

**REGULATING MORTGAGES
COMPARISON OF FINAL STATUTORY INSTRUMENTS WITH
DRAFTS OF FEBRUARY 2002**

Regulated Activities Order

February 2002 Article	July 2002 Article	Heading	Notes
1 & 2	1 & 2	Citation, commencement and interpretation	In the February version, article 2 had substituted the mortgage commencement dates in the RAO. That has now been done in SI 2002/1777. Article 1 of the July version explains that the Order comes into force on such a day as the Treasury may specify. The February version specified the commencement date (albeit the actual date had not been inserted at that stage. However, the provision for HMT to specify the commencement date is new. In the current Order article 2 is now 'interpretation' (the same provision was made in article 1 of the February Order)
-	3	Meaning of "Overseas person"	This provision is new and makes a consequential amendment to the existing definition of "overseas person" in the RAO to take account of the new exclusion for overseas persons in relation to mortgage activities (inserted by article 19)
3	4	Arranging regulated mortgage contracts	Minor change to one aspect of the regulated activity of arranging a regulated mortgage contract. The effect is to clarify that making arrangements to vary a regulated mortgage contract is a regulated activity only when the variation in question changes the obligations of the borrower under the contract
4	5	Exclusion of arrangements not causing a deal	No change
5	6	Exclusion where a person provides a means of communication between parties	No change
6	7	Exclusion where the	No change

		arranger is party to the contract	
7	8	Exclusion where transaction is with or through an authorised person	No change
-	9	Exclusion of arrangements made in the course of administration by authorised person	New article to ensure that special purpose vehicles used for mortgage securitisation are not to be treated as carrying on the new regulated activity of arranging regulated mortgage contracts (i) by reason of the activities of an authorised person, carried out in relation to securitised mortgage contracts, pursuant to an administration arrangement between SPV and that authorised between the SPV and that authorised administrator and (ii) by reason of anything or anything done by the SPV in the course of administering the securitised contracts during a temporary period of no more than one month when there is no such administration arrangement in place
8	10	Exclusion of arrangements which consist of introduction to an authorised person for independent advice	Change of article numbering, but no change to substance of the exclusion
-	11	Exclusion of arrangements consisting of an introduction to an authorised person	A new exclusion which applies to introductions to any authorised person, appointed representative or overseas person who may lawfully carry on the regulated activities of arranging, advising on, or entering into regulated mortgage contracts provided that specified conditions are met. Those conditions are that the introducer must not handle client money, and must disclose to the client any corporate links he has with the person to whom the introduction is made, and details of any pecuniary or other interest he has in making the introduction
9	12	Other exclusions applicable to the new regulated activity of arranging regulated mortgage contracts	Now extended to include an exclusion for overseas persons that make arrangements for a borrower to enter into a

			regulated mortgage contract where the borrower is also ordinarily resident outside of the UK, and for overseas persons who make arrangements to vary a regulated mortgage contract, the borrower under which was ordinarily resident outside the UK when he entered into that contract
10	13	Advising on regulated mortgage contracts	The substance of the activity is unchanged, but the drafting has been amended slightly to clarify that it applies to advice to vary a regulated mortgage contract in such a way as would vary the obligations of the borrower under that contract
11	14	Exclusion of advice given in print, electronic or broadcast media	No change
-	15	Exclusion of advice given in the course of administration by authorised person	New article to ensure that special purpose vehicles used for mortgage securitisations are not to be treated as carrying on the new regulated activity of advising on regulated mortgages contracts (i) by reason of the activities of an authorised person, carried out in relation to securitised mortgage contracts, pursuant to an administration arrangement between SPV and that authorised administrator and (ii) by reason of anything done by the SPV itself in the course of administering the securitised contracts during a temporary period of no more than one month when there is no such administration arrangement in place
12	16	Other exclusions applicable to the new regulated activity of advising on regulated mortgage contracts	No change
13	17	Exclusion of trustees, nominees and personal representatives	Extends the exclusion for trustees, etc to include the regulated activities of entering into and administering (as well as arranging and advising on) regulated mortgage contracts
14	18	Exclusion of activities carried on in the course of a	No change

