more	_____	_____	_____
K4.7	All cases	<input type="text"/>	<input type="text"/>	<input type="text"/>

**SALE & RENT BACK (SRB) BUSINESS**

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K5	<b>SRB administrators</b>	<u>Number</u>
K5.1	Regulated SRB agreements administered	<input type="text"/>
K5.2	<del>Number of</del> <u>Non-regulated</u> SRB agreements administered	<input type="text"/>
K5.3	Number of SRB agreements administered for other firms	<input type="text"/>
Number of SRB agreements administered for other firms - top 5 firms		
	Firm Ref Number (FRN)	Number of SRB agreements administered
K5.4	1: _____	1: _____
K5.5	2: _____	2: _____
K5.6	3: _____	3: _____
K5.7	4: _____	4: _____
K5.8	5: _____	5: _____

**16 Annex 19BG      Notes for Completion of the Mortgage Lending and Administration Return ('MLAR')**

**NOTES FOR COMPLETION OF THE MORTGAGE LENDING & ADMINISTRATION RETURN ('MLAR')**

...

**SECTION K: SALE AND RENT BACK BUSINESS (SRB)**

**Introduction**

This section must be completed as follows:

- *SRB agreement providers* must complete K1 to ~~K5~~ K4
- *SRB administrators* must complete ~~K6~~ K5
- *Firms* that are both *SRB agreement providers* and *SRB administrators* must complete K1 to ~~K6~~ K5.

**K                      SRB: Residential sales by individuals**

It is expected that *firms* will have the following to report:

...

- non-regulated SRB agreements: in respect of transactions of a similar nature entered into before SRB became a *regulated activity* which are still being administered; and also any new contract that, while not meeting the precise conditions for a regulated contract, nonetheless has similar characteristics (for example cases where the purchaser is not regulated or where the firm has purchased a property under value and rents an alternative property to the seller).

This approach means that all new and existing sale and rent back agreements, – whether regulated or not, and whether transacted before or after SRB became a *regulated activity* – must be included in the information reported by the *firm* in section K.

...

**K1                      Overall business summary**

...

- K1.6                      Other:** include any other amounts which affect the balances reported in K1.1 and K1.7, that is which reflect any change in the book value of any SRB agreements during the quarter. This is to capture any 'amounts' that will affect the overall position but is not covered by K1.2-K1.5. A value is required to be recorded in the 'Amount' column only.



...

**K1.8 SRB agreements arranged for unauthorised persons:** The number of SRB agreements arranged where an unauthorised person has obtained title to the property and monies have been paid to the SRB seller. The 'Amount' is the sale value (paid to seller) and should be reported gross, that is, before the deduction of any fees and charges.

## **K2 New business in the quarter**

...

**K2.1 to ~~2.4~~2.3** Sales: analysed by **discount on open market value** (OMV)

Here SRB transactions are classified into different bands, according to the amount of **discount** expressed as a percentage of the open market value of the property that is subject to the SRB contract. Discount is the open market value minus the sales value.

Values are required to be recorded in both the 'Number' and 'Amount' columns. So for example, for those SRB agreements where the discount is 30% to under 40%, enter the total number of such sales and the total sales values of those agreements in the relevant boxes on the K2.2 line.

**K2.4** Average of all sales

The average discount is recorded as an amount. This value should therefore be recorded in the 'Amount' column only. For example, if 4 properties with an open market value of £100,000 were bought at a 25% discount and 4 properties with an open market value of £120,000 at a 35% discount, the average amount of discount is £33,500.

**K2.5 to ~~2.7~~2.6** Sales: analysed by **provider fees charged**

Here, SRB transactions are classified into two different bands, according to the amount of provider fees charged to the SRB agreement. Enter the total number of such sales in the 'Number' column and the total sales values of those agreements in the 'Amount' column.

**K2.7** Average fees charged

The average amount of provider fees are recorded here. This value should be recorded in the 'Amount' column only. For example, if 8 new agreements were entered into during the quarter with provider fees totalling £4000, enter £500 (£4000 divided by 8) in the 'Amount' column.

