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STATUTORY INSTRUMENTS

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**2009 No. 1342**

**The Financial Services and Markets Act 2000  
(Regulated Activities) (Amendment) Order 2009**

**PART 4**

**AMENDMENTS OF OTHER SECONDARY LEGISLATION**

**Amendments of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001**

**27.** In the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001(1) after article 3C (arranging and advising on regulated home purchase plans) insert—

**“Arranging and advising on regulated sale and rent back agreements**

**3D.** A person is not to be regarded as carrying on by way of business an activity specified by—

- (a) article 25E of the Regulated Activities Order (arranging regulated sale and rent back agreements);
- (b) article 53D of that Order (advising on regulated sale and rent back agreements); or
- (c) article 64 of that Order (agreeing), so far as relevant to either of the articles mentioned in sub-paragraphs (a) and (b),

unless that person carries on the business of engaging in that activity.”.

**Amendments of the Financial Services and Markets Act 2000 (Exemption) Order 2001**

**28.** In the Financial Services and Markets Act 2000 (Exemption) Order 2001(2), Part 4 of the Schedule (persons exempt in respect of particular regulated activities) is amended as follows—

- (a) in paragraph 47 (local authorities)—
  - (i) delete “or” at the end of sub-paragraph (c);
  - (ii) after sub-paragraph (d) insert—  
“; or
  - (e) article 25E, 53D or 63J of that Order (arranging, advising on, entering into or administering a regulated sale and rent back agreement)”;
- (b) in paragraph 48 (social housing)—
  - (i) delete “or” at the end of sub-paragraph (c);

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(1) [S.I. 2001/1177](#); article 3A was inserted by [S.I. 2003/1475](#) and articles 3B and 3C were inserted by [S.I. 2006/2383](#).

(2) [S.I. 2001/1201](#); paragraphs 47 and 48 of the Schedule were substituted by [S.I. 2003/1675](#) and amended by [S.I. 2006/2383](#).

(ii) after sub-paragraph (d) insert—

“;

(e) article 25E, 53D or 63J of that Order (arranging, advising on, entering into or administering a regulated sale and rent back agreement)”.

### **Amendments of the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001**

**29.**—(1) The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001(3) is amended as follows.

(2) In article 2(1) (interpretation)—

(a) after the definition of “the Act” insert—

““agreement provider” has the meaning given by paragraph (3) of article 63J of the Regulated Activities Order, read with paragraphs (6) and (7) of that article;

“agreement seller” has the meaning given by article 63J(3) of the Regulated Activities Order”;

(b) after the definition of “regulated mortgage contract” insert—

““regulated sale and rent back agreement” has the meaning given by article 63J(3) of the Regulated Activities Order;”.

(3) After article 6F (activities to which exemption from the general prohibition does not apply: regulated home purchase plans) insert—

**“6G.**—(1) An activity of the kind specified by article 53D of the Regulated Activities Order (advising on regulated sale and rent back agreements) where the advice in question falls within paragraph (2).

(2) Subject to paragraph (3), advice falls within this paragraph in so far as—

(a) it consists of a recommendation, given to an individual to enter as agreement seller or agreement provider into a regulated sale and rent back agreement with a particular person; and

(b) in entering into a regulated sale and rent back agreement that person would be carrying on an activity of the kind specified by article 63J(1) of the Regulated Activities Order (regulated sale and rent back agreements).

(3) Advice does not fall within paragraph (2) if it endorses a corresponding recommendation given to the individual by an authorised person with permission to carry on an activity of the kind specified by article 53D of the Regulated Activities Order or a person who is an exempt person in relation to an activity of that kind.

**6H.**—(1) An activity of the kind specified by article 63J(1) or (2) of the Regulated Activities Order (regulated sale and rent back agreements).

(2) Paragraph (1) does not apply to an activity carried on by a person in his capacity as a trustee or personal representative where the agreement seller under the regulated sale and rent back agreement in question is a beneficiary under the trust, will or intestacy.”.

## **Amendments of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005**

**30.**—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(4) is amended as follows.

(2) In article 28B(1)(a) (one off non-real time communications and solicited real time communications) for “10G or 10H” substitute “10G, 10H, 10I, 10J or 10K”.

(3) In article 73(2) (advice centres)—

(a) delete “or” at the end of sub-paragraph (d);

(b) after sub-paragraph (e) insert—

“; or

(f) a regulated sale and rent back agreement”.

(4) In Schedule 1 Part 1 (controlled activities)—

(a) after paragraph 10H (advising on a regulated home purchase plan) insert—

### **“Providing a regulated sale and rent back agreement**

**10I.** Entering into a regulated sale and rent back agreement as agreement provider is a controlled activity.

### **Arranging a regulated sale and rent back agreement**

**10J.** Making arrangements—

(a) for another person to enter as agreement seller or agreement provider into a regulated sale and rent back agreement; or

(b) for an agreement seller or an agreement provider under a regulated sale and rent back agreement, entered into on or after 1st July 2009, to vary the terms of that plan in such a way as to vary the obligations of the agreement seller or the agreement provider under that plan,

is a controlled activity.

### **Advising on a regulated sale and rent back agreement**

**10K.** Advising a person (“A”) is a controlled activity if the advice is—

(a) given to A in A’s capacity as agreement seller, potential agreement seller, agreement provider or potential agreement provider; and

(b) advice on the merits of A doing either of the following—

(i) entering into a regulated sale and rent back agreement, or

(ii) varying the terms of a regulated sale and rent back agreement, entered into on or after 1st July 2009 by A, in such a way as to vary A’s obligations under that agreement.”.

(5) In Schedule 1 Part 2 (controlled investments)—

(a) after paragraph 26B (regulated home purchase plans) insert—

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(4) [S.I. 2005/1529](#), amended by [S.I. 2006/2383](#); there are other amending instruments but none is relevant.

**“Regulated sale and rent back agreement**

**26C.** Rights under a regulated sale and rent back agreement.”.

- (b) in paragraph 27(1) (rights to or interests in investments) for “26A or 26B” substitute “26A, 26B or 26C”;
- (c) in paragraph 28 (interpretation)—
  - (i) before the definition of “buying” insert—

““agreement provider” has the meaning given in paragraph (3) of article 63J of the Regulated Activities Order, read with paragraphs (6) and (7) of that article; “agreement seller” has the meaning given in article 63J(3) of the Regulated Activities Order”;
  - (ii) after the definition of “regulated home reversion plan” and “reversion seller” insert—

““regulated sale and rent back agreement” has the meaning given in article 63J(3) of the Regulated Activities Order;”.

**Amendments of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008**

**31.** In section 474(1) of the Companies Act 2006, as applied to limited liability partnerships by regulation 32 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008<sup>(5)</sup> (minor definition) in the definition of “regulated activity”—

- (a) after paragraph (c) insert —

“(ca) article 25E (arranging regulated sale and rent back agreements),”; and
- (b) after paragraph (g) insert —

“(ga) article 53D (advising on regulated sale and rent back agreements),”.