

**MORTGAGES: CONDUCT OF BUSINESS SOURCEBOOK
(CONSEQUENTIAL AMENDMENTS TO THE HANDBOOK) (NO 2)
INSTRUMENT 2004**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the Mortgages: Conduct of Business sourcebook.
- B. The rule-making powers listed in that Schedule are specified for the purpose of section 153(2) of the Financial Services and Markets Act 2000 (Rule-making instruments).

Commencement

- C. This instrument comes into force on 31 October 2004.

Amendments to the Handbook

- D. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2):

(1)	(2)
GEN	Annex A
AUTH	Annex B
Glossary	Annex C

Citation

- E. This instrument may be cited as the Mortgages: Conduct of Business Sourcebook (Consequential Amendments to the Handbook) (No 2) Instrument 2004.

By order of the Board
19 February 2004

Annex A

Amendments to GEN

In this Annex, underlining indicates new text and striking through indicates deleted text. Text made but not yet in force is shown in square brackets.¹

Transitional provisions

...

GEN

3 Table: (2) Transitional provisions applying to GEN only

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
[3]	[GEN 4.3.1R]	G	<p>[(1) ...</p> <p>(2) Until 1 August 2005, a <u>A</u> firm may continue to use stationery and similar materials which refer to its membership of self-regulatory schemes superseded by FSA regulation. However, a <i>firm</i> will need to ensure that any such reference is adequately qualified so that the <i>customer</i> is not misled as to the regulatory arrangements in place.]</p>	[From 31 October 2004 until 15 July 2005]	[Apply in relation to <i>regulated mortgage activities</i> from 31 October 2004]

¹ See the Mortgages: Conduct of Business Sourcebook (Consequential Amendments to the Handbook) Instrument 2003.

...

4.2.2G There are other pre-contract information requirements outside this chapter, including:

...

- [(5) for *regulated mortgage contracts*, in *MCOB 4.4* (Initial disclosure requirements), *MCOB 5.6* (Content of illustrations) and *MCOB 6.4* (Content of the offer document)-]; and
- (6) for *regulated lifetime mortgage contracts*, in *MCOB 8.4* (Initial disclosure requirements), *MCOB 9.4* (Content of illustrations) and *MCOB 9.5* (Disclosure at the offer stage for lifetime mortgages).

Annex B

Amendments to AUTH

In this Annex, underlining indicates new text and striking through indicates deleted text. All the text being amended in this Annex is made but not yet in force.²

Appendix 4 to the Authorisation manual

- 4.4.13 G The effect of the *Regulated Activities Order* is that mortgage contracts which are varied can fall into one of the following categories:
- (1) a contract that was entered into before 31 October 2004, and that is subsequently varied on or after that date so that it satisfies the conditions set out in *AUTH* App 4.4.1G(1) to (3), will not be a *regulated mortgage contract* (because it was not a *regulated mortgage contract* at the time it was entered into);
 - (2) a contract that was originally entered into before 31 October 2004, but is subsequently changed on or after that date such that a new contract is entered into, will be a *regulated mortgage contract* (provided, of course, that it meets the definition in the *Regulated Activities Order*); and
 - (3) a *regulated mortgage contract* that was originally entered into on or after 31 October 2004, and which is subsequently varied by, for example, making a further advance, will remain a *regulated mortgage contract*.
- 4.4.14 G It is possible for more than one mortgage contract to be secured by the same (first) charge. The first contract might be entered into before 31 October 2004 (and therefore not be a *regulated mortgage contract*) and a second contract entered into on or after 31 October 2004 (and be a *regulated mortgage contract*).
- ...
- 4.5.1 G Article 25A of the *Regulated Activities Order* describes two types of *regulated activities* concerned with *arranging regulated mortgage contracts*. These are:
- (1) making arrangements for another *person* to:
 - (a) enter into a *regulated mortgage contract* as borrower; or
 - (b) vary the terms of a *regulated mortgage contract* entered into by him as borrower on or after 31 October 2004 in such a way as to vary his obligations under the contract; and
- ...

² See the Mortgages: Conduct of Business Sourcebook (Consequential Amendments to the Handbook) Instrument 2003.