**K2.8 to 2.9** Sales: analysed by **annual rent as ~~percent~~ percentage of sale value**

K2.8 Here the total number of new SRB agreements (entered in the 'Number' column) and the amount of average monthly rent being charged at the outset of the agreements (entered in the 'Amount' column) is recorded.

K2.9 The average rental yield percentage is calculated as the **total** annual rent for all new SRB agreements in the quarter divided by the total sales values, entered in the 'Amount' column.

...

### K3.1 to K3.6 **Agreements terminated:**

...

For each time band, enter the total number of such transactions ~~and the total original sales values of those agreements.~~

...

~~In the supplementary analysis, provide summary totals for:~~

- ~~• original SRB values: the gross sales value paid to the seller~~
- ~~• current SRB values: the book value of the contract at time of re-sale~~
- ~~• actual resale values (i.e. the price at which either the property was sold back to the seller, or the seller left the property after giving notice) inclusive of any fees or charges levied as part of this resale transaction.~~

### K3.7 to K3.9 **Transfers and Disposals**

...

The analysis looks into the status of each SRB agreement when it is sold or transferred, ~~distinguishing between:~~

- ~~• agreements which are fully performing, and~~
- ~~• those where the seller is not currently meeting the terms and conditions of the contract.~~

~~For both types of contract, *firms* Firms should report:~~

- original SRB values: the gross sales value paid to the seller;
- current SRB values: the book value of the contract at time of sale/transfer; and
- actual disposal/transfer values: the value of the contract as recognised in the agreement with the acquiring party.

...

### K5 **SRB administrators**

*Firms* holding SRB administration permissions must complete the number of regulated SRB agreements that they administer, the number of non-regulated SRB agreements that they administer and as well as the number of regulated SRB agreements that they administer for ~~third parties~~ other firms.

...

## Annex J

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

#### 1 Annex 1BR Complaints publication report

This table belongs to *DISP* 1.10A.2R.

#### Complaints publication report

Firm name: .....

Group: (if applicable): .....

Other firms included in this report (if any): .....

Period covered in this report: [e.g. 1 January – 30 June 2010]

Brands/trading names covered: .....

<b>1</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
		Number of complaints opened	Number of complaints closed	Complaints closed within 8 weeks (%)	Closed complaints upheld by firm (%)
<b>2</b>	Banking				
<b>3</b>	Home finance				
<b>4</b>	General insurance and pure protection				
<b>5</b>	Decumulation, life and pensions				
<b>6</b>	Investments				

**Annex K**

**Amendments to the Collective Investment Schemes sourcebook (COLL)**

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

Table: contents of the prospectus

4.2.5 R This table belongs to *COLL* 4.2.2R (Publishing the prospectus).

...		
17	The following particulars:	
	...	
	(f)	the circumstances and conditions for issuing <i>units</i> in an <i>authorised fund</i> which limit the <i>issue</i> of any <i>class</i> of <i>units</i> in accordance with <i>COLL</i> <del>6.2.21</del> <u>6.2.18R</u> (Limited issue);
	(g)	the circumstances and procedures for the limitation or deferral of <i>redemptions</i> in accordance with <i>COLL</i> <del>6.2.16</del> <u>6.2.19R</u> (Limited redemption) or <i>COLL</i> <del>6.3.8</del> <u>6.2.21R</u> (Deferred redemption);
	...	
...		

**Annex L****Amendments to the Listing Rules sourcebook (LR)**

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

[*Editor's Note:* The change to LR 9.8.10R shown below confirms an amendment which has already been made administratively.]

9.8.10 R A *listed company* must ensure that the auditors review each of the following before the annual report is published:

...

- (2) the parts of the statement required by *LR 9.8.6R(6)* (corporate governance) that relate to the following provisions of the *UK Corporate Governance Code*:
- (a) C.1.1;
  - (b) C.2.~~2~~1; and
  - (c) C.3.1 to C.3.7.

