

# **Secondary legislation for the regulation of Home Reversion and Home Purchase Plans: A consultation**

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March 2006



HM TREASURY





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regulation of Home Reversion  
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# INTRODUCTION

**1.1** The Regulation of Financial Services (Land Transactions) Act 2005 was introduced by the Government on 25 May 2005 and received Royal Assent on 19 December 2005. It enables activities relating to financial arrangements involving the acquisition or disposal of land (including Home Reversion Plans, Ijara home financing arrangements and other flexible tenure schemes) to fall within the scope of Financial Services Authority (FSA) regulation.<sup>1</sup>

**1.2** This consultation seeks your views on the following questions relating to the activities to be included in secondary legislation and the definition of those activities. The purpose of this consultation is to ensure the effective regulation of Home Reversion Plans and Ijara home financing arrangements by the FSA.

**Question 1:** Do you think the definition of a Home Reversion Plan is accurate and will it capture all available Home Reversion products without capturing other products with similar features?

**Question 2:** Do you agree with the definition and use of 'plan provider'?

**Question 3:** Do you agree with our approach to administering activities relating to Home Reversion Plans?

**Question 4:** Do you agree with our approach to the regulation of intermediaries?

**Question 5:** Do you think the definition of a Home Purchase Plan is accurate?

**Question 6:** Do you agree with our approach to the regulation of Home Purchase Plans (and therefore Ijara and Diminishing Musharaka home financing products)?

**Question 7:** Do you agree with our approach to activities to be excluded from the Home Reversion and Home Purchase Plan regulatory regime?

**Question 8:** Do you agree with our approach to consequential amendments relating to the Home Reversion and Home Purchase Plan regulatory regime?

**Question 9:** Do you agree with the partial regulatory impact assessment at Annex C?

If you disagree with our proposals it would be helpful if you could explain your concerns in appropriate detail.

## HOW TO RESPOND

**1.3** The consultation period will begin on 31<sup>st</sup> March 2006 and will run for 12 weeks until 23<sup>rd</sup> June 2006. Please ensure that your response reaches us by that date. Please send responses to this consultation document to:

Keith Davis  
Payments and Inclusion Team  
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1 Horse Guards Road

<sup>1</sup> In the rest of this consultation document Land Transactions Act means the Regulation of Financial Services (Land Transactions) Act 2005

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**1.4** This paper is available on the Treasury's public website at [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk).

**1.5** It would be helpful to receive your response by **23<sup>rd</sup> June**. We cannot guarantee to consider your response if it arrives after that date. Please explain in your reply if you represent an organisation, and if so, its membership and coverage. **Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes.** These are primarily, in this case, the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA). If you want the information that you provide to be treated as confidential, you should be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request to disclose the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

**1.6** HM Treasury will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

**1.7** Attached to this consultation, as Annex B, are the following draft Statutory Instruments:

- Order amending the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) to bring activities relating to Home Reversion Plans and Ijara home financing arrangements within FSA regulation ("the RAO Amending Order");
- Order making consequential amendments to the Terrorism Act 2000;
- Order making consequential amendments to Proceeds of Crime Act 2002.

It is important to note that these Orders are only drafts and subject to change following this consultation.

## PARTIAL REGULATORY IMPACT ASSESSMENT

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**1.8** A Partial Regulatory Impact Assessment (Partial RIA) is published as Annex C of this document and should be read in conjunction with it. The Partial RIA lays out implementation options for the two areas highlighted above and considers qualitative, and where possible, quantitative costs and benefits for each option.

**1.9** A copy of the Partial RIA can be found on the Treasury's website: [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk) or requested through HM Treasury's correspondence and enquiry unit. Contact details can be found at the following website address: [http://www.hm-treasury.gov.uk/contact/contact\\_index.cfm](http://www.hm-treasury.gov.uk/contact/contact_index.cfm).

## THE CONSULTATION CRITERIA

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**1.10** The consultation is being conducted in line with the Code or Practice on Consultation. The six criteria are listed below (a full version of the criteria can be found at <http://www.cabinet-office.gov.uk/regulation/Consultation/Code.htm>):

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about who may be affected, what questions are being asked, and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

**1.11** If you feel that this consultation does not fulfil these criteria please contact:

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## BACKGROUND TO THE CONSULTATION

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### WHO SHOULD READ THIS CONSULTATION PAPER?

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**2.1** This consultation is for all of those interested in the regulation of Home Reversion Plans and Ijara home financing arrangements. It will therefore be especially relevant to those who design and sell these products or act as advisers or arrangers for them. The consultation will also be of interest to the consumers of these products.

### POLICY BACKGROUND

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**2.2** The FSA currently regulates certain activities relating to first charge residential mortgages. The regime ensures that: mortgage borrowers receive clear and comparable information about the mortgages and mortgage services on offer in the market place; any mortgage advertising or marketing material is clear, fair and not misleading; when a firm advises borrowers, it must make sure that it recommends a suitable mortgage based on the borrower's needs and circumstances; and charges are not excessive. The regime also sets standards providing protection should borrowers get into arrears with their mortgages.

**2.3** A decision to subject Home Reversion Plans to regulation was made following a consultation in November 2003, *Regulating Home Reversion Plans*, and announced on 10 May 2004 by the then Financial Secretary, Ruth Kelly:

“Buying a home reversion policy is a huge financial decision involving the most important, and sometimes only significant, asset of elderly people. It can have significant implications for tax, benefits, inheritance and long-term financial planning. Regulation will help people to make informed choices, offer valuable consumer protection and ensure that there is a level playing field in the equity release market.”

**2.4** In the light of a further consultation in July 2004, *Defining Home Reversions*, it was decided that Ijara home financing arrangements and other flexible tenure schemes should also be brought within the scope of FSA regulation (and therefore included in primary legislation) along with Home Reversion Plans. However, at present, the Government only intends to specify Home Reversion Plans and Ijara home financing arrangements in secondary legislation. (See paragraphs 2.12 – 2.14).

### LEGISLATIVE BACKGROUND

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**2.5** Under the Financial Services and Markets Act 2000 (FSMA), only FSA authorised or exempt persons are allowed to carry on a regulated activity. In order for an activity to be regulated under FSMA it must be carried on by way of business and be specified in an Order made under section 22 of FSMA. Schedule 2 to FSMA sets out, in broad terms, a non-exhaustive list of the sorts of activities and investments that may be specified in such an Order.

**2.6** Before the enactment of the Land Transactions Act, Schedule 2 covered contractual rights in respect of loans secured on land, but did not cover such rights in respect of other types of finance provided in connection with land transactions. The Land Transactions Act amended Schedule 2 to add rights in respect of financial arrangements in connection with the acquisition or disposal of land.

**2.7** The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) is the Order made under section 22 of FSMA (as read with Schedule 2 to FSMA), which sets out the specified activities that are subject to FSA regulation.

**2.8** This consultation covers the changes to be made to the RAO following on from the Land Transactions Act 2005. These measures apply to the whole of the UK. The necessary steps to bring these arrangements into FSA regulation are as follows:

- The Government will bring forward secondary legislation to bring activities relating to Home Reversion Plans and Ijara home financing arrangements into FSA regulation, taking into account responses to this consultation.
- The FSA will draw up, consult on and then publish rules regarding activities relating to Home Reversion Plans and Ijara home financing arrangements.
- Firms will need to apply for permission from the FSA to conduct activities relating to Home Reversion Plans and Ijara home financing arrangements.

### **WHAT IS A HOME REVERSION PLAN?**

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**2.9** A range of Home Reversion Plans are currently available. Under a typical Home Reversion Plan, a homeowner sells part (partial reversion) or all (full reversion) of their home at a discounted price in return for a lump sum (or payments over a period of time) and the right to remain in the house until they die or move into residential care. The amount paid to the homeowner depends on a number of factors including the age of the owner, an actuarial assessment of life expectancy, and the value of the property. The plan provider is entitled to sell the property after the former owner dies or moves into care.

### **WHAT IS AN IJARA HOME FINANCING ARRANGEMENT?**

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**2.10** Whilst there are also different variations of this scheme available, under a typical Ijara home financing arrangement, the provider buys the property and acquires legal title. The customer enters into a lease agreement with the provider and also into an agreement to purchase the property at the end of an agreed term. The customer then makes regular monthly payments over this period. These payments are made up of purchase payments (the total sum eventually equalling the initial purchase price) and rental payments. Legal title transfers to the customer at the end of the term.

**2.11** One significant subset of the Ijara form is Diminishing Musharaka products. Under a typical scheme, the provider buys the property with the customer, who must contribute at least 10% to the purchase price. The provider has legal title and holds the property on trust for himself and the customer in the proportions contributed to the purchase price. The customer then purchases additional 'units' from the provider each month, gradually increasing the customer's beneficial share in the property. The customer also enters into a lease agreement and pays a monthly rental on the share of the property beneficially owned by the provider. The rent is typically reassessed every six months. Legal title is transferred to the customer after all payments have been made.

## WHAT ARE FLEXIBLE TENURE SCHEMES?

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**2.12** Following consultation in July 2004 a decision was made to bring flexible tenure schemes within the scope of FSA regulation. In this context flexible tenure refers to arrangements that allow homeowners to increase or decrease equity ownership in a property by buying or selling shares in ownership from or to a finance provider (for example a local authority).

**2.13** Many products fall within the definition given above. These can be divided into the following categories, according to their regulatory treatment:

- shared ownership schemes, home improvement loans and mortgage to rent schemes, which are mostly provided by local authorities and registered social landlords, who are exempt from FSA regulation.
- flexible mortgages and lifetime mortgages, which are provided by commercial providers and regulated by the FSA because a first legal charge is taken on the property as security.<sup>1</sup>
- Home Reversion Plans and Ijara home financing arrangements, which are provided by commercial providers and not subject to FSA regulation.

**2.14** Although Schedule 2 to FSMA now provides for the possible regulation of Home Reversion Plans, Ijara home financing arrangements and other flexible tenure schemes, the Government only intends to extend FSA regulation to Home Reversion Plans and Ijara home financing arrangements at this stage.

## REGISTERED SOCIAL LANDLORDS AND LOCAL AUTHORITIES

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**2.15** Mortgage business carried on by registered social landlords or local authorities is exempt from FSA regulation. The Government intends to exclude the activities of registered social landlords and local authorities from the proposed regulation of Home Reversion Plans and Ijara home financing arrangements in order to remain consistent with the current approach on regulated mortgages.

**2.16** The Housing Corporation regulates the activities of registered social landlords and is funded by, and accountable to, the Office of the Deputy Prime Minister (ODPM). Local authorities are statutory bodies and have a duty to act reasonably and fairly. ODPM is responsible for national policy on local authorities.

**2.17** Since the introduction of statutory mortgage regulation by the FSA in October 2004, ODPM has consulted on and issued 'Mortgage Sales Guidance' for registered social landlords and local authorities. The guidance introduced lending requirements for registered social landlords and local authorities where the lending is secured by a first legal charge on property. The requirements closely reflect the rules that the FSA have put in place for commercial lenders and intermediaries, in particular:

- Good practice standards for all communications with customers
- Responsible lending requirements
- Pre-application information

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<sup>1</sup> Lifetime Mortgages are a form of equity release whereby the homeowner withdraws capital using a mortgage secured by a first legal charge. The loan, with interest, is repaid when the property is sold, either on the borrower's death or when the borrower moves home. Lifetime mortgages fall within the current regulatory regime applicable to mortgages.