- 4.5.18 G In addition to the exclusion in article 33A, introducers may be able to take advantage of the exclusion in article 33 of the *Regulated Activities Order* (Introducing). This excludes arrangements where:
- ...
- (3) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to *investments* generally or in relation to any class of *investments* (including mortgages) to which the arrangements relate. ~~Other exclusions~~

Other exclusions

- 4.5.19 G ...

...

- 4.8.2 G The definition does not include administration of a *regulated mortgage contract* which was not entered into by way of business. ... See, however, *AUTH* App 4.4.4G and *AUTH* App 4.4.13G for a discussion of how a variation of a mortgage contract entered into before 31 October 2004 could amount to the entry into a new *regulated mortgage contract* on or after 31 October 2004.

...

- 4.11.5 G For the purposes of *regulated mortgage activities*, sections 418(2), (4), (5), (5A) and (6) are relevant, as follows:
- (1) Section 418(2) refers to a case where a *UK-based person* carries on a *regulated activity* in another *EEA State* in the exercise of rights under a *Single Market Directive*. The only *Single Market Directive* which is relevant to mortgages is the *Banking Consolidation Directive*. ~~In the FSA's view, the regulated mortgage activities of entering into or administering a regulated mortgage contract or agreeing to carry on either of those activities may be carried on by a credit institution using the passport under that directive.~~

...

...

- 4.12.5 G Where a *person* is already an *appointed representative* (in relation to any non-mortgage activities) and he proposes to carry on, with effect from 31 October 2004, any *regulated mortgage activities*, he will need to consider the following matters.
- (1) He must become *authorised* if his proposed mortgage activities include either *entering into a regulated mortgage contract* or *administering a regulated mortgage contract*. ... He will therefore need to apply for a *permission* to cover all the *regulated activities* that he proposes to carry on on or after 31 October 2004.

...

Annex C

Amendments to the Glossary

Amend the following definitions as shown (underlining indicates new text, striking through indicates deleted text). All the text in this Annex is made but not yet in force.³

<i>administering a regulated lifetime mortgage contract</i>	the <i>regulated activity</i> , specified in article 61(2) of the <i>Regulated Activities Order</i> , which is in summary: administering a <i>regulated mortgage contract</i> (which is a <i>lifetime mortgage</i>) where the contract was entered into <u>on or</u> after 31 October 2004.
<i>administering a regulated mortgage contract</i>	the <i>regulated activity</i> , specified in article 61(2) of the <i>Regulated Activities Order</i> , which is in summary: administering a <i>regulated mortgage contract</i> where the contract was entered into <u>on or</u> after 31 October 2004.
<i>advising on regulated mortgage contracts</i>	the <i>regulated activity</i> , specified in article 53A of the <i>Regulated Activities Order</i> , which is in summary: advising a <i>person</i> if the advice: (a) is given to the <i>person</i> in his capacity as a borrower or potential borrower; and (b) is advice on the merits of his: (i) entering into a particular <i>regulated mortgage contract</i> ; or (ii) varying the terms of a <i>regulated mortgage contract</i> entered into by him <u>on or</u> after 31 October 2004 in such a way as to vary his obligations under that contract.
<i>arranging qualifying credit</i>	the <i>controlled activity</i> , specified in paragraph 10A of Schedule 1 to the <i>Financial Promotion Order</i> , of making arrangements: (a) for another <i>person</i> to enter as borrower into an agreement for the provision of <i>qualifying credit</i> ; or (b) for a borrower under a <i>regulated mortgage contract</i> , entered into <u>on or</u> after 31 October 2004, to vary the terms of that contract.
<i>arranging (bringing about) regulated mortgage contracts</i>	the <i>regulated activity</i> , specified in article 25A(1) of the <i>Regulated Activities Order</i> , which is in summary: making arrangements for another <i>person</i> to:

³ See the Mortgages: Conduct of Business Sourcebook (Consequential Amendments to the Handbook) Instrument 2003.

- (a) enter into a *regulated mortgage contract* as borrower; or
- (b) vary the terms of a *regulated mortgage contract* entered into by him as borrower on or after 31 October 2004.

(see also *arranging* (in relation to *regulated mortgage contracts*) and *making arrangements with a view to regulated mortgage contracts*.)

entering into a regulated mortgage contract

the *regulated activity*, specified in article 621(1) of the *Regulated Activities Order*, which is in summary: entering into a *regulated mortgage contract* as lender.