## Annex M

## Amendments to the Perimeter Guidance manual (PERG)

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

1.5.1 G General *guidance* on the perimeter is also contained in various *FSA* documents (mainly fact sheets and frequently asked questions) that are available on the *FSA* website at [www.fsa.gov.uk](http://www.fsa.gov.uk). These documents, and the URL on which they may be accessed, include:

- (1) ~~{deleted}~~ *FSA* Guidance Note GN9 (2010) on financial regulation for social housing providers which is available at <http://www.fsa.gov.uk/pubs/guidance/guidance9.pdf>;

...

Communications by employers and contracted service providers to ~~their~~ employees

8.4.34 G Employers and their contracted service providers may *communicate* with ~~their~~ employees on matters which involve *controlled investments*. For example, *work-related insurance, staff mortgages, personal pension schemes* (including *stakeholder schemes*) and other employee benefit schemes other than *occupational pension schemes*. Interests under the trusts of an *occupational pension scheme* are not a *controlled investment* (see paragraph 27(2) of Schedule 1 to the *Financial Promotion Order*). ~~Such~~

In the case of *personal pension schemes* (including *stakeholder schemes*), such communications will only be invitations or inducements to *engage in investment activity* if they seek to persuade or incite employees to do things such as:

...

- (2) exercise certain rights under such a scheme, ~~include~~ including making additional contributions or exercising options.

Communications which seek to persuade or incite employees to subscribe for *work-related insurance* or enter into *staff mortgages* may also be invitations or inducements to *engage in investment activity*.

Communications which are intended to educate or give employees information with no element of persuasion or incitement will not be invitations or inducements under section 21. Employers may wish to give their employees investment material prepared and *approved* by an

*authorised person*. This material may be given under cover of a communication from the employer. If so, the covering communication will not itself be an inducement if all it does is to refer employees to the material and explain what they should do if they wish to act on it, without seeking to persuade or incite them to act. Where the covering communication is itself a *financial promotion* it will need to be *approved* by an *authorised person* provided it is a *non-real time financial promotion* unless an exemption applies. If it is a *real time financial promotion* it cannot be *approved* (see, for example, COBS 4.10.4R). In such cases, an exemption would need to apply. Where employee share schemes are concerned, the exemption in article 60 of the *Financial Promotion Order* (Participation in employee share schemes) is likely to apply to any *financial promotions* made by employers or members of their *group*. Where an employer's *financial promotions* relate to such things as *company* health or general insurance benefit packages, the exemptions in article 24 (Relevant insurance activity: non real time communications) or 26 (Relevant insurance activity: real time communications) of the *Financial Promotion Order* may apply. Employers who promote pension products, *work-related insurance or staff mortgages* to their employees will be able to use the exemption exemptions in article 72 (~~Pension products offered by employers~~), article 72B and article 72D and contracted service providers who promote pension products, *work-related insurance or staff mortgages* to employees will be able to use the exemptions in article 72A, article 72C and article 72E, provided certain conditions are met. These conditions are explained in PERG 8.14.40AG to PERG 8.14.40AEG. ...

...

Certified high net worth individuals (article 48)

- 8.14.21 G This exemption disapplies the restriction in section 21 of the *Act* from *non-real time financial promotions* or *solicited real time financial promotions* which are made to a *person* who the communicator believes on reasonable grounds to be a certified high net worth individual and which relate to certain *investments*. These *investments* must be either:
- (1) *shares* in or *debentures* or *alternative debentures* of an unlisted company; or
  - (2) *warrants*, *certificates representing certain securities*, *options*, *futures* or *contracts for differences* relating to *shares* in or *debentures* ~~or alternative debentures~~ of an unlisted company; or
  - (3) units in collective investment schemes investing predominantly in *shares* in or *debentures* ~~or alternative debentures~~ of an unlisted company.

...

Pension product offers offered to employees by employers (article 72) and third parties (article 72A)



8.14.40A G Article 72 exempts any *financial promotion* made by an employer to an employee in relation to a *group personal pension scheme* or a *stakeholder pension scheme*. This is subject to certain requirements as follows:

...

- (2) the employer must not receive or have received any direct financial benefit ~~from that scheme (such as commission from, or a reduction in the amount of the premium payable by the employer in respect of any insurance policy issued to the employer by, the provider of the scheme)~~ (including any commission, discount, remuneration or reduction in premium) as a result of making the communication;
- (3) the employer must notify the employee in writing, prior to the employee becoming a member, of the amount of the contribution that the employer will make to the scheme in respect of that employee or the basis on which the contribution will be calculated; and

...