- Information at mortgage offer stage and during the lifetime of the mortgage
- Additional consumer protection requirements for equity mortgages
- The fair treatment of customers in financial difficulties

**2.18** This guidance also makes provision for complaints that arise from the sale of mortgage products and cannot be settled by registered social landlords to be heard by the Housing Ombudsman Service and for complaints that cannot be settled by local authorities to be heard by the Local Government Ombudsman.

**2.19** ODPM is exploring ways in which social tenants can use more innovative financing arrangements, such as Sharia-compliant home financing products. It is aiming (with other Departments) to ensure that social tenants who buy their homes from registered social landlords or local authorities using such products receive consumer protection equivalent to that afforded under FSA regulation.

# 3

## ISSUES FOR CONSIDERATION

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### THE GOVERNMENT'S APPROACH

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**3.1** For the purpose of secondary legislation, the Government seeks to establish a regulatory regime for Home Reversion Plans and Ijara home financing arrangements similar to that already in place for Regulated Mortgage Contracts (RMCs). This will ensure a level regulatory playing field within the equity release market and within the Sharia compliant home financing market.<sup>1</sup>

**3.2** Activities that are regulated under the current RMC regime include:

- Entering into a RMC as a lender
- Administering a RMC (which includes notifying the borrower of changes in interest rates and/or payments and taking steps to collect or recover payments due under the arrangement)
- Making arrangements for a borrower or a potential borrower to enter into or vary the terms of a RMC
- Giving advice to a borrower or a potential borrower on entering into or varying the terms of a RMC

**3.3** This consultation will therefore focus on the definitions of the different financing arrangements and on activities where deviations from the RMC model are proposed.

**3.4** It is important to note that the eventual FSA rules for Home Reversion Plans and Ijara home financing arrangements need to be appropriate and proportionate to the nature of and risks inherent to these products, as well as the size of the markets. Therefore the FSA rules may differ from the rules in place for RMCs.

### HOME REVERSION PLANS

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#### Definition

**3.5** A Home Reversion Plan is defined as:

a “regulated home reversion plan” 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 “plan provider”) buys all or part of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the “reversion seller”);
- (ii) the reversion seller (if he is an individual) or an individual who is a beneficiary of the trust (if the reversion 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; and

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<sup>1</sup> RMC means a Regulated Mortgage Contract as defined in the RAO as a credit agreement, the repayment of which is secured by a first legal charge on the property in the UK, at least 40% of which is used or is intended to be used as a dwelling by the borrower or a related person. RMC captures Lifetime Mortgages

(iii) the arrangement specifies one or more qualifying termination events, on the occurrence of which that entitlement will end.”<sup>2</sup>

**3.6** The definition refers to “an arrangement comprised in one or more instruments or agreements” since Home Reversion Plans may be comprised of several instruments and may encompass contractual or trust arrangements. It provides that an arrangement is a regulated Home Reversion Plan if the requirements in (i) to (iii) are met at the time the arrangement is entered into. This follows the approach taken for regulated mortgage contracts and means that if, after being entered into, the arrangement is amended and (i) to (iii) are no longer met, it will still be considered a regulated Home Reversion Plan. This enables greater certainty as it means that judgements are not required about whether possible variations might have led or will lead to a change in the regulatory position.

**3.7** Under paragraph (i) of the definition, the plan provider must buy all or part of a qualifying interest in land from the reversion seller. This is because the intention is to capture both full reversions and partial reversions (see paragraph 2.10). We have referred to “all or part of a qualifying interest in land” rather than “a qualifying interest or an undivided share of a qualifying interest in land” (which is used in the definition of regulated Home Purchase Plan) because, in a partial reversion, the qualifying interest in land may be held in trust by the reversion seller and plan provider as tenants in common or as joint tenants. Paragraph (ii) of the definition means that the occupier is entitled (and intends) to use at least 40% of the land as their home, for the specified period.

**3.8** This is in contrast with the RMC definition which refers to land being used or intended to be used for this purpose. The reason for the difference is that in an RMC the borrower owns all the land and therefore is automatically entitled to occupy it whereas in a Home Reversion Plan the reversion seller no longer owns all the land, but the occupier is still entitled to occupy it notwithstanding this.

**3.9** Under paragraph (iii) of the definition, the Home Reversion Plan must specify at least one “qualifying terminating event”, upon which the entitlement to occupy the land will end. The “qualifying termination events” are defined as (a) the occupier becomes a resident of a care home (b) the occupier dies or (c) the end of a specified period of at least twenty years<sup>3</sup>. We have provided specific termination events in order to avoid capturing mortgage to rent products or other flexible tenure products which confer an entitlement to reside in the property following sale, as it is not the Government’s intention to regulate these products at this stage. In particular, we have provided for the time period in (c) to be a minimum of twenty years because a time period of at least this length is one of the factors distinguishing the home reversion products currently available from mortgage to rent products or other flexible tenure products. The Government intends to keep this figure under review.

**3.10** We are not aware of any hybrid products, that is to say products that share the features of Home Reversion Plans and RMCs. Accordingly we have not made special provision for them in the RAO Amending Order.

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<sup>2</sup> Article 63B (3)(a) of the RAO, as inserted by article 19 of the RAO Amending Order”

<sup>3</sup> Article 63B (4)(e) of the RAO, as inserted by article 18 of the RAO Amending Order

**Question 1:** Do you think the definition of a Home Reversion Plan is accurate and will it capture all available Home Reversion products without capturing other products with similar features?

## Activities to be regulated

**Entering into as plan provider** **3.11** Entering into a Home Reversion Plan as a plan provider will be a regulated activity.<sup>4</sup>

**3.12** In defining the activities to be regulated in respect of Home Reversion Plans, the Government proposes a different approach from the arrangements in place for RMCs as follows:

- Defining ‘plan provider’
- Administering Home Reversion Plans
- Arranging and advising on Home Reversion Plans

**Defining ‘plan provider’** **3.13** It is possible for plan providers to transfer all or part of their rights or obligations under a Home Reversion Plan or the interest in land acquired under a Home Reversion Plan, to a third party (who may not contract directly with the reversion seller). In order for the third party to be regulated the third party ‘plan provider’ will be defined as both the original plan provider and a person to whom the rights or obligations under a Home Reversion Plan or the interest in land of the original plan provider are transferred<sup>5</sup>. The RAO Amending Order makes use of this definition of ‘plan provider’ throughout, and, in particular, in relation to regulated activities, exclusions relating to Home Reversion Plans and consequential amendments.<sup>6</sup>

**Question 2:** Do you agree with the definition and use of ‘plan provider’?

**Administering** **3.14** Administering a Home Reversion Plan will also be a regulated activity. However, due to the particular characteristics of Home Reversion Plans the way this is defined will be different from the RMC definition.

**3.15** If Home Reversion Plans are structured to provide the consumer with an income stream, its administration will include payments from the plan provider to the reversion seller, and not the other way around as is the case with RMCs.

**3.16** The definition of administering Home Reversion Plans includes making payments to the reversion seller and notifying them of changes in payments due or other matters required under the arrangement.<sup>7</sup> We have not made provision for rights relating to enforcement action because it is not relevant to the administering activities conducted for home reversion plans.

**3.17** Administering an RMC is a regulated activity where the RMC is entered into by way of business after the coming into force date. However, administering a Home Reversion Plan is a regulated activity where the plan was entered into after the coming

<sup>4</sup> Article 63B (1) of the RAO, as inserted by article 18 of the RAO Amending Order

<sup>5</sup> Article 63B (6) and (7) of the RAO, as inserted by article 18 of the RAO Amending Order

<sup>6</sup> Article 63B (3)(b) of the RAO, as inserted by article 18 of the RAO Amending Order

<sup>7</sup> Article 63B (2) and (3)(c) of the RAO, as inserted by article 19 of the RAO Amending Order

into force date regardless of whether the plan was entered into by way of business or not.

**Question 3:** Do you agree with our approach to administering activities relating to Home Reversion Plans?

### Arranging and advising

**3.18** As with RMCs, arranging Home Reversion Plans, arranging to vary the terms of Home Reversion Plans and advising on entry into or variation of Home Reversion Plans will be regulated activities. The RMC regime only regulates making arrangements for and giving advice to borrowers. However, the Government also intends to make a provision for the regulation of making arrangements for and giving advice to plan providers, in addition to reversion sellers.<sup>8</sup>

**3.19** The rationale behind this provision is to capture in regulation the activities of persons acting as intermediaries on behalf of both home owners considering a reversion (as reversion seller) and also persons (such as individuals or small companies) considering investing in a reversion by becoming a plan provider, where the actual reversion agreement will be between the homeowner and the investor/provider. It will allow the FSA to draw up rules for intermediaries that will protect the homeowner as well as the investor/provider. It is not the Government's intention to regulate, under this instrument, the activities of investors in reversion companies where the reversion agreement is between the reversion company and the homeowner.

**Question 4:** Do you agree with our approach to the regulation of intermediaries?

## HOME PURCHASE PLANS

### Definition

**3.20** The definition of Home Purchase Plans is intended to capture Ijara and Diminishing Musharaka home financing products. It is not intended to capture Murabaha products as these already fall within the definition of "regulated mortgage contract". Home Purchase Plans are defined as:

"a "regulated home purchase plan" 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 "home purchase provider") buys a qualifying interest or an undivided share of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom;
- (ii) where an undivided share of a qualifying interest in land is bought, the interest is held on trust for the home purchase provider and the individual or trustees mentioned in paragraph (iii) as beneficial tenants in common;
- (iii) the arrangement provides for the obligation of an individual or trustees (the "home purchaser") to buy the interest bought by the home purchase provider during the course of or at the end of a specified period; and

<sup>8</sup> Article 25B and 53B of the RAO, as inserted by article 4 and 13 of the RAO Amending Order

(iv) the home purchaser (if he is an individual) or an individual who is a beneficiary of the trust (if the home purchaser 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 during that period and intends to do so;<sup>9</sup>

**3.21** The definition refers to “an arrangement comprised in one or more instruments or agreements” since, like Home Reversion Plans, Home Purchase Plans may be comprised of several instruments and may encompass contractual or trust arrangements. As with the definition of regulated Home Reversion Plan, this provides that an arrangement is a regulated Home Purchase Plan if the requirements in (i) to (iv) are met at the time the arrangement is entered into. Again, this follows the approach taken for regulated mortgage contracts and is done for the reasons given paragraph 3.6.

**3.22** Under paragraph (i) of the definition, the home purchase provider buys a qualifying interest in land or an undivided share of a qualifying interest in land. Under paragraph (ii), where the interest bought is an undivided share, the qualifying interest must be held on trust for the home purchase provider and the home purchaser. This is intended to cover diminishing Musharaka products (which are described in paragraph 2.12) and is consistent with the definition in section 71A of the Finance Act 2003. Under paragraph (iii) of the definition, the arrangement provides for the obligation of the home purchaser to buy the qualifying interest in land during the course of or at the end of a specified period. This is intended to cover products where the purchase price is payable in instalments over the product term and products where the purchase price is payable at the end of the product term. Under paragraph (iv) of the definition, the home purchaser, beneficiary of the trust or related person is entitled to occupy at least 40% of the land ((ie the land in which all or an undivided share of a qualifying interest is being bought)) as or in connection with a dwelling for the specified period and intends to do so. This is consistent with the dwelling criteria for regulated Home Reversion Plans (see paragraph 3.6) and is intended to cover occupancy of the property pursuant to a lease or otherwise. Although the definition is aimed at capturing Ijara and diminishing Musharaka products, we have not made reference in the definition to these products or Islamic finance more generally as we wish to capture all products with these features.

