

10/4<sup>\*\*</sup>

Financial Services Authority

# Sale and rent back (full regime)

Feedback on CP09/22, made rules  
and consultation on reporting

January 2010





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The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 30 April 2010.

Comments may be sent by electronic submission using the form on the FSA's website at ([www.fsa.gov.uk/Pages/Library/Policy/CP/2010/cp10\\_04\\_response.shtml](http://www.fsa.gov.uk/Pages/Library/Policy/CP/2010/cp10_04_response.shtml)).

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**It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure.**

**A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.**

Copies of this Consultation Paper are available to download from our website – [www.fsa.gov.uk](http://www.fsa.gov.uk). Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

# 1 Introduction

- 1.1 In this paper, we explain how we will regulate the sale and rent back (SRB) market. We have divided the paper into two sections:
- Part 1 – a Policy Statement, which sets out the feedback we received to our consultation on the full regime for SRB and the final rules; and
  - Part 2 – a Consultation Paper, where we consult on the reporting requirements for sale and rent back firms.
- 1.2 Sale and rent back involves individuals, often those facing financial difficulties selling their home at a discount in return for the right to remain in their property for a set period. Some homeowners in financial difficulty value the opportunity that SRB gives them to clear their debts and stay in their homes, even for a limited period, for both practical and emotional reasons. Options for such consumers can be limited, and while SRB is not an appropriate solution for all, it is an option valued by some.
- 1.3 In response to stakeholder concerns, at Budget 2008, the government asked the Office of Fair Trading (OFT) to investigate the SRB market.
- 1.4 As a result of that investigation, the OFT recommended that SRB transactions should become subject to statutory regulation and that this regulation should fall under the responsibilities of the FSA.<sup>1</sup> Following a consultation process the Treasury confirmed in June 2009 that the scope of FSA regulation would be extended to include SRB activities.<sup>2</sup>
- 1.5 We adopted a two-stage approach to regulating this market. Following consultation, an interim regime<sup>3</sup> was brought in on 1 July 2009 to address the most immediate problems for consumers. We followed this in September 2009 with a consultation on our proposals for the full regime (CP 09/22).<sup>4</sup> The consultation period ended on 30 November.

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1 *Sale and rent back. An OFT market study* [www.offt.gov.uk/shared\\_offt/reports/consumer\\_protection/oft1018.pdf](http://www.offt.gov.uk/shared_offt/reports/consumer_protection/oft1018.pdf)

2 *Regulating the sale and rent back market: a consultation* [www.hm-treasury.gov.uk/d/consult\\_rent\\_sale060209.pdf](http://www.hm-treasury.gov.uk/d/consult_rent_sale060209.pdf)  
summary of responses to consultation [www.hm-treasury.gov.uk/d/consultsalerent\\_response020609.pdf](http://www.hm-treasury.gov.uk/d/consultsalerent_response020609.pdf)

3 *Regulating sale and rent back: an interim regime:* [www.fsa.gov.uk/pubs/policy/ps09\\_09.pdf](http://www.fsa.gov.uk/pubs/policy/ps09_09.pdf)

4 *Regulating sale and rent back: a full regime:* [www.fsa.gov.uk/pubs/cp/cp09\\_22.pdf](http://www.fsa.gov.uk/pubs/cp/cp09_22.pdf)



# Feedback on CP09/22 and made rules

## Part 1 – Policy statement

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**Annex A:** List of respondents to CP09/22

**Annex B:** Summary of changes to draft rules

**Appendix 1:** Final rules for regulated sale and rent back activities for the full regime

**Appendix 2:** FOS instrument

**Appendix 3:** Moneymadeclear consumer factsheet – Just the facts about sale and rent back schemes

# 2 Overview

- 2.1 In this Policy Statement, we report on the responses we received to CP09/22 and the decisions we have reached as a result. We also sets out the final rules and guidance that will apply under the full sale and rent back (SRB) regime, which will come into force on 30 June 2010.

## **What does this Policy Statement (PS) contain?**

- 2.2 Chapter 3 contains feedback on the responses we received to CP09/22. It highlights the main issues raised by respondents and the decision we have made as a result;
- 2.3 Chapter 4 contains an updated cost benefit analysis on our final rules;
- 2.4 Annex A contains a list of the respondents to CP09/22;
- 2.5 Annex B contains a summary of the amendments made to the rules following consultation;
- 2.6 Appendix 1 contains the final rules for the full regime for SRB;
- 2.7 Appendix 2 contains the FOS instrument;<sup>5</sup> and
- 2.8 Appendix 3 contains our consumer factsheet on SRB.