~~This exemption should enable employers to promote pension schemes to their employees without undue concern that they may be breaching the restriction in section 21 of the Act. PERG 8.4.34 G (Communications by employers to their employees) has further *guidance* about the application of section 21 to employers generally.~~

8.14.40AA G Article 72A exempts any *financial promotion* made to an employee by or on behalf of a person (“A”) in relation to a *group personal pension scheme* or a *stakeholder pension scheme*. This is subject to certain requirements as follows:

- (1) the employer and A must have entered into a written contract specifying the terms on which the communication may be made;
- (2) in the case of a communication made by a person (“B”) on behalf of A, A and B must also have entered into a written contract specifying the terms on which the communication may be made;
- (3) the employer must not receive or have received, any direct financial benefit (including any commission, discount, remuneration or reduction in premium) as a result of the communication being made;
- (4) the employer must make a contribution to the scheme in the event of the employee becoming a member of the scheme and the communication must contain a statement informing the employee of this;
- (5) where the communication is a *non-real time financial promotion*,

it must contain, or be accompanied by, a statement informing the employee of his right to seek advice from an *authorised person* or an *appointed representative*; and

- (6) the employer or A must notify the employee in writing prior to the employee becoming a member of the *scheme* of:
- (a) the amount of the contribution that the employer will make to the *scheme* in respect of that employee, or the basis on which the contribution will be calculated; and
  - (b) any remuneration A or B has received, or will receive, as a consequence of the employee becoming a member of the *scheme*, or the basis on which any such remuneration will be calculated.

Insurance product offers communicated to employees by employers (article 72B) and third parties (article 72C)

8.14.40AB G Article 72B exempts any *financial promotion* made by an employer to an employee in relation to *work-related insurance*. This is subject to certain requirements as follows:

- (1) where the provider of the insurance is not the employer, the employer must not receive or have received, any direct financial benefit (including any commission, discount, remuneration or reduction in premium) as a result of making the communication; and
- (2) where the communication is a *non-real time financial promotion*, it must contain, or be accompanied by, a statement informing the employee of his right to seek advice from an *authorised person* or an *appointed representative*.

8.14.40AC G Article 72C exempts any *financial promotion* made to an employee by or on behalf of a person (“A”) in relation to *work-related insurance*. This is subject to certain requirements as follows:

- (1) the employer and A must have entered into a written contract specifying the terms on which the communication may be made;
- (2) in the case of a communication made by a person (“B”) on behalf of A, A and B must also have entered into a written contract specifying the terms on which the communication may be made;
- (3) the employer must not receive or have received, any direct financial benefit (including any commission, discount, remuneration or reduction in premium) as a result of the communication being made;
- (4) where the communication is a *non-real time financial promotion*, it must contain, or be accompanied by, a statement informing the

employee of his right to seek advice from an *authorised person* or an *appointed representative*; and

- (5) the employer or A must notify the employee in writing prior to the employee entering into a contract for the *work-related insurance* of any remuneration A or B has received, or will receive, as a consequence of the employee entering into the contract, or the basis on which any such remuneration will be calculated.

Staff mortgage offers communicated to employees by employers (article 72D) and third parties (article 72E)

8.14.40AD G Article 72D exempts any *financial promotion* made by an employer to an employee in relation to a *staff mortgage*. This is subject to certain requirements as follows:

- (1) where the provider of the *staff mortgage* is an undertaking in the same group as the employer, the employer must not receive or have received, any direct financial benefit (including any commission, discount, remuneration or reduction in premium) as a result of making the communication; and
- (2) where the communication is a *non-real time financial promotion*, it must contain, or be accompanied by, a statement informing the employee of his right to seek advice from an *authorised person* or an *appointed representative*.