**3.23** Hybrid products that share features of Home Purchase Plans and RMCs will be treated as Home Purchase Plans.<sup>10</sup>

**3.24** Certain transactions undertaken as part of Islamic home financing arrangements are exempt from Stamp duty land tax. That tax exemption is intended to cover Murabaha, diminishing Musharaka and Ijara products (see sections 71A to 73 of the Finance Act 2003). It uses a different approach to defining the arrangements concerned – in particular, our definition refers to an obligation of the home purchaser to buy the land whereas the tax definition refers to a right to require the finance institution to sell the land. We do not anticipate that difficulties should arise from this difference of approach.

**Question 5:** Do you think the definition of a Home Purchase Plan is accurate?

<sup>9</sup> Article 63F (3)(a) of the RAO, as inserted by article 19 of the RAO Amending Order

<sup>10</sup> Amendment to article 61 of the RAO, made by article 17 of the RAO Amending Order

## Activities to be regulated

### Entering into, Administering, Arranging and Advising

**3.25** The activities to be regulated in respect of Home Purchase Plans are the same as for RMCs. Entering into<sup>11</sup>, administering<sup>12</sup>, arranging<sup>13</sup> and advising on<sup>14</sup> Home Purchase Plans are all regulated activities with the same scope that currently applies under the RMC regime.

**3.26** As with Home Reversion Plans, administering a Home Purchase Plan is a regulated activity where the plan was entered into after the coming into force date though, like regulated mortgage contracts, there is a requirement for the plan to have been entered into by way of business.

**Question 6:** Do you agree with our approach to the regulation of Home Purchase Plans (and therefore Ijara and Diminishing Musharaka home financing products)?

## EXCLUSIONS

**3.27** For the purpose of secondary legislation the Government intends to mirror the exclusion of activities that apply to the RMC regime in order to ensure a level regulatory playing field between the new regime for Home Reversion and Home Purchase Plans and the existing regime for RMCs.

**Question 7:** Do you agree with our approach to activities to be excluded from the Home Reversion and Home Purchase Plan regulatory regime?

## CONSEQUENTIAL AMENDMENTS

**3.28** For the purpose of secondary legislation and in order to ensure, as far as necessary, a level regulatory playing field between the new regime for Home Reversion and Home Purchase Plans and the existing regime for RMCs, the Government intends to make consequential amendments equivalent to those made when implementing the RMC regime.

**3.29** The primary legislation that will be amended consists of the Consumer Credit Act 1974, the Law of Property (Miscellaneous Provisions) Act 1989, the Financial Services and Markets Act 2000<sup>15</sup>, the Terrorism Act 2000 and the Proceeds of Crime Act 2002. The Terrorism Act 2000 and the Proceeds of Crime Act 2002 will be amended under separate Orders using powers under those Acts. The Consumer Credit Act 1974 amendment applies only to Home Purchase Plans.

**3.30** The scope orders made under FSMA that will be amended consist of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities By Way of Business) Order 2000, the Financial Services and Markets Act 2000 (Exemption) Order 2001, the Financial Services and Markets Act 2000 (Appointed Representatives)

<sup>11</sup> Article 63F (1) of the RAO, as inserted by article 18 of the RAO Amending Order

<sup>12</sup> Article 63F (2) and of the RAO, as inserted by article 18 of the RAO Amending Order

<sup>13</sup> Article 25C of the RAO, as inserted by article 4 of the RAO Amending Order

<sup>14</sup> Article 53C of the RAO, as inserted by article 13 of the RAO Amending Order

<sup>15</sup> Articles 24 – 26 of the RAO Amending Order

Regulations 2001, the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 and the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.<sup>16</sup>

**3.31** Other secondary legislation that will be amended consists of the Money Laundering Regulations 2003 and the Consumer Credit (Advertisements) Regulations 2004 (where our amendment applies only to Home Purchase Plans for the reason given in paragraph 3.27).<sup>17</sup>

**Question 8:** Do you agree with our approach to consequential amendments relating to the Home Reversion and Home Purchase Plan regulatory regime?

## OTHER CHANGES (“OVERSEAS PERSONS”)

**3.32** We have also amended article 72 of the RAO to replace references to a “non-resident individual” with references to a person who is non-resident. This amendment applies to regulated mortgage contracts in addition to Home Reversion Plans and Home Purchase Plans and applies to individuals and trustees in the case of regulated mortgage contracts and Home Purchase Plans and individuals, trustees and other persons in the case of Home Reversion Plans.

## REGULATORY IMPACT ASSESSMENT

**3.33** A partial Regulatory Impact Assessment is included at Annex C. This examines the impact of the three draft Orders. The Government welcomes comments on this and particularly any views on the estimated costs of regulation to industry.

**Question 9:** Do you agree with the partial regulatory impact assessment at Annex C?

## INTERIM AUTHORISATION

**3.34** When first charge residential mortgage regulation was introduced in 2004, the Government made transitional arrangements for firms coming into FSA regulation. It is the Government’s intention to bring forward separate secondary legislation that will introduce transitional arrangements for firms engaging in regulated activities relating to Home Reversion and Home Purchase Plans.

**3.35** The effect will be to confer interim authorised status on firms which have applications for authorisation or variation of permission, or appeals to the Financial Markets Tribunal against FSA decisions that are undecided on the date regulation comes into force.

**3.36** Interim authorised status will only be available to firms conducting business legally before the date on which the FSA opens its doors for applications. In the case of intermediaries, these arrangements will apply for a specified period of 12 months after the commencement date.

<sup>16</sup> Articles 27 – 30 and 33 of the RAO Amending Order

<sup>17</sup> Article 31 – 32 of the RAO Amending Order

**3.37** Firms with interim authorised status will be subject to FSMA and FSA rules and to the FSA's supervisory jurisdiction, including the application of the approved persons regime and the associated sanctions and penalties that the FSA can apply. As with mortgage regulation, the Government will allow the FSA to decide the extent to which the Financial Services Compensation Scheme (FSCS) will cover claims made in connection with regulated activities carried on by firms with interim authorised status.

**3.38** The exact detail of these arrangements will be for the FSA to determine.

### **OTHER COMMENTS**

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**3.39** In addition to the specific questions above, the Government would welcome any other comments relating to the activities to be included in secondary legislation and the regulation of those activities, in order to ensure that regulation is as efficient and effective as possible, that a level regulatory playing field exists for products under different regimes, that regulation is proportionate and that consumers benefit from an appropriate level of protection.

# A

## LIST OF QUESTIONS

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**Question 1:** Do you think the definition of a Home Reversion Plan is accurate and will it capture all available Home Reversion products without capturing other products with similar features?

**Question 2:** Do you agree with the definition and use of 'plan provider'?

**Question 3:** Do you agree with our approach to administering activities relating to Home Reversion Plans?

**Question 4:** Do you agree with our approach to the regulation of intermediaries?

**Question 5:** Do you think the definition of a Home Purchase Plan is accurate?

**Question 6:** Do you agree with our approach to the regulation of Home Purchase Plans (and therefore Ijara and Diminishing Musharaka home financing products)?

**Question 7:** Do you agree with our approach to activities to be excluded from the Home Reversion and Home Purchase Plan regulatory regime?

**Question 8:** Do you agree with our approach to consequential amendments relating to the Home Reversion and Home Purchase Plan regulatory regime?

**Question 9:** Do you agree with the partial regulatory impact assessment at Annex C?

If you disagree with our proposals it would be helpful if you could explain your concerns in appropriate detail.



# B

## STATUTORY INSTRUMENTS

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Three draft statutory instruments are included in this consultation.

The first draft Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and makes consequential amendments to primary legislation and other secondary legislation.

The second draft Order makes consequential amendments to the Terrorism Act 2000.

The third draft Order makes consequential amendments to the Proceeds of Crime Act 2002.

*An order made by the Treasury and laid before Parliament under paragraph 26 of Schedule 2 to the Financial Services and Markets Act 2000 (c. 8) for approval by a resolution of each House of Parliament within a period of twenty-eight days beginning with the day on which the Order is made, subject to extension for periods of dissolution, prorogation or adjournment of both Houses for more than four days.*

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S T A T U T O R Y   I N S T R U M E N T S

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**2006 No. xxx**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000 (Regulated Activities)  
(Amendment) (No. [xxx]) Order 2006**

<i>Made</i> - - - -	xxx
<i>Laid before Parliament</i>	xxx
<i>Coming into force</i> - -	xxx

In the opinion of the Treasury, one of the effects of the following Order is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000<sup>(1)</sup>) will become a regulated activity;

The Treasury, in exercise of the powers conferred upon them by sections 22(1) and (5), 426 and 428(3) of, and paragraph 25 of Schedule 2 to, that Act, make the following Order:

**PART 1**

General

**Citation and commencement**

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. [xxx]) Order 2006.

(2) This Order comes into force on [xxx].

**PART 2**

Amendments to the Regulated Activities Order

2. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(2)</sup> is amended as follows.

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<sup>(1)</sup> 2000 c.8. A relevant amendment was made by the Regulation of Financial Services (Land Transactions) Act 2005 c.24 which inserts paragraph 23A of Schedule 2 to the 2000 Act.

<sup>(2)</sup> S.I. 2001/544; amended by S.I. 2003/1475; there are other amending instruments but none is relevant.

## Definitions

3.—(1) In article 3(1)—

- (a) after the definition of “funeral plan contract” insert—
  - “ “home purchase provider” has the meaning given by article 63F(3);
  - “home purchaser” has the meaning given by article 63F(3); ”;
- (b) in paragraph (a) of the definition of “overseas person”—
  - (i) after “25A,” insert “ 25B, 25C, ”; and
  - (ii) for “and 61” substitute “, 53B, 53C, 61, 63B and 63F”;
- (c) after the definition of “pension fund management contract” insert—
  - “ “plan provider” has the meaning given by paragraph (3) of article 63B, read with paragraphs (6) and (7) of that article;”;
- (d) after the definition of “qualifying contract of insurance” insert—
  - “ “regulated home purchase plan” has the meaning given by article 63F(3);
  - “regulated home reversion plan” has the meaning given by article 63B(3);”;
- (e) after the definition of “relevant investment” insert—
  - “ “reversion seller” has the meaning given by article 63B(3);”.

(2) In article 3(2) after “article 25(1)” insert “, 25A(1), 25B(1) or 25C(1)”.

## Arranging regulated home reversion plans and regulated home purchase plans

4. After article 25A (arranging regulated mortgage contracts) insert—

### “Arranging regulated home reversion plans

**25B.**—(1) Making arrangements—

- (a) for another person to enter into a regulated home reversion plan as reversion seller or as plan provider; or
- (b) for another person to vary the terms of a regulated home reversion plan entered into by him as reversion seller or as plan provider after the coming into force of article 63B, in such a way as to vary his obligations under that plan,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements entering into a regulated home reversion plan as reversion seller or as plan provider is also a specified kind of activity.