		profession or non-investment business	
-	19	Overseas persons	Extension of the exclusion for overseas persons to the activities of (i) arranging regulated mortgage contracts provided that the borrower or prospective borrower is an individual who is normally resident overseas at the time of the transaction; and (ii) entering into, and administering regulated mortgage contracts, provided that the borrower is an individual who is or was normally resident overseas at the time the mortgage is or was entered into. The scope of this exclusion does not extend to relevant mortgage-related activities undertaken by persons where the borrower under the contract or prospective contract in question is a trustee
15	20	Exceptions from section 145 of the Consumer Credit Act 1974 (CCA)	Amendments made to the CCA to ensure that the activities of arranging or advising on regulated mortgage contracts do not fall to be regulated under the CCA as credit brokerage, debt adjusting, or debt counselling. Those amendments have been revised in the light of technical comments on the drafting received in the course of consultation. The changes are intended to give accurate effect to the policy set out in the consultation document
16	21	Dis-application of section 155 (CCA) in relation to brokerage fees charged by authorised persons and appointed representatives in respect of introductions which constitute a regulated activity under the FSMA	No change
-	22	Amendment to the FSMA 2000 (carrying on regulated activities by way of business) Order 2001	Amendment made to align the by-way- of business test which applies to the new regulated activities of arranging and advising on regulated mortgage contracts with that which applies to investment business (and, in particular, the activities

			of arranging deals in investments and advising on investments)
17	23	Amendment to the FSMA (Exemption) Order 2001	No change
18	24	Amendment to the FSMA (Appointed Representatives) regulations 2001	No change
19	25	Amendment to the FSMA (Professions) (Non-exempt Activities) Order 2001	No change
20	-	Amendment to the FSMA 2000 (Regulated Activities) (Amendment) Order 2001	Deleted because the commencement date for mortgage-related provisions in the FSMA 2000 (Regulated Activities) (Amendment) Order 2001 has now been changed by the FSMA (Commencement of Mortgage Regulation) (Amendment) Order 2002 (SI 2002/1777)

Financial Promotion Order

February 2002 Article	July 2002 Article	Heading	Notes
1	1	Citation and commencement	Provides that the Order comes into force on such a day as the Treasury may specify, which must be notified in the London, Edinburgh and Belfast Gazettes. This differs from the consultation draft, where article 1 specified the commencement date
-	2	Interpretation	New provision defining 'the Financial Promotion Order'. No change to the substantive effect of the Order
2	4 & 5	Exempt communications: miscellaneous amendments and Controlled activities: arranging and advising on qualifying credit	The amendments made by paragraphs (3) to (7) of article 2 of the February draft to the Financial Promotions Order are now made by articles 4 & 5 of the July version,. A minor clarificatory amendment has been made to the drafting of the new controlled activities in article 5. The effect of that amendment is that arranging or advising on a variation to a regulated mortgage contract is a controlled activity if the variation in question changes the obligations of the borrower under the contract. The amendment made by paragraph (2) of article 2 of the February draft has been deleted, since the necessary change to the commencement date for the provisions relating to qualifying credit in the Financial Promotions Order has now been made by SI 2002/1777
-	3	Exempt communications: real time communications effecting an introduction	New exemption for real time communications relating to the controlled activities or arranging, advising on or providing qualifying credit, which consist of introductions to authorised persons, appointed representatives or overseas persons. The exemption is subject to the conditions that the person making the communication does not handle client money and discloses to the client information about any corporate links he has with the person to who the introduction is made, and details of any financial gain he will make from the introduction. This exemption mirrors and is consequential upon the new exclusion for introductions to authorised persons, appointed representatives and overseas persons in article 33A of the Regulated Activities Order