
STATUTORY INSTRUMENTS

2001 No. 544

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

PART II

SPECIFIED ACTIVITIES

CHAPTER XVII

EXCLUSIONS APPLYING TO SEVERAL SPECIFIED KINDS OF ACTIVITY

Overseas persons

72.—(1) An overseas person does not carry on an activity of the kind specified by article 14 [F¹ or 25D][F¹, 25D or 25DA] by—

- (a) entering into a transaction as principal with or through an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or
- (b) entering into a transaction as principal with a person in the United Kingdom, if the transaction is the result of a legitimate approach.

(2) An overseas person does not carry on an activity of the kind specified by article 21 [F² or 25D][F², 25D or 25DA] by—

- (a) entering into a transaction as agent for any person with or through an authorised person or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or
- (b) entering into a transaction with another party ("X") as agent for any person ("Y"), other than with or through an authorised person or such an exempt person, unless—
 - (i) either X or Y is in the United Kingdom; and
 - (ii) the transaction is the result of an approach (other than a legitimate approach) made by or on behalf of, or to, whichever of X or Y is in the United Kingdom.

(3) There are excluded from article 25(1) [F³ or 25D][F³, 25D or 25DA] arrangements made by an overseas person with an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt.

(4) There are excluded from article 25(2) [F⁴ or 25D][F⁴, 25D or 25DA] arrangements made by an overseas person with a view to transactions which are, as respects transactions in the United Kingdom, confined to—

- (a) transactions entered into by authorised persons as principal or agent; and
- (b) transactions entered into by exempt persons, as principal or agent, in the course of business comprising regulated activities in relation to which they are exempt.

Status: Point in time view as at 28/11/2017. This version of this provision has been superseded.

Changes to legislation: The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, Section 72 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(5) There is excluded from article 53 the giving of advice by an overseas person as a result of a legitimate approach.

[^{F5}(5A) An overseas person does not carry on an activity of the kind specified by article 25A(1)(a), [^{F6}25A(2A),] 25B(1)(a) [^{F7}, 25C(1)(a) or 25E(1)(a)] if each person who may be contemplating entering into the relevant type of agreement in the relevant capacity is non-resident.

(5B) There are excluded from articles 25A(1)(b), 25B(1)(b) [^{F8}, 25C(1)(b) and 25E(1)(b)] arrangements made by an overseas person to vary the terms of a qualifying agreement.

(5C) There are excluded from articles 25A(2), 25B(2) [^{F9}, 25C(2) and 25E(2)], arrangements made by an overseas person which are made solely with a view to non-resident persons who participate in those arrangements entering, in the relevant capacity, into the relevant type of agreement.

(5D) An overseas person does not carry on an activity of the kind specified in article 61(1), 63B(1) [^{F10}, 63F(1) or 63J(1)] by entering into a qualifying agreement.

(5E) An overseas person does not carry on an activity of the kind specified in article 61(2), 63B(2) [^{F11}, 63F(2) or 63J(2)] where he administers a qualifying agreement.

(5F) In paragraphs (5A) to (5E)—

(a) “non-resident” means not normally resident in the United Kingdom;

(b) “qualifying agreement” means—

(i) in relation to articles 25A and 61, a regulated mortgage contract where the borrower (or each borrower) is non-resident when he enters into it;

(ii) in relation to articles 25B and 63B, a regulated home reversion plan where the reversion seller (or each reversion seller) is non-resident when he enters into it;

(iii) in relation to articles 25C and 63F, a regulated home purchase plan where the home purchaser (or each home purchaser) is non-resident when he enters into it;

[^{F12}(iv) in relation to articles 25E and 63J, a regulated sale and rent back agreement where the agreement seller (or each agreement seller) is non-resident when the agreement seller enters into it;]

(c) “the relevant capacity” means—

(i) in the case of a regulated mortgage contract, as borrower;

(ii) in the case of a regulated home reversion plan, as reversion seller or plan provider;

(iii) in the case of a regulated home purchase plan, as home purchaser;

[^{F13}(iv) in the case of a regulated sale and rent back agreement, as agreement seller or agreement provider;]

(d) “the relevant type of agreement” means—

(i) in relation to article 25A, a regulated mortgage contract;

(ii) in relation to article 25B, a regulated home reversion plan;

(iii) in relation to article 25C, a regulated home purchase plan[^{F14};

(iv) in relation to article 25E, a regulated sale and rent back agreement].]

(6) There is excluded from article 64 any agreement made by an overseas person to carry on an activity of the kind specified by article 25(1) or (2), 37 [^{F15}, 39A], 40 or 45 if the agreement is the result of a legitimate approach.

(7) In this article, “legitimate approach” means—

- (a) an approach made to the overseas person which has not been solicited by him in any way, or has been solicited by him in a way which does not contravene section 21 of the Act; or
- (b) an approach made by or on behalf of the overseas person in a way which does not contravene that section.