### Arranging regulated home purchase plans

**25C.**—(1) Making arrangements—

- (a) for another person to enter into a regulated home purchase plan as home purchaser; or
- (b) for another person to vary the terms of a regulated home purchase plan entered into by him as home purchaser after the coming into force of article 63F, in such a way as to vary his obligations under that plan,

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements entering into a regulated home purchase plan as home purchaser is also a specified kind of activity.”.

## Exclusion of arrangements not causing a deal

5. In article 26 (arrangements not causing a deal), for “article 25(1) and article 25A(1)” substitute “articles 25(1), 25A(1), 25B(1) and 25C(1)”.

**Exclusion where a person provides a means of communication between parties**

6. In article 27 (enabling parties to communicate) for “article 25(2) and article 25A(2)” substitute “article 25(2), 25A(2), 25B(2) or 25C(2)”.

**Exclusion where the arranger is a party to the contract**

7. In article 28A (arranging contracts to which the arranger is a party)—

- (a) in paragraph (1)—
  - (i) for “article 25A(1)” substitute “articles 25A(1), 25B(1) and 25C(1)”;
  - (ii) for “contract”, in both places it occurs, substitute “contract or plan”;
- (b) in paragraph (2)—
  - (i) for “article 25A(2)” substitute “articles 25A(2), 25B(2) and 25C(2)”;
  - (ii) after “contracts” insert “or plans”.

**Exclusion of arrangements where transaction is with or through an authorised person**

8. In article 29 (arranging deals with or through authorised persons) in paragraph (1)—

- (a) for “article 25(1) and (2) and article 25A(1) and (2)” substitute “articles 25(1) and (2), 25A(1) and (2), 25B(1) and (2) and 25C(1) and (2)”;
- (b) in sub-paragraph (b) for “investor or (as the case may be) a borrower under a regulated mortgage contract” substitute “investor, borrower, reversion seller, plan provider or (as the case may be) home purchaser”.

**Exclusion made in the course of administration by an authorised person**

9. In article 29A (arrangements made in the course of administration by authorised person)—

- (a) the current text is numbered paragraph (1);
- (b) after paragraph (1) insert—

“(2) A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 25B(1)(b) as a result of—

  - (a) anything done by an authorised person (“B”) in relation to a regulated home reversion plan which B is administering pursuant to an arrangement of the kind mentioned in article 63C(a); or
  - (b) anything A does in connection with the administration of a regulated home reversion plan in circumstances falling within article 63C(b).

(3) A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 25C(1)(b) as a result of—

  - (a) anything done by an authorised person (“B”) in relation to a regulated home purchase plan which B is administering pursuant to an arrangement of the kind mentioned in article 63G(a); or
  - (b) anything A does in connection with the administration of a regulated home purchase plan in circumstances falling within article 63G(b).”.

**Exclusion of arrangements which consist of introduction to an authorised person etc. for independent advice**

10. In article 33 (introducing)—

- (a) for “article 25(2) and article 25A(2)” substitute “articles 25(2), 25A(2), 25B(2) and 25C(2)”;
- (b) in paragraph (b)(iii)—
  - (i) after “25A, ” insert “25B, 25C, ”;
  - (ii) for “and 53A” substitute “, 53A, 53B and 53C”.

**Exclusion of certain other arrangements consisting of an introduction to an authorised person etc.**

**11.** In article 33A (introducing to authorised persons etc.)—

(a) after paragraph (1) insert—

“(1A) There are excluded from article 25B(2) arrangements where—

- (a) they are arrangements under which a client is introduced to a person (“N”) who is—
  - (i) an authorised person who has permission to carry on a regulated activity of the kind specified by any of articles 25B, 53B and 63B(1),
  - (ii) an appointed representative who may carry on a regulated activity of the kind specified by either of articles 25B and 53B without contravening the general prohibition, or
  - (iii) an overseas person who carries on activities specified by any of articles 25B, 53B and 63B(1); and
- (b) the conditions mentioned in paragraph (2) are satisfied.

(1B) There are excluded from article 25C(2) arrangements where—

- (a) they are arrangements under which a client is introduced to a person (“N”) who is—
  - (i) an authorised person who has permission to carry on a regulated activity of the kind specified by any of articles 25C, 53C and 63F(1),
  - (ii) an appointed representative who may carry on a regulated activity of the kind specified by either of articles 25C and 53C without contravening the general prohibition, or
  - (iii) an overseas person who carries on activities specified by any of articles 25C, 53C and 63F(1); and
- (b) the conditions mentioned in paragraph (2) are satisfied.”;

(b) for paragraph (4) substitute—

“(4) In this article, “client” means—

- (a) for the purposes of paragraph (1), a borrower within the meaning given by article 61(3)(a)(i), or a person who is or may be contemplating entering into a regulated mortgage contract as such a borrower (as the case may be);
- (b) for the purposes of paragraph (1A), a reversion seller, a plan provider or a person who is or may be contemplating entering into a regulated home reversion plan as a reversion seller or as a plan provider (as the case may be);
- (c) for the purposes of paragraph (1B), a home purchaser or a person who is or may be contemplating entering into a regulated home purchase plan as a home purchaser (as the case may be).”.

**Other exclusions—arranging**

**12.** In article 36 (other exclusions) in paragraph (2) for “Article 25A is” substitute “Articles 25A, 25B and 25C are”.

**Advising on regulated home reversion plans and regulated home purchase plans**

**13.** After article 53A (advising on regulated mortgage contracts) insert—

**“Advising on regulated home reversion plans**

**53B.** Advising a person is a specified kind of activity if the advice—

- (a) is given to the person in his capacity as—
  - (i) a reversion seller or potential reversion seller, or
  - (ii) a plan provider or potential plan provider; and
- (b) is advice on the merits of his doing any of the following—
  - (i) entering into a particular regulated home reversion plan, or

- (ii) varying the terms of a regulated home reversion plan entered into by him after the coming into force of article 63B in such a way as to vary his obligations under that plan.

#### **Advising on regulated home purchase plans**

**53C.** Advising a person is a specified kind of activity if the advice—

- (a) is given to the person in his capacity as a home purchaser or potential home purchaser; and
- (b) is advice on the merits of his doing any of the following—
  - (i) entering into a particular regulated home purchase plan, or
  - (ii) varying the terms of a regulated home purchase plan entered into by him after the coming into force of article 63F in such a way as to vary his obligations under that plan.”.

#### **Exclusion of advice given in newspapers etc.**

**14.** In article 54 (advice given in newspapers etc.)—

- (a) in paragraph (1)—
  - (i) for “article 53 and article 53A” substitute “articles 53, 53A, 53B and 53C”;
  - (ii) in sub-paragraph (a) for “or (as the case may be) article 53A” substitute “, 53A, 53B or 53C, as the case may be,”;
  - (iii) after sub-paragraph (b)(ii) insert—
    - “(iii) to enter as reversion seller or plan provider into regulated home reversion plans, or vary the terms of regulated home reversion plans entered into by them as reversion seller or plan provider,
    - (iv) to enter as home purchaser into regulated home purchase plans, or vary the terms of regulated home purchase plans entered into by them as home purchaser”;
- (b) in paragraph (2) for “article 53 and article 53A” substitute “articles 53, 53A, 53B and 53C”.

#### **Exclusion of advice given in the course of administration by authorised person**

**15.** In article 54A (advice given in the course of administration by authorised person)—

- (a) the current text is numbered paragraph (1);
- (b) after paragraph (1) insert—
  - “(2) A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 53B by reason of—
    - (a) anything done by an authorised person (“B”) in relation to a regulated home reversion plan which B is administering pursuant to arrangements of the kind mentioned in article 63C(a); or
    - (b) anything A does in connection with the administration of a regulated home reversion plan in circumstances falling within article 63C(b).
  - (3) A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 53C by reason of—
    - (a) anything done by an authorised person (“B”) in relation to a regulated home purchase plan which B is administering pursuant to arrangements of the kind mentioned in article 63G(a); or
    - (b) anything A does in connection with the administration of a regulated home purchase plan in circumstances falling within article 63G(b).”.

#### **Other exclusions—advising**

**16.** In article 55 (other exclusions) in paragraph (2) for “Article 53A is” substitute “Articles 53A, 53B and 53C are”.

**Regulated mortgage contracts**

17. In article 61 (regulated mortgage contracts) in paragraph (3)(a) after paragraph (iii) insert—  
 “but such a contract is not a regulated mortgage contract if it is a regulated home purchase plan;”.

**Entering into and administering regulated home reversion plans and regulated home purchase plans**

18. After article 63A (other exclusions) insert—

## “CHAPTER XVA

**REGULATED HOME REVERSION PLANS***The activities***Regulated home reversion plans**

**63B.**—(1) Entering into a regulated home reversion plan as plan provider is a specified kind of activity.

(2) Administering a regulated home reversion plan is also a specified kind of activity where the plan was entered into after the coming into force of this article.

(3) In this Chapter—

- (a) a “regulated home reversion plan” 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 “plan provider”) buys all or part of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the “reversion seller”);
  - (ii) the reversion seller (if he is an individual) or an individual who is a beneficiary of the trust (if the reversion 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; and
  - (iii) the arrangement specifies one or more qualifying termination events, on the occurrence of which that entitlement will end;
- (b) “administering” a regulated home reversion plan means either or both of—
- (i) notifying the reversion seller of changes in payments due under the plan, or of other matters of which the plan requires him to be notified; and
  - (ii) taking any necessary steps for the purposes of making payments to the reversion seller under the plan.

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

- (a) reference to a “qualifying interest” in land—
- (i) in relation to land in England or 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;
- (b) “timeshare accommodation” has the meaning given by section 1 of the Timeshare Act 1992<sup>(3)</sup>;
- (c) “related person” in relation to the reversion seller or, where the reversion 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 characteristics of the relationship between husband and wife; or

<sup>(3)</sup> 1992 c. 35.

- (iii) that person’s parent, brother, sister, child, grandparent or grandchild;
  - (d) “qualifying termination event”, in relation to a person’s entitlement to occupy land, means—
    - (i) the person becomes a resident of a care home;
    - (ii) the person dies;
    - (iii) the end of a specified period of at least twenty years beginning with the day on which the reversion seller entered into the arrangement; and
  - (e) 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.
- (5) For the purposes of the definition of “qualifying termination event” in paragraph (4), “care home”—
- (i) in relation to England and Wales, has the meaning given by section 3 of the Care Standards Act 2000<sup>(4)</sup>;
  - (ii) in relation to Scotland, means accommodation provided by a “care home service” within the meaning of section 2(3) of the Regulation of Care (Scotland) Act 2001<sup>(5)</sup>;
  - (iii) in relation to Northern Ireland, means—
    - (aa) a residential care home within the meaning of article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003<sup>(6)</sup>; or
    - (bb) a nursing home within the meaning of article 11 of that Order.
- (6) In this Order—
- (a) references to entering into a regulated home reversion plan as plan provider include acquiring any rights or obligations of the plan provider under such a plan or acquiring, during the currency of the plan, all or part of the interest in land bought by the plan provider under it; but
  - (b) in relation to a person who acquires any such rights, obligations or interest, an activity is a specified kind of activity for the purposes of articles 25B(1)(b) and 53B(b)(ii) and paragraph (2) if the plan was entered into by the plan provider (rather than the rights, obligations or interest acquired) after the coming into force of the relevant article.
- (7) Accordingly, references in this Order to a plan provider, other than in paragraph (6), include a person who acquires any such rights, obligations or interest.