8.14.40AE G Article 72E exempts any *financial promotion* made to an employee by or on behalf of a person (“A”) in relation to a *staff mortgage*. This is subject to certain requirements as follows:

- (1) the employer and A must have entered into a written contract specifying the terms on which the communication may be made;
- (2) in the case of a communication made by a person (“B”) on behalf of A, A and B must also have entered into a written contract specifying the terms on which the communication may be made;
- (3) where the provider of the *staff mortgage* is an undertaking in the same group as the employer, the employer must not receive or have received, any direct financial benefit (including any commission, discount, remuneration or reduction in premium) as a result of the communication being made;
- (4) in the case of a *non-real time communication*, the communication must contain, or be accompanied by, a statement informing the employee of his right to seek advice from an *authorised person* or an *appointed representative*; and
- (5) the employer or A must notify the employee in writing prior to the employee entering into the *staff mortgage* of any remuneration A or B has received, or will receive, as a consequence of the

employee entering into the *staff mortgage*, or the basis on which any such remuneration will be calculated.

8.14.40AF G The exemptions described in PERG 8.14.40AG to PERG 8.14.40AEG should enable employers (and their contracted service providers) to promote employee benefits packages that include any *pension schemes*, *work-related insurance* schemes and *staff mortgages* to employees without undue concern that they may be breaching the restriction in section 21 of the Act. PERG 8.14.34G (Communications by employers and contracted service providers to employees) has further *guidance* about the application of section 21 to employers and contracted service providers generally.

...

8.36.6 G Table Application of Exemptions to Forms of Promotions

Financial Promotion Order		Applies to		
Article No.	Title and PERG 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
72	Pension products offered by employers (8.14.40AG)	*	*	*
<u>72A</u>	<u>Pension product offers communicated to employees by third parties (8.14.40AAG)</u>	<u>*</u>	<u>*</u>	<u>*</u>
<u>72B</u>	<u>Insurance product offers communicated to employees by employers (8.14.40ABG)</u>	<u>*</u>	<u>*</u>	<u>*</u>
<u>72C</u>	<u>Insurance products offers communicated to employees by</u>	<u>*</u>	<u>*</u>	<u>*</u>

...

	<u>third parties</u> (8.14.40ACG)			
<u>72D</u>	<u>Staff mortgage offers communicated to employees by employers</u> (8.14.40ADG)	*	*	*
<u>72E</u>	<u>Staff mortgage offers communicated to employees by third parties</u> (8.14.40AEG)	*	*	*
...				

...

**10.5 Employers and affinity groups (such as trade unions)**

...

**Q48. What are the exemptions that are available to employers?**

...

- the employer informs the employee in any written promotion of his right to seek independent financial advice from a regulated person.

**Q48A. What are the exemptions that are available to contracted service providers that make financial promotions to employees?**

There is a specific exemption for contracted service providers (or *persons* acting on their behalf) that make financial promotions to employees in article 72A of the *Financial Promotion Order*. This applies in circumstances broadly similar to those set out in Q48. Further details of the exemption are set out in *PERG 8.14.40AAG*.

...

**10 Annex 5 Table summarising regulatory position concerning financial promotions by trustees, employers and affinity groups.**

Person communicating	Subject or purpose of communication	Need for approval or exemption available
...		
Employer,	To persuade employees or	Approval or exemption needed

<p>affinity group or trustee</p>	<p>members to join a stakeholder pension scheme or a <i>group personal pension scheme</i>.</p>	<p>as rights under a stakeholder pension scheme and rights under a group pension scheme are themselves investments.</p> <p>...</p> <p>Employers <u>and contracted service providers</u> may be able to use the specific <u>exemption exemptions</u> for promotions made to employees if the conditions in the exemption exemptions are satisfied (see Q48 <u>and Q48A</u>).</p> <p>...</p>
<p>...</p>		
<p>Employer, affinity group or trustee</p>	<p>To persuade members of a pension scheme to switch funds by reference to which their benefits are calculated.</p>	<p>...</p> <p>Employers <u>and contracted service providers</u> may be able to use the specific <u>exemption exemptions</u> for promotions made to employees where the promotion relates to switching rights under a group personal pension scheme or a stakeholder pension scheme and the other conditions in the <u>exemption exemptions</u> are satisfied (see Q48 <u>and Q48A</u>).</p> <p>...</p>
<p>...</p>		