[^{F16}(8) Paragraphs (1) to (5) do not apply where the overseas person is an investment firm or credit institution—

- (a) who is providing or performing investment services and activities on a professional basis; and
- (b) whose home Member State is the United Kingdom.]

[^{F17}(9) Paragraphs (1) to (5) do not apply where the overseas person is providing clearing services as a central counterparty (within the meaning of section 313(1) of the Act).]

[^{F18}(9A) Paragraphs (1) to (5) do not apply—

- (a) where the overseas person is a central securities depository which provides the services referred to in Article 23(2) or 25(2) of the CSD regulation in the United Kingdom (including through a branch in the United Kingdom); or
- (b) where the overseas person is an EEA CSD which provides services in the United Kingdom for which it is not authorised under Article 16 of the CSD regulation.]

[^{F19}(10) Paragraphs (5A) and (5C) do not apply where the overseas person is a mortgage intermediary whose home Member State is the United Kingdom.]

[^{F20}(11) This Article does not apply where the overseas person is—

- (a) a third-country firm, as defined by Article 4.1.57 (“definitions”) of the markets in financial instruments directive (“third country firm”);
- (b) established in a country subject to an equivalence decision; and
- (c) carrying on an activity a third country firm established in that third country may carry on by virtue of the equivalence decision under—
 - (i) Article 46.1 of the markets in financial instruments regulation (general provisions) if it is registered by ESMA in the register of third country firms established in accordance with Article 48 of that Regulation (register);
 - (ii) Article 47.3 of the markets in financial instruments regulation (equivalence decision) if it has a branch in an EEA State other than the United Kingdom and is authorised in that State in accordance with Article 39 of the markets in financial instruments directive (establishment of a branch); or
 - (iii) Article 46.5 of the markets in financial instruments regulation.

(12) For the purposes of paragraph (11)—

- (a) “equivalence decision” means a decision adopted by the Commission in relation to a country under Article 47.1 of the markets in financial instruments regulation which has not been withdrawn by a subsequent decision adopted by the Commission under that Article; and
- (b) a country is subject to an equivalence decision if a period of more than three years has elapsed since the adoption of the decision by the Commission, beginning on the day after the date of the adoption of the decision.]

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Textual Amendments

- F1** Words in art. 72(1) substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **5(2)**
- F2** Words in art. 72(2) substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **5(2)**
- F3** Words in art. 72(3) substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **5(2)**
- F4** Words in art. 72(4) substituted (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **5(2)**
- F5** Art. 72(5A)-(5F) substituted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **21**
- F6** Word in art. 72(5A) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(26)(a)** (with Pt. 4)
- F7** Words in art. 72(5A) substituted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **20(a)**
- F8** Words in art. 72(5B) substituted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **20(b)**
- F9** Words in art. 72(5C) substituted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **20(c)**
- F10** Words in art. 72(5D) substituted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **20(d)**
- F11** Words in art. 72(5E) substituted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **20(e)**
- F12** Art. 72(5F)(b)(iv) inserted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **20(f)**
- F13** Art. 72(5F)(c)(iv) inserted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **20(g)**
- F14** Art. 72(5F)(d)(iv) and semi-colon inserted (1.7.2009 for specified purposes, 30.6.2010 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), arts. 1(2), **20(h)**
- F15** Word in art. 72(6) inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(3), **10(6)**
- F16** Art. 72(8) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), arts. 1(2), **24(e)**
- F17** Art. 72(9) inserted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **33(5)** (with regs. 52-58)
- F18** Art. 72(9A) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), reg. 1, **Sch. para. 23(3)** (with regs. 7(4), 8(4), 9(1))

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- F19** Art. 72(10) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(26)(b)** (with Pt. 4)
- F20** Art. 72(11)(12) inserted (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **5(3)**

Modifications etc. (not altering text)

- C1** Art. 72 modified in part (31.10.2001) by [The Financial Services and Markets Act 2000 \(Interim Permissions\) Order 2001 \(S.I. 2001/3374\)](#), art. 1, **Sch. para. 12** (with Sch. para. 4)
- C2** Art. 72 modified in part (31.10.2004) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Mortgages\) Order 2004 \(S.I. 2004/2615\)](#), art. 1(2)(b), **Sch. para. 12** (with Sch. para. 4)
- C3** Art. 72 modified in part (14.1.2005) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(General Insurance Intermediaries\) Order 2004 \(S.I. 2004/3351\)](#), art. 1(2)(b), **Sch. para. 11** (with Sch. para. 4)
- C4** Art. 72 modified in part (6.4.2007) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2006 \(S.I. 2006/1969\)](#), art. 1(3), **Sch. para. 13** (with Sch. para. 4)

Status:

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