#### *Exclusions*

#### **Arranging administration by authorised person**

**63C.** A person who is not an authorised person does not carry on an activity of the kind specified by article 63B(2) in relation to a regulated home reversion plan where he—

- (a) arranges for another person, being an authorised person with permission to carry on an activity of that kind, to administer the plan; or
- (b) administers the plan himself 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**

**63D.** A person who is not an authorised person does not carry on an activity of the kind specified by article 63B(2) in relation to a regulated home reversion plan where he administers the plan pursuant to an agreement with an authorised person who has permission to carry on an activity of that kind.

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<sup>(4)</sup> 2000 c.14.

<sup>(5)</sup> 2001 asp 8.

<sup>(6)</sup> S.I. 2003/431 (N.I.9).

### Other exclusions

**63E.** Article 63B is also subject to the exclusions in articles 66 (trustees etc.), 72 (overseas persons) and 72A (information society services).

## CHAPTER XV B

### REGULATED HOME PURCHASE PLANS

#### *The activities*

#### Regulated home purchase plans

**63F.**—(1) Entering into a regulated home purchase plan as home purchase provider is a specified kind of activity.

(2) Administering a regulated home purchase plan is also a specified kind of activity where the plan was entered into by way of business after the coming into force of this article.

(3) In this Chapter—

- (a) a “regulated home purchase plan” 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 “home purchase provider”) buys a qualifying interest or an undivided share of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom;
  - (ii) where an undivided share of a qualifying interest in land is bought, the interest is held on trust for the home purchase provider and the individual or trustees mentioned in paragraph (iii) as beneficial tenants in common;
  - (iii) the arrangement provides for the obligation of an individual or trustees (the “home purchaser”) to buy the interest bought by the home purchase provider during the course of or at the end of a specified period; and
  - (iv) the home purchaser (if he is an individual) or an individual who is a beneficiary of the trust (if the home purchaser 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 during that period and intends to do so;
- (b) “administering” a regulated home purchase plan means either or both of—
- (i) notifying the home purchaser of changes in payments due under the plan, or of other matters of which the plan requires him to be notified; and
  - (ii) taking any necessary steps for the purposes of collecting or recovering payments due under the plan from the home purchaser;

but a person is not to be treated as administering a regulated home purchase plan merely because he has, or exercises, a right to take action for the purposes of enforcing the plan (or to require that such action is or is not taken).

(4) Article 63B(4)(a) to (c) and (e) applies for the purposes of paragraph (3)(a) with references to the “reversion seller” being read as references to the “home purchaser”.

#### *Exclusions*

#### Arranging administration by authorised person

**63G.** A person who is not an authorised person does not carry on an activity of the kind specified by article 63F(2) in relation to a regulated home purchase plan where he—

- (a) arranges for another person, being an authorised person with permission to carry on an activity of that kind, to administer the plan; or
- (b) administers the plan himself 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

**63H.** A person who is not an authorised person does not carry on an activity of the kind specified by article 63F(2) in relation to a regulated home purchase plan where he administers the plan pursuant to an agreement with an authorised person who has permission to carry on an activity of that kind.

### Other exclusions

**63I.** Article 63F is also subject to the exclusions in articles 66 (trustees etc.), 72 (overseas persons) and 72A (information society services)."

### Exclusion of trustees, nominees and personal representatives

**19.** In article 66 (trustees, nominees and personal representatives)—

- (a) in paragraph (2) for "and 25A(1) and (2)" substitute ", 25A(1) and (2), 25B(1) and (2) and 25C(1) and (2)";
- (b) in paragraph (6) for "and 53A" substitute ", 53A, 53B and 53C";
- (c) after paragraph (6A) insert—

"(6B) Subject to paragraph (7), a person acting as trustee or personal representative does not carry on an activity of the kind specified by article 63B(1) or (2) where the reversion seller under the regulated home reversion plan in question is a beneficiary under the trust, will or intestacy.

(6C) Subject to paragraph (7), a person acting as trustee or personal representative does not carry on an activity of the kind specified by article 63F(1) or (2) where the home purchaser under the regulated home purchase plan in question is a beneficiary under the trust, will or intestacy.";

- (d) in paragraph (7) for " and (6A)" insert ", (6A), (6B) and (6C)".

### Exclusion of activities carried on in the course of a profession or non-investment business

**20.** In article 67 (activities carried on in the course of a profession or non-investment business) in paragraph (1)—

- (a) after "25A, " insert "25B, 25C, ";
- (b) for "and 53A" substitute ", 53A, 53B and 53C".

### Overseas persons

**21.** In article 72 (overseas persons) for paragraphs (5A) to (5F) substitute—

"(5A) An overseas person does not carry on an activity of the kind specified by article 25A(1)(a), 25B(1)(a) or 25C(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) and 25C(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) and 25C(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) or 63F(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) or 63F(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 qualifying regulated mortgage contract, being one where the borrower (or each borrower) is non-resident when he enters into it;

- (ii) in relation to articles 25B and 63B, a qualifying regulated home reversion plan, being one 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 qualifying regulated home purchase plan, being one where the home purchaser (or each home purchaser) is non-resident when he 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;
- (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.”.

### Specified investments

22. After article 88 (regulated mortgage contracts) insert—

#### “Regulated home reversion plans

88A. Rights under a regulated home reversion plan.

#### Regulated home purchase plans

88B. Rights under a regulated home purchase plan.”.

### Rights to or interests in investments

23. In article 89 (rights to or interests in investments) for “article 88” substitute “article 88, 88A or 88B”.

## PART 3

### Amendments to Primary Legislation

#### Amendment of the Consumer Credit Act 1974

24.—(1) The Consumer Credit Act 1974<sup>(7)</sup> is amended as follows.

(2) In section 16 (exempt agreements) —

(a) for subsection (6C) substitute—

“(6C) This Act does not regulate a consumer credit agreement if—

- (a) it is secured by a land mortgage and entering into the agreement as lender is a regulated activity for the purposes of the Financial Services and Markets Act 2000; or
- (b) it is or forms part of a regulated home purchase plan and entering into the agreement as home purchase provider is a regulated activity for the purposes of that Act.”;
- (b) in subsection (6D) for “subsection (6C)” substitute “subsection (6C)(a)”.

(3) In section 53 (duty to display information) for “section 16(6C)” substitute “section 16(6C)(a)”.

(4) In section 146 (exceptions from section 145)—

(a) in subsection (5A)—

(i) for paragraph (a) substitute—

<sup>(7)</sup> 1974 c. 39; sections 16 and 146 were amended by S.I. 2003/1475.

- “(a) to an authorised person, within the meaning of the 2000 Act, who has permission under that Act to enter into a relevant agreement as lender or home purchase provider (as the case may be); or”;
- (ii) for “a relevant agreement” substitute “the relevant agreement”;
- (b) in subsection (5D)—
- (i) for the definition of “relevant agreement” substitute—
- ““relevant agreement” means an agreement which—
- (a) is secured by a land mortgage, or
- (b) is or forms part of a regulated home purchase plan,
- but only if entering into the agreement as lender or home purchase provider (as the case may be) is a regulated activity for the purposes of the 2000 Act.”;
- (ii) after “and references to “regulated activities” ” insert “, “regulated home purchase plan” and “home purchase provider” ”.

### **Amendment of the Law of Property (Miscellaneous Provisions) Act 1989**

**25.** In section 2 of the Law of Property (Miscellaneous Provisions) Act 1989<sup>(8)</sup> (contracts for sale etc. of land to be made by signed writing)—

- (a) in subsection (5)(c) after “regulated mortgage contract” insert “, a regulated home reversion plan or a regulated home purchase plan”;
- (b) in subsection (6) after “ “regulated mortgage contract” ” insert “, “regulated home reversion plan” and “regulated home purchase plan” ”.

### **Amendment of the Financial Services and Markets Act 2000**

**26.** In section 49(2A)(b)<sup>(9)</sup> of the Financial Services and Markets Act 2000 (persons connected with an applicant) after “regulated mortgage contract” insert “, a regulated home reversion plan or a regulated home purchase plan”.

## **PART 4**

### **Amendments to Other Secondary Legislation**

**27.** In the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001<sup>(10)</sup> after article 3A(arranging and advising on regulated mortgage contracts) insert—

#### **“Arranging and advising on regulated home reversion plans**

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

- (a) article 25B of the Regulated Activities Order (arranging regulated home reversion plans);
- (b) article 53B of that Order (advising on regulated home reversion plans); or
- (c) article 64 of that Order (agreeing), so far as relevant to either of the articles mentioned in subparagraphs (a) and (b),

unless he carries on the business of engaging in that activity.

#### **Arranging and advising on regulated home purchase plans**

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

- (a) article 25C of the Regulated Activities Order (arranging regulated home purchase plans);

<sup>(8)</sup> 1989 c. 34; section 2 was amended by S.I. 2001/3649.

<sup>(9)</sup> Section 49(2A) was inserted by S.I. 2001/544 and S.I. 2004/1610.

<sup>(10)</sup> S.I. 2001/1177; amended by S.I. 2003/1475; there are other amending instruments but none is relevant.

- (b) article 53C of that Order (advising on regulated home purchase plans); 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 he carries on the business of engaging in that activity.”.

**28.** In the Financial Services and Markets Act 2000 (Exemption) Order 2001<sup>(1)</sup>, Part IV 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 (a);
  - (ii) after sub-paragraph (b) insert—
- “(c) article 25B, 53B or 63B of that Order (arranging, advising on, entering into or administering a regulated home reversion plan); or
- (d) article 25C, 53C or 63F of that Order (arranging, advising on, entering into or administering a regulated home purchase plan.”;
- (b) in sub-paragraph (1) of paragraph 48 (social housing)—
  - (i) delete “or” at the end of sub-paragraph (a);
  - (ii) after sub-paragraph (b) insert—
- “(c) article 25B, 53B or 63B of that Order (arranging, advising on, entering into or administering a regulated home reversion plan); or
- (d) article 25C, 53C or 63F of that Order (arranging, advising on, entering into or administering a regulated home purchase plan.”

**29.—(1)** The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001<sup>(2)</sup> are amended as follows.

(2) In regulation 1(2) —

- (a) after the definition of “contract of long-term case insurance” insert—
 

““home purchaser” has the same meaning as in article 63F(3) of the Regulated Activities Order;”;
- (b) after the definition of “other counterparties” insert—
 

““plan provider” has the same meaning as in article 63B(3) of the Regulated Activities Order;”;
- (c) after the definition of “the Regulated Activities Order” insert—
 

““regulated home purchase plan” has the same meaning as in article 63F(3) of the Regulated Activities Order;

“regulated home reversion plan” has the same meaning as in article 63B(3) of the Regulated Activities Order;

“reversion seller” has the same meaning as in article 63B(3) of the Regulated Activities Order;”.

(3) In regulation 2(1)—

- (a) after sub-paragraph (ac) insert—
 

“(ad) an activity of the kind specified by article 25B of that Order (arranging regulated home reversion plans);

(ae) an activity of the kind specified by article 25C of that Order (arranging regulated home purchase plans);”;
- (b) at the end of sub-paragraph (ca) delete “or”;
- (c) after sub-paragraph (ca) insert—
 

“(cb) an activity of the kind specified by article 53B of that Order (advising on regulated home reversion plans);

<sup>(1)</sup> S.I. 2001/1201; amended by S.I. 2003/1675; there are other amending instruments but none is relevant.