## **Who should read this PS?**

- 2.9 This paper will be of interest to firms active in the SRB market, relevant trade bodies and consumer representatives.

## **Responses to CP09/22**

- 2.10 We received 24 responses to CP09/22 from a range of consumer representatives, trade bodies, professional bodies, SRB firms and equity release firms. Only six SRB firms responded.
- 2.11 Respondents were broadly supportive of our approach for the full regime. Some

<sup>5</sup> We included a consultation question and a draft instrument from the Financial Ombudsman Service in CP09/22, relating to the extension of the FOS voluntary jurisdiction to include sale and rent back activities and the operation of multilateral trading facilities. The instrument published here contains the final rules made following the consultation. See Chapter 3 Q42 for further information.

<sup>6</sup> CP10/4: SRB: final rules and reporting consultation (January 2010)



questions drew a mixed response, with some respondents strongly for and others strongly against particular proposals. In many (but not all) such instances views were polarised by stakeholder group. Some respondents answered all of the consultation questions, others focused on selected questions, and some provided high-level comments on the proposals.

- 2.12 Given the general level of support, there are only a few areas where we have changed our proposals. These changes have been prompted both by consultation responses and discussions with stakeholders following publication of CP09/22. They are summarised in a table in Annex B. The areas where we have made the most significant changes relate to:
- security of tenure (see our response to question 33)
  - affordability and appropriateness (see our response to questions 19 and 20)
  - post-sale disclosure (see our response to question 31)
- 2.13 We have also made some technical amendments to the rules to make them clearer or more accurately reflect the published policy intention.
- 2.14 Where we have made changes to our proposals we have revisited the cost benefit analysis (CBA) in CP09/22. An updated CBA is in Chapter 4.

### **Next steps**

- 2.15 The next stage for firms wishing to continue to undertake SRB business under the full regime is the authorisation process.
- 2.16 As stated in CP09/22, the interim regime will end at midnight on 29 June 2010 and the full regime will begin on 30 June 2010. Interim permissions will lapse at this point. Firms must be authorised to operate under the full regime before they can undertake SRB business from 30 June.
- 2.17 Interim authorised firms and firms with an interim variation of permission (VoP) must apply for and receive approval for the full regime if they wish to continue undertaking SRB business from 30 June. We encourage firms to apply as soon as possible to ensure their applications are dealt with before the full regime starts.
- 2.18 Firms which are not currently regulated by the FSA but wish to undertake SRB business must be authorised under the full regime before they can do so. Firms may submit their application packs ahead of the full regime coming into force on 30 June. However, under the SRB legislation we cannot formally assess these applications until the full regime starts on 30 June, the point at which the application fee becomes payable.
- 2.19 Information for firms and authorisation application forms are available from our website ([www.fsa.gov.uk/smallfirms/your\\_firm\\_type/mortgage/rentback/index.shtml](http://www.fsa.gov.uk/smallfirms/your_firm_type/mortgage/rentback/index.shtml)).

## **CONSUMERS**

This Policy Statement will be of interest to consumers who are considering entering into a sale and rent back agreement, and the consumer bodies representing the interests of these consumers. In particular consumers should note the addition of conduct of business rules designed to prevent the use of high-pressure selling techniques, and to ensure that consumers enter into sale and rent back agreements that they understand and that are appropriate to their circumstances. Consumers may also wish to note the requirements around tenancy agreements.

# 3 Summary of responses

- 3.1 Many of our proposals in CP09/22 received widespread support from respondents. Where respondents raised particular issues, we set out our response here and explain how we have amended our proposals to address these, or why in some cases we have concluded that the change is either unnecessary or inappropriate. The following section sets out the questions from CP09/22 together with the summary of responses received.

Q1: Does our analysis fit with your understanding?

- 3.2 Most respondents agreed that our analysis had correctly described the characteristics of the sale and rent back (SRB) market and its participants.
- 3.3 Some respondents noted the discrepancy between the OFT estimate of 1,000 firms operating in the market,<sup>6</sup> and the number of firms authorised under the interim regime (fewer than 70). They were concerned about the potential for consumer detriment caused by unauthorised firms and individuals (often referred to as ‘armchair investors’) operating in this market.

**Our response:** Recent economic conditions have made investing in SRB a less attractive option for many, and the reduced availability of funding for SRB has prevented others from continuing in the market. This may go some way to explaining the difference between the OFT estimate and number of firms with interim authorisation.

