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*Status: Point in time view as at 28/01/2021.*

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## STATUTORY INSTRUMENTS

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# 2001 No. 544

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

### PART II

#### SPECIFIED ACTIVITIES

#### [<sup>F1</sup>CHAPTER XVC

#### REGULATED SALE AND RENT BACK AGREEMENTS

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#### Textual Amendments

- F1** Pt. 2 Ch. 15C 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), 17

#### *The activities*

#### **Entering into and administering regulated sale and rent back agreements**

**63J.**—(1) Entering into a regulated sale and rent back agreement as an agreement provider is a specified kind of activity.

(2) Administering a regulated sale and rent back agreement is also a specified kind of activity when the agreement was entered into on or after 1st July 2009.

(3) In this Chapter—

- (a) a “regulated sale and rent back agreement” is an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into—
- (i) the arrangement is one under which a person (the “agreement provider”) buys all or part of the qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the “agreement seller”); and
  - (ii) the agreement seller (if the agreement seller is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so;

but such an arrangement is not a regulated sale and rent back agreement if it is a regulated home reversion plan;

- (b) “administering” a regulated sale and rent back agreement means any of—

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- (i) notifying the agreement seller of changes in payments due under the agreement, or of other matters of which the agreement requires the agreement seller to be notified;
- (ii) taking any necessary steps for the purpose of making payments to the agreement seller under the agreement; and
- (iii) taking any necessary steps for the purposes of collecting or recovering payments due under the agreement from the agreement seller,

but a person is not to be treated as administering a regulated sale and rent back agreement because that person has, or exercises, a right to take action for the purposes of enforcing the agreement (or to require that such action is or is not taken).

(4) For the purposes of paragraph (3)—

(a) the reference to a “qualifying interest” in land—

- (i) in relation to land in England and Wales, is to an estate in fee simple absolute or a term of years absolute, whether subsisting at law or in equity;
- (ii) in relation to land in Scotland, is to the interest of an owner in land or the tenant’s right over or interest in a property subject to a lease;
- (iii) in relation to land in Northern Ireland, is to any freehold estate or any leasehold estate, whether subsisting at law or in equity;

[<sup>F2</sup>(b) “timeshare accommodation” means overnight accommodation which is the subject of a timeshare contract within the meaning of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010; and]

(c) “related person” in relation to the agreement seller or, where the agreement seller is a trustee, a beneficiary of the trust, means—

- (i) that person’s spouse or civil partner;
- (ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristic of the relationship between husband and wife;
- (iii) that person’s parent, brother, sister, child, grandparent or grandchild.

(5) For the purposes of paragraph (3)(a)(ii), the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys.

(6) In this Order—

- (a) references to entering into a regulated sale and rent back agreement as agreement provider include acquiring any obligations or rights of the agreement provider, including the agreement provider’s interest in land or interests under one or more of the instruments or agreements referred to in paragraph (3)(a); but
- (b) in relation to a person who acquires any such obligations or rights, an activity is a specified kind of activity for the purposes of articles 25E(1)(b) and 53D(b)(ii) and paragraph (2) only if the agreement was entered into by the agreement provider (rather than the obligations or rights acquired) on or after 1st July 2009.

(7) Accordingly, references in this Order to an agreement provider, other than in paragraph (6), include a person who acquires any such obligations or rights.

#### Textual Amendments

**F2** Art. 63J(4)(b) substituted (23.2.2011) by [The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 \(S.I. 2010/2960\)](#), reg. 1(2), **Sch. 6 para. 7(3)** (with Sch. 7 para. 4)

## Exclusions

### Arranging administration by authorised person

**63K.** A person who is not an authorised person does not carry on an activity of the kind specified by article 63J(2) in relation to a regulated sale and rent back agreement where that person—

- (a) arranges for another person, being an authorised person with permission to carry on an activity of that kind, to administer the agreement; or
- (b) administers the agreement during a period of not more than one month beginning with the day on which any such arrangement comes to an end.

### Administration pursuant to agreement with authorised person

**63L.** A person who is not an authorised person does not carry on an activity of the kind specified by article 63J(2) in relation to a regulated sale and rent back agreement where that person administers the agreement pursuant to an agreement with an authorised person who has permission to carry on activity of that kind.

### Other exclusions

**63M.** Article 63J is also subject to the exclusions in article 66 (trustees etc.), 72 (overseas persons) [<sup>F3</sup>, <sup>F4</sup> ... [<sup>F5</sup>72AA (managers of [<sup>F6</sup>UK UCITS] and AIFs) and 72G (local authorities).]]

#### Textual Amendments

- F3** Words in art. 63M substituted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 1(6)**
- F4** Words in art. 63M omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **5(3)(c)** (as amended by [S.I. 2019/1390](#), regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in art. 63M substituted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(41)**
- F6** Words in art. 63M substituted (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **148(2)(r)** (with savings in [S.I. 2019/680](#), **reg. 11** (as amended by [S.I. 2019/1212](#), regs. 1(3), **22(3)**); 2020 c. 1, **Sch. 5 para. 1(1)**

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