<sup>(2)</sup> S.I. 2001/1217; amended by S.I. 2003/1475 and S.I. 2003/1476; there are other amending instruments but none is relevant.

(cc) an activity of the kind specified by article 53C of that Order (advising on regulated home purchase plans); or”;

(d) in sub-paragraph (d) for “(b), (c) or (ca)” substitute “(ad), (ae), (b), (c), (ca), (cb) or (cc)”.

(4) After regulation 3(3) insert—

“(3A) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where he—

(a) makes arrangements (in circumstances constituting the carrying on of an activity of the kind specified by article 25B of that Order)—

(i) for persons to enter (or with a view to persons entering) as reversion sellers or plan providers into regulated home reversion plans with other counterparties, or

(ii) for a person to vary a regulated home reversion plan entered into by a person as reversion seller or plan provider with other counterparties after the coming into force of article 63B of that Order; or

(b) gives advice (in circumstances constituting the carrying on of an activity of the kind specified by article 53B of that Order) on the merits of—

(i) persons entering as reversion sellers or plan providers into regulated home reversion plans with other counterparties, or

(ii) persons varying regulated home reversion plans entered into by them as reversion seller or plan provider with other counterparties after the coming into force of article 63B of that Order.

(3B) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where he—

(a) makes arrangements (in circumstances constituting the carrying on of an activity of the kind specified by article 25C of that Order)—

(i) for persons to enter (or with a view to persons entering) as home purchasers into regulated home purchase plans with other counterparties, or

(ii) for a person to vary a regulated home purchase plan entered into by a person as home purchaser with other counterparties after the coming into force of article 63F of that Order; or

(b) gives advice (in circumstances constituting the carrying on of an activity of the kind specified by article 53C of that Order) on the merits of—

(i) persons entering as home purchasers into regulated home purchase plans with other counterparties, or

(ii) persons varying regulated home purchase plans entered into by them as home purchaser with other counterparties after the coming into force of article 63F of that Order.”.

**30.**—(1) The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001<sup>(13)</sup> is amended as follows.

(2) In article 2(1)—

(a) after the definition of “contractually based investment” insert—

“ “home purchaser” has the meaning given by article 63F(3) of the Regulated Activities Order;

“home purchase provider” has the meaning given by article 63F(3) of the Regulated Activities Order;”;

(b) after the definitions of “occupational pension scheme” and “personal pension scheme” insert—

“ “plan provider” has the meaning given by article 63B(3) of the Regulated Activities Order;”;

(c) after the definition of “the Regulated Activities Order” insert—

“ “regulated home purchase plan” has the meaning given by article 63F(3) of the Regulated Activities Order;

“regulated home reversion plan” has the meaning given by article 63B(3) of the Regulated Activities Order;

<sup>(13)</sup> S.I. 2001/1227; amended by S.I. 2001/3650 and S.I. 2003/1475; there are other amending instruments but none is relevant.

“regulated mortgage contract” has the meaning given by article 61 of the Regulated Activities Order;”

(d) after the definition of “relevant investment” insert—

““reversion seller” has the meaning given by article 63B(3) of the Regulated Activities Order;”.

(3) After article 6B insert—

**6C.**—(1) An activity of the kind specified by article 53B of the Regulated Activities Order (advising on regulated home reversion plans) 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 reversion seller or plan provider into a regulated home reversion plan with a particular person; and
- (b) in entering into a regulated home reversion plan that person would be carrying on an activity of the kind specified by article 63B(1) of the Regulated Activities Order (regulated home reversion plans).

(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 53B of the Regulated Activities Order or a person who is an exempt person in relation to an activity of that kind.

**6D.**—(1) An activity of the kind specified by article 63B(1) or (2) of the Regulated Activities Order (regulated home reversion plans).

(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 reversion seller under the regulated home reversion plan in question is a beneficiary under the trust, will or intestacy.

**6E.**—(1) An activity of the kind specified by article 53C of the Regulated Activities Order (advising on regulated home purchase plans) 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 home purchaser into a regulated home purchase plan with a particular person; and
- (b) in entering into a regulated home purchase plan that person would be carrying on an activity of the kind specified by article 63F(1) of the Regulated Activities Order (regulated home purchase plans).

(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 53C of the Regulated Activities Order or a person who is an exempt person in relation to an activity of that kind.

**6F.**—(1) An activity of the kind specified by article 63F(1) or (2) of the Regulated Activities Order (regulated home purchase plans).

(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 home purchaser under the regulated home purchase plan in question is a beneficiary under the trust, will or intestacy.”.

**31.** In regulation 2(3)(h) of the Money Laundering Regulations 2003<sup>(14)</sup> after “a regulated mortgage contract” insert “, a regulated home reversion plan or a regulated home purchase plan”.

**32.** In the Consumer Credit (Advertisements) Regulations 2004<sup>(15)</sup> for regulation 10(5) substitute—

“(5) These regulations do not apply to any advertisement in so far as it is a communication of an invitation or inducement to enter into—

- (a) a regulated mortgage contract within the meaning of article 61 of the Financial Services and Markets Act (Regulated Activities) Order 2001; or

<sup>(14)</sup> S.I. 2003/3075.

<sup>(15)</sup> S.I. 2004/1484.

(b) a regulated home purchase plan within the meaning of article 63F of that Order.”.

33.—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005<sup>(16)</sup> is amended as follows.

(2) In Schedule 1 Part I (controlled activities)—

(a) after paragraph 10B (advising on qualifying credit etc.) insert—

**“Providing a regulated home reversion plan**

**10C.** Entering into a regulated home reversion plan as plan provider is a controlled activity.

**Arranging a regulated home reversion plan**

**10D.** Making arrangements—

- (a) for another person to enter as reversion seller or plan provider into a regulated home reversion plan; or
- (b) for a reversion seller or a plan provider under a regulated home reversion plan, entered into by him after the coming into force of article 63B(3) of the Regulated Activities Order, to vary the terms of that plan in such a way as to vary his obligations under that plan,

is a controlled activity.

**Advising on a regulated home reversion plan**

**10E.** Advising a person is a controlled activity if the advice is—

- (a) given to the person in his capacity as reversion seller, potential reversion seller, plan provider or potential plan provider; and
- (b) advice on the merits of his doing any of the following—
  - (i) entering into a regulated home reversion plan, or
  - (ii) varying the terms of a regulated home reversion plan entered into by him after the coming into force of article 63B of the Regulated Activities Order in such a way as to vary his obligations under that plan.

**Providing a regulated home purchase plan**

**10F.** Entering into a regulated home purchase plan as home purchase provider is a controlled activity.

**Arranging a regulated home purchase plan**

**10G.** Making arrangements—

- (a) for another person to enter as home purchaser into a regulated home purchase plan; or
- (b) for a home purchaser under a regulated home purchase plan, entered into after the coming into force of article 63F(3) of the Regulated Activities Order, to vary the terms of that plan in such a way as to vary his obligations under that plan,

is a controlled activity.

**Advising on a regulated home purchase plan**

**10H.** Advising a person is a controlled activity if the advice is—

- (a) given to the person in his capacity as home purchaser or potential home purchaser; and
- (b) advice on the merits of his doing any of the following—

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<sup>(16)</sup> S.I. 2005/1529.

- (i) entering into a regulated home purchase plan, or
- (ii) varying the terms of a regulated home purchase plan entered into by him after the coming into force of article 63F of the Regulated Activities Order in such a way as to vary his obligations under that plan.”.

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

- (a) after paragraph 26 (agreements for qualifying credit) insert—

**“Regulated home reversion plans**

**26A.** Rights under a regulated home reversion plan.

**Regulated home purchase plans**

**26B.** Rights under a regulated home purchase plan.”

- (b) in paragraph 28 (interpretation)—

- (i) after the definition of “contractually based investment” insert—

“ “home purchase provider” and “home purchaser” have the meaning given in article 63F(3) of the Regulated Activities Order;”;

- (ii) after the definition of “occupational pension scheme” insert—

“ “plan provider” has the meaning given in article 63B(3) of the Regulated Activities Order;”;

- (iii) after the definition of “qualifying funeral plan contract” insert—

“ “regulated home purchase plan” has the meaning given in article 63F(3) of the Regulated Activities Order;

“regulated home reversion plan” and “reversion seller” have the meaning given in article 63B(3) of the Regulated Activities Order;”.

Signatory text

Date

*Names*  
Two of the Lords Commissioners  
of Her Majesty’s Treasury

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the “principal Order”) so as to specify as regulated activities for the purposes of the Financial Services and Markets Act 2000 (c. 8) (“FSMA”), the activities of entering into, administering, arranging and advising on regulated home reversion plans and regulated home purchase plans. The matters with respect to which regulated activities may be specified include finance arrangements in connection with the acquisition or disposal of land (paragraph 23A of Schedule 2 to FSMA, inserted by the Regulation of Financial Services (Land Transactions) Act 2005 (c. 24)).

Article 3 inserts new definitions and makes a consequential amendment to the definition of “overseas person” in the principal Order.

Article 4 inserts new articles into the principal Order which specify the new regulated activities of arranging home reversion plans (“home reversion arranging”) and arranging regulated home purchase plans (“home purchase arranging”).

Articles 5 to 11 amend articles 26 to 33A of the principal Order, so as to apply the exclusions specified in those articles to home reversion arranging and home purchase arranging. Those exclusions relate, for example, to arrangements not causing a deal, the provision of the means of communication between the parties to a transaction, arrangements to which the arranger is a party and arrangements where the transaction is with or through an authorised person.

Article 13 inserts new articles into the principal Order which specify the new regulated activities of advising on regulated home reversion plans (“home reversion advising”) and advising on regulated home purchase plans (“home purchase advising”).

Articles 14 and 15 amend respectively articles 54 and 54A of the principal Order so as to apply the exclusion specified in those articles to home reversion advising and home purchase advising. Those exclusions relate to advice given in the media and advice given in the course of administration by an authorised person.

Article 17 amends article 61 of the principal Order to provide that products which have the features of both a regulated home purchase plan and a regulated mortgage contract, will not be considered a regulated mortgage contract.

Article 18 inserts new articles into the principal Order which specify the new regulated activities of entering into and administering regulated home reversion plans (“home reversion entry”) and entering into and administering regulated home purchase plans (“home purchase entry”) and apply exclusions relating to arranging administration by an authorised person and administration pursuant to agreement with an authorised person.

Article 19 amends article 66 of the principal Order so as to extend the scope of the exclusion relating to trustees, nominees and personal representatives to home reversion and home purchase entry, home reversion and home purchase arranging and home reversion and home purchase advising.

Article 20 amends article 67 of the principal Order so as to extend the scope of the exclusion relating to activities carried on in the course of a profession or non-investment business to home reversion arranging, home purchase arranging, home reversion advising and home purchase advising.

Article 21 amends article 72 of the principal Order to apply the overseas person exception to the regulated activities of entering into, administering, arranging and advising on regulated home reversion plans and regulated home purchase plans. It also replaces references in article 72 to a “non-resident individual” with references to a person who is “non-resident” to make clear that this applies to individuals and trustees in the case of regulated mortgage contracts and home purchase plans and individuals, trustees and other persons in the case of regulated home reversion plans. This amendment applies to regulated mortgage contracts as well as regulated home reversion plans and regulated home purchase plans.

Article 22 inserts new articles into the principal Order which specify rights under regulated home reversion plans and rights under regulated home purchase plans as specified investments.

Article 23 amends article 89 of the principal Order to exclude rights under regulated home reversion plans and rights under regulated home purchase plans.

Articles 24 to 26 make necessary consequential amendments to the Consumer Credit Act 1974 (c. 39), the Law of Property (Miscellaneous Provisions) Act 1989 (c. 34) and FSMA.

Articles 27 to 33 amend secondary legislation including other instruments made under FSMA in order to apply the regulatory regime established under FSMA to persons who carry on the newly specified regulated activities.

A Regulatory Impact Assessment of the effect of this instrument on the costs of business has been prepared and may be obtained from the Payments and Inclusion Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on HM Treasury’s website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

STATUTORY INSTRUMENTS

**2006 No. xxx**

**PREVENTION AND SUPPRESSION OF TERRORISM**

**The Terrorism Act 2000 (Business in the Regulated Sector) Order 2006**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Treasury, in exercise of the powers conferred on them by paragraph 5 of Schedule 3A to the Terrorism Act 2000<sup>(17)</sup>, make the following Order:

**Citation and commencement**

**34.** This Order may be cited as the Terrorism Act 2000 (Business in the Regulated Sector) Order 2006 and comes into force on [xxx].

**Amendment of Part 1 of Schedule 3A**

**35.** In Part 1 of Schedule 3A to the Terrorism Act 2000<sup>(18)</sup> (regulated sector), in paragraph 2(g) after “a regulated mortgage contract” insert “, a regulated home reversion plan or a regulated home purchase plan”.

Signatory text

Address	<i>Names</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Terrorism Act 2000 (c. 11) to add to the list of excluded activities the regulated activities of arranging deals in investments or advising on investments, in so far as the investment consists of rights under a regulated home reversion plan or a regulated home purchase plan. The effect of this is that a business will not be in the regulated sector to the extent that it conducts such activities. This is relevant to the offence in the Act relating to failure to disclose information (see sections 21A and 21B of the Act) which requires information to come to a person in the course of a business in the regulated sector.

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. xxx) Order 2006 (S.I. 2006/xxx) makes arranging and advising activities relating to regulated home reversion plans and regulated home purchase plans (as defined in that Order) regulated activities. As a result, such activities will fall within the scope of regulation by the Financial Services Authority.

<sup>(17)</sup> 2000 c. 11; Schedule 3A was inserted by the Anti-terrorism, Crime and Security Act 2001 (c. 24), section 3 and Schedule 2.

<sup>(18)</sup> Part 1 of Schedule 3A was substituted by S.I. 2003/3076.

A Regulatory Impact Assessment of the effect of this instrument on the costs of business has been prepared and may be obtained from the Payments and Inclusion Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on HM Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

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STATUTORY INSTRUMENTS

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**2006 No. xxx**

**PROCEEDS OF CRIME**

**The Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order  
2006**

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Treasury, in exercise of the powers conferred on them by paragraph 5 of Schedule 9 to the Proceeds of Crime Act 2002<sup>(19)</sup>, make the following Order:

**Citation and commencement**

**36.** This Order may be cited as the Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2006 and comes into force on [xxx].

**Amendment of Part 1 of Schedule 9**

**37.** In Part 1 of Schedule 9 to the Proceeds of Crime Act 2002<sup>(20)</sup> (regulated sector), in paragraph 2(g) after “a regulated mortgage contract” insert “, a regulated home reversion plan or a regulated home purchase plan”.

Signatory text

Address Date	<i>Names</i> Two of the Lords Commissioners of Her Majesty’s Treasury
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**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Proceeds of Crime Act 2002 (c. 29) to add to the list of excluded activities the regulated activities of arranging deals in investments or advising on investments, in so far as the investment consists of rights under a regulated home reversion plan or a regulated home purchase plan. The effect of this is that a business will not be in the regulated sector the extent that it conducts such activities. This is relevant to the offence in the Act relating to failure to disclose information (see section 330 of the Act) which requires information to come to a person in the course of a business in the regulated sector.

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. xxx) Order 2006 (S.I. 2006/xxx) makes arranging and advising activities relating to regulated home reversion plans and regulated home purchase plans (as defined in that Order) regulated activities. As a result, such activities will fall within the scope of regulation by the Financial Services Authority.

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<sup>(19)</sup> 2002 c. 29.

<sup>(20)</sup> Part 1 of Schedule 9 was substituted by S.I. 2003/3074.

A Regulatory Impact Assessment of the effect of this instrument on the costs of business has been prepared and may be obtained from the Payments and Inclusion Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on HM Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

## TITLE OF PROPOSALS

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The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. [xxx]) Order 2006.

The Terrorism Act 2000 (Business in the Regulated Sector) Order 2006

The Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2006.

## PURPOSE AND INTENDED EFFECT

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### Objective

The principal purpose of the legislation is to amend the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) (which is made under the Financial Services and Markets Act 2000 (FSMA)), to specify and define activities relating to Home Reversion Plans and Home Purchase Plans (capturing Ijara home financing arrangements) to be regulated by the Financial Services Authority (FSA). This will create a level regulatory playing field with already regulated mortgage products and extend essential consumer protection to potentially complicated financial decisions affecting individuals' lives.

Legislation relating to financial services is reserved to the UK Parliament and the proposal extend to England, Wales, Scotland and Northern Ireland.

### Policy Background

The FSA currently regulates certain activities relating to first charge residential mortgages. The regime ensures that: mortgage borrowers receive clear and comparable information about the mortgages and mortgage services on offer in the market place; any mortgage advertising or marketing material is clear, fair and not misleading; when a firm advises borrowers, it must make sure that it recommends a suitable mortgage based on the borrowers' needs and circumstances; and charges are not excessive. The regime also sets standards providing protection should borrowers get into arrears with their mortgages.

A decision to subject Home Reversion Plans to regulation was made following a consultation in November 2003, 'Regulating Home Reversion Plans', and announced on 10 May 2004 by the then Financial Secretary, Ruth Kelly.

In the light of a further consultation in July 2004, 'Defining Home Reversions', it was decided that Ijara home financing arrangements and other flexible tenure schemes should also be brought within the scope of FSA regulation (and therefore included in primary legislation) along with Home Reversion Plans.

### Legislative Background

Under the Financial Services and Markets Act 2000 (FSMA), only FSA authorised or exempt persons are allowed to carry on a regulated activity. In order for an activity to be regulated under FSMA it must be carried on by way of business and be specified in an Order made under section 22 of FSMA. Schedule 2 to FSMA sets out, in broad terms, a

non-exhaustive list of the sorts of activities and investments that may be specified in such an Order.

Before the enactment of the Regulation of Financial Services (Land Transactions) Act 2005, Schedule 2 covered contractual rights in respect of loans secured on land, but did not cover such rights in respect of other types of finance provided in connection with land transactions. The Land Transactions Act amended Schedule 2 to add rights in respect of financial arrangements in connection with the acquisition or disposal of land.

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) is the Order made under section 22 of FSMA (as read with Schedule 2 to FSMA), which sets out the specific activities that are subject to FSA regulation.

This proposal makes use of the provisions in the Regulation of Financial Services (Land Transactions) Act 2005 and amends the RAO in order to specify and define the activities relating to Home Reversion Plans and Ijara home financing arrangements that will be subject to regulation, establishing a regulatory regime similar to the one in place for first charge residential mortgages.

Although Schedule 2 to FSMA now also provides for the possible regulation of other flexible tenure schemes, a decision has been taken to not extend FSA regulation to these schemes at present. This is because these schemes (when payment is secured by a first charge) are mostly provided by Local Authorities and Registered Social Landlords. They are subject to mortgage sales guidance issued by the Office of the Deputy Prime Minister.

### **Rationale for Government Intervention**

Home Reversion Plans are aimed at older consumers who have paid off their mortgages (or have substantial equity, notwithstanding a mortgage) and who require additional income or a cash lump sum. This money may be used to supplement pensions, or meet expenses such as home repairs or maintenance, and long-term care. In informal discussions with the Government, stakeholders have raised concerns about a projected rapid expansion of the equity release market and the potential for consumer detriment if reversion plans remain outside the FSA regime. The regulation of Home Reversion Plans would protect consumers who may have complex advice needs and may be vulnerable to being sold a reversion plan that is unsuited to their needs.

Ijara home financing arrangements have been developed to meet the same purpose as a 'regular' mortgage product whilst also complying with Islamic principles. Purchasing a house is potentially the largest financial transaction individuals will make during their lifetimes and requires a suitable degree of protection. Potential areas of consumer detriment could be prevented through FSA rules and remedies.

## OPTIONS

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### Option 1

Do nothing.

#### Risks

The risks of not subjecting Home Reversion Plans and Ijara home financing arrangements to FSA regulation include:

- Mis-selling; consumers may be advised to take out one type of equity release plan when they would be better off trading down to a smaller property or entering into another type of equity release plan;
- Unfair treatment; unregulated providers are under no obligation to treat their customers (often vulnerable people) fairly, consequently the consumer may be provided with a reversion of an unfairly low value, due either to a low valuation of their property, or to a low proportion of that valuation being offered as a reversion;
- Regulatory confusion; consumers may not understand the difference between the regulated and unregulated parts of the market. FSA regulation requires lifetime mortgage providers to consider both lifetime mortgages and reversions. Firms selling only reversions are not caught by FSA regulation. A similar situation exists with Murabaha and Ijara products; and
- Redress; consumers may be confused by the differences in redress arrangements between regulated and unregulated products.

### Option 2

Give the FSA responsibility for regulating Home Reversion Plans and Ijara home financing products.

#### Risks

- The FSA may focus its regulatory regime where it is not needed, particularly if there is no evidence of consumer detriment;
- Additional compliance and conduct of business costs for firms;
- These new arrangements may set a precedent for the FSA to regulate other sale and purchase arrangements.

#### Unintended Consequences

HM Treasury has not been able to identify any unintended consequences and none have been flagged to us during either of the two consultations mentioned above or during informal engagement with stakeholders.

#### Implementation and Delivery plans

This proposal will be consulted on for three months and will be implemented as soon as the responses have been considered.

As above, the proposed cause of action will allow the FSA to draw up and consult on their rules for regulating Home Reversion Plans and Ijara home financing arrangements. The consultation on the FSA rules will last for three months. After the FSA has considered responses to their consultation, they will issue a policy statement on the new rules. Firms will need to apply for permission to engage in these regulated activities. Firms will be given approximately six months time to prepare for regulation before it becomes effective.

## **COST AND BENEFITS**

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### **Analysing the benefits**

#### **Option 1**

The main benefit of doing nothing in these markets is:

- Avoiding the risk that regulation will act as a barrier to entry;

Specifically in relation to Home Reversion Plans:

- The Government has already focused its regulatory regime on where there has been a proven need for regulation, and arguably there is no need to do more;
- Consumers already have access to a good deal of information. For example, charities such as Age Concern, and trade bodies such as the Council of Mortgage Lenders and Safe Home Income Plans (SHIP) publish consumer fact sheets that set out the pros and cons of lifetime mortgages and reversion plans (and indeed whether equity release meets individual needs). Arguably some consumers already have the wherewithal to take their own decisions on the basis of full information.

#### **Option 2**

The main benefits of FSA regulation include:

- The regulation of all equity release products, and all Islamic-compliant home financing products respectively, creating a level regulatory playing field for firms;
- Greater clarity for customers wanting to make a fair comparison between products offering broadly similar benefits;
- Consumer access to redress procedures where appropriate;
- Avoidance of regulatory arbitrage.

Specifically in relation to Home Reversion Plans:

- Advice during the sales process in relation to individuals' tax and benefit positions;
- Reduced information asymmetry between the plan provider and the consumer;

- Increased confidence in the home reversion market, which has seen a recent fall in lending that is attributed to uncertainty concerning the regulatory environment.

## Analysing the Costs

### Option 1

This option will not result in any direct costs to industry, but due to the risks that consumers face, there is the possibility of a cost to consumers should things go wrong. It is very difficult to quantify this cost.

### Option 2

The most significant cost of this option is the initial and ongoing regulatory compliance costs to industry. The precise nature of the regime that will apply will not be made clear until the FSA have consulted on their rules and so these costs could change significantly.

The costs in this RIA therefore remain estimates, which we will look to refine further after the FSA's consultation and their detailed cost benefit analysis.

## The Markets

There is a range of firms in the equity release market. These comprise providers, brokers (specialist equity release intermediaries) and reversion brokers (those that market reversionary properties to private investors).

There are more intermediaries and Independent Financial Advisers (IFAs) selling equity release products, including home reversions as part of their range of business. The following table summarises the position of the firms that specifically target the equity release market, based on current information:

**Table 1: Number of firms currently in the equity release market**

	Providers	Specialist Intermediaries	Intermediaries
Lifetime Mortgages <sup>1</sup>	35		13 <sup>2</sup>
Reversion plans <sup>3</sup>	6	11	50

The current and future markets for Islamic finance are hard to quantify, as they are relatively under-developed. In relation to Ijara home financing arrangements, we have been able to identify four current providers (all of which are currently regulated for mortgage business) and two more proposing to launch Ijara products in the near future. We estimate there to be about 50 intermediaries active in this market.

## Calculating the costs

In calculating the costs, this RIA assumes that the FSA will adopt a similar regime for reversions and Ijara products to that introduced for mortgages. Whilst we cannot anticipate the exact regime that the FSA might apply, we assume that the regime would cover the regulation of firms, advice and advisers,

<sup>1</sup> Source: FSA, latest reported data covering the period April – September 2005

<sup>2</sup> This excludes firms that helped arrange less than ten (and typically arranged one or two) lifetime mortgages.

<sup>3</sup> Source: Industry analysis

the disclosure regime, financial promotions, and other conduct of business issues as well as providing access to the Financial Ombudsman Service (FOS).

In the equity release and Islamic-compliant markets, firms that are not currently regulated by the FSA would face the most substantial costs of regulation. These include the one-off costs such as authorisation costs, setting up systems and training staff, as well as ongoing compliance costs. However, the costs for firms that are already regulated by the FSA, for example because they also sell lifetime mortgages or Murabaha products, would be less. They would already have received formal authorisation from the FSA and be subject to some rules governing the unregulated activities of regulated firms. They would need to apply to vary their permission, however, and it is likely there would be some systems, training and ongoing conduct of business costs associated with complying with FSA requirements governing the selling of home reversions or Ijara products, when the selling of these products becomes a fully regulated activity.

In calculating the costs for individual firms, we have attempted a read across to the arrangements that the FSA has put in place for firms under mortgage regulation. We have used the cost benefit analyses that the FSA carried out for this purpose in CP 174 and CP 186. These papers are available from the FSA website – [www.fsa.gov.uk](http://www.fsa.gov.uk).

For a detailed breakdown of the costs and the assumptions made in calculating these costs, please see the attached table at the end of this document. In summary we estimate the one-off costs for individual firms to be:

	Home Plan providers	Home Reversion Intermediaries	Ijara Providers	Ijara Intermediaries
Currently regulated for mortgage business	£300,000	£4,400	£298,000	£4,300
Currently not regulated	£540,000	£5,900	£538,000	£5,800

Ongoing annual costs for providers and intermediaries have been estimated at approximately £180,000 and £3,000 respectively. These costs are the same for Home Reversion and Ijara home financing providers and intermediaries.

### Total Cost to Industry

For the purposes of estimating the total cost to industry the following assumptions have been made: regulation will not cause the number of providers to change; but will cause the number of intermediaries advising on home reversions and Ijara products to increase (please see the attached table for the assumed numbers).

The estimated total one-off compliance cost to the industry for home reversions plans and Ijara home financing arrangements would be approximately £8.6million. It is estimated that the annual ongoing costs would total approximately £4.4 million.

## SMALL FIRMS IMPACT TEST

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When Home Reversion Plans and Ijara home financing arrangements are regulated there may be some reduction in the number of small firms in the market as these firms may be discouraged by the costs of compliance with FSA regulation. However the estimated costs of compliance are much lower for a small firm than for a larger one, and therefore we do not expect many firms to exit the market. Also, regulation may improve consumer confidence in the home reversions market leading to more opportunities for new entrants, including small firms.

## COMPETITION ASSESSMENT

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Though the equity release market as a whole at present accounts for significantly less than 1% of total mortgage lending in the UK, it is a market that has seen considerable growth in recent years.

Whilst there has been a year on year increase in the outstanding equity release balance, there has been a slow down in reversion lending, falling from £129 million in 2003 to just over £40 million in 2004. Reversion lending during 2005 has shown some improvement, totalling £41 million up to the third quarter. We have been told that the predominant factor for this fall in lending is due to uncertainty in the market surrounding the regulatory treatment of these products and the fact they currently remain unregulated. In addition, some reversion plan providers suggested at the time of our first consultation that regulation of lifetime mortgages would be a powerful marketing tool, and consumers may favour these products. These figures also lend support to this point of view. Regulation could attract some of the larger lenders into the reversion market, as potential reputational risk from a lack of redress arrangements would be reduced.

The Ijara market is still in its infancy and it is expected that regulation will increase confidence for product providers. We do not expect there to be many new entrants encouraged into the market by new products. Any further growth in the market for Ijara products is expected to result from individuals switching to these products from conventional mortgages. The extent to which the Islamic-compliant market grows will depend to large extent on how financially competitive these products are.

## ENFORCEMENT, SANCTIONS, MONITORING AND REVIEW

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It will be for the FSA to enforce and monitor compliance. The FSA will have a number of sanctions available if providers and intermediaries fail to comply including fines, and ultimately withdrawal of permission to carry on the business. But firms have the safeguard of the right of appeal to an independent tribunal against FSA decisions.

## SUMMARY TABLE OF COSTS AND LIST OF ASSUMPTIONS

Below is a detailed breakdown of the costs we have taken into account in estimating the total cost to industry of this initiative and also a list of the assumptions made in calculating these costs.

Cost Category	One off costs				Ongoing costs		
	Unregulated Provider <sup>3</sup>	Regulated Provider <sup>4</sup>	Unregulated Intermediary <sup>5</sup>	Regulated Intermediary <sup>6</sup>	Provider	Intermediary	
Assumed number for Home Reversion	3	4	20	600	7	620	
Assumed number for Ijara products	3	3	50	50	6	100	
First Application <sup>7</sup>	564		476				
Variation of permission <sup>8</sup>		282		238			
Application fee <sup>9</sup>	5,000	250	1,500	250			
IT systems <sup>10</sup>	235,000	11	500	500			
Training and competence	97,000	97,000	1,600	1,600			
Management and supervision time	200,000	200,000	1,700	1,700	40,000	1,974	
Additional requirements for equity release	2,000	2,000	100	100			
Initial disclosure					23,226	189	
Advice and selling standards					8,387	153	
Pre-sale disclosure					65,806	488	
Offer stage disclosure					29,677		
Fair treatment measures					6,452		
Redress					1,290	102	
Post-sale variations					5,161		
<b>Total per Home Reversion firm</b>	<b>£539,564</b>	<b>£299,532</b>	<b>£5,876</b>	<b>£4,388</b>	<b>£180,000</b>	<b>£2,907</b>	
<b>Total per Ijara product firm</b>	<b>£537,564</b>	<b>£297,532</b>	<b>£5,776</b>	<b>£4,288</b>	<b>£180,000</b>	<b>£2,907</b>	<b>Total</b>
<b>Total for all Home Reversion</b>	<b>£1,618,692</b>	<b>£1,198,128</b>	<b>£117,520</b>	<b>£2,632,800</b>	<b>£1,260,000</b>	<b>£1,802,404</b>	<b>£8,629,544</b>
<b>Total for all Ijara</b>	<b>£1,612,692</b>	<b>£892,596</b>	<b>£288,800</b>	<b>£214,400</b>	<b>£1,080,000</b>	<b>£290,710</b>	<b>£4,379,198</b>
<b>Total one-off cost to industry</b>		<b>£8,575,628</b>			<b>Total ongoing costs to industry</b>	<b>£4,433,115</b>	
<b>Total cost of initiative to industry in first year</b>		<b>£13,008,743</b>					

## Notes to the summary table

1. The figures used assume that the FSA will regulate Home Reversion Plans and Ijara home financing arrangements in a similar way to lifetime mortgages and Murabaha arrangements and therefore firms will incur similar kinds of costs. The precise costs will, of course, depend on the FSA's rules following its consultation and its own cost benefit analysis.
2. The estimates are based on FSA cost benefit analyses in CP 174 (Prudential and other requirements for mortgage firms and intermediaries) and CP 186 (Mortgage regulation: Draft conduct of business rules and feedback on CP 146).
3. The unregulated provider is assumed to be the equivalent of a medium-sized mortgage lender with annual gross advances of between £10 and £100 million.
4. The provider regulated for mortgage business is also assumed to be the equivalent of a medium-sized mortgage lender with annual gross advances of between £10 and £100 million.
5. The unregulated intermediary is assumed to be the equivalent of a small mortgage broker.
6. The intermediary regulated for mortgages business is also assumed to be the equivalent of a small mortgage broker.
7. The costs to the firm of completing the application for the first time are based on the figures in CP 174; medium mortgage lender = £564 and a small intermediary = £476.
8. The costs to the firm of completing the application to vary permission are also based on the figures in CP 174; medium mortgage lender = £282, and small intermediary = £238.
9. Application fees for unregulated firms are based on the FSA policy statement on consultation paper 192 (Further consultation on fees for mortgage firms and insurance intermediaries). We have assumed that the unregulated provider would pay £5,000 (equivalent paid by a medium-sized mortgage lender), and the unregulated intermediary would pay £1,500 (equivalent paid by a small mortgage broker). Those firms that are already regulated for mortgage business would pay £250 in application fee. This is based on the FSA Fees Consultation published on 31 January 2006, whereby the new administration charge where a variation of permission does not result in the firm falling within one or more new activity groups, is £250.
10. All other costs in the table above are based on the total incremental compliance costs for mortgage lenders and mortgage intermediaries as set out in CP 186 divided by the number of mortgage lenders and mortgage intermediaries respectively, then rounded. The consultation paper assumed there to be 155 mortgage lenders and 13,725 mortgage intermediaries.
11. The only deviation from the assumption in 10 above, is that we do not think that there would be any significant additional IT costs for providers that are already regulated for mortgage business.









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