However we share respondents concerns about unauthorised business and ‘armchair investors’, and this issue is discussed in more detail in the response to Q7 below.

Q2: To what extent are introducer arrangements used in the SRB market? What types of firms use introducer agreements?

- 3.4 Few respondents answered this question. Of those that did, most thought that introducer arrangements were becoming more prevalent in the SRB market. The range of firm types using introducer arrangements appears to be fairly wide, ranging from mortgage brokers and financial advisers looking to supplement their income, to firms that carried out SRB activities before the interim regime, but have now opted to act as introducers as an alternative to being authorised in their own right.

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6 *Sale and rent back. An OFT market study* [www.offt.gov.uk/shared\\_offt/reports/consumer\\_protection/oft1018.pdf](http://www.offt.gov.uk/shared_offt/reports/consumer_protection/oft1018.pdf)

**Our response:** We are aware that introducer arrangements are becoming more common in the SRB market. As there is no appointed representatives regime for SRB, some firms may be tempted to consider using the available introducer exclusions as an alternative to being directly authorised.

However, firms should note that unauthorised introducers may only carry out a very limited range of activities, so must take care to ensure they are not undertaking regulated activities. This is an area of the market that we will be monitoring. Further guidance on introducing exclusions can be found in our perimeter guidance (PERG) 14.4A in Annex G of Appendix 1.

Q3: Do you agree with our approach for regulating SRBs?

- 3.5 Most respondents were supportive of our approach for regulating SRB, recognising the need for a full regulatory regime to mitigate the risk of consumer detriment in this market. A small number of respondents were concerned that regulation would stifle the market and reduce choice, which could lead to worse outcomes for consumers.

**Our response:** We believe that the approach we have taken to regulation is the most appropriate to address the risks that SRB poses to our statutory objectives.

Q4: Do you have any comments on our perimeter guidance for SRB?

- 3.6 Respondents generally thought that the perimeter guidance was appropriate. However several respondents raised concerns about the clarity of the 'by way of business' test, and thought that some players in the market may take advantage of this potentially 'grey area' to undertake business without being authorised to do so.

**Our response:** The scope of our regulation, including the 'by way of business' test, is set by the government. We are discussing with the government amending the 'by way of business' test to create a special separate, narrower test for SRB than for other regulated activities. The aim of this would be to make it clear in the legislation itself rather than in the perimeter guidance that the SRB provider must be authorised if there is a commercial element to the transaction, irrespective of how infrequently the provider enters into SRB agreements. This would clarify the issue for the benefit of all market participants having re-evaluated the volume of business undertaken by small investors and the associated risk of consumer detriment during our consultation process.

We will continue to monitor the market and take action where we find evidence of unauthorised activity. See Q7 below for more information on our approach to unauthorised business.

Q5: Do you agree with our proposals on authorisation?

- 3.7 Respondents generally supported our proposals on authorisation, and agreed that it was appropriate for firms authorised under the interim regime to be reassessed under the standards that will apply under the full regime. One firm requested that the application process be modified to avoid the need for significant duplication of information only recently provided for the interim regime.
- 3.8 Two respondents argued that there should be an appointed representatives regime for SRB, particularly where firms already have established appointed representatives structures in place.

**Our response:** Applications for the full regime will be considered in their own right. Firms must provide all of the information we ask for, even if they gave us this for their interim application. This is to confirm that the position has not changed since their original application, and because the applications are being assessed under a different set of rules.

You can find more information on the application process in the 'next steps' section of Chapter 2 and on our website.

On appointed representatives, as explained in CP09/22, the government did not consider it appropriate to put an appointed representatives regime in place for SRB. All firms wishing to undertake SRB activity must be directly authorised, unless they are exempt or using a legitimate exclusion.

Q6: Do you agree with our approved persons proposals for SRB?

- 3.9 Most respondents welcomed our proposal to apply our approved persons provisions to SRB firms and bring the SRB market in line with other home finance firms. Several referred to the proposals in the Mortgage Market Review to apply the controlled functions CF10 (compliance oversight) and CF30 (customer function) to the mortgage market, and felt a similar approach would be appropriate for SRB.

**Our response:** SRB firms are covered by the proposals on extending the approved persons regime outlined in CP10/02 Mortgage Market Review: Arrears and Approved Persons ([www.fsa.gov.uk/pubs/cp/cp10\\_02.pdf](http://www.fsa.gov.uk/pubs/cp/cp10_02.pdf)), in particular the application of the compliance oversight and customer functions to home finance advisers and arrangers who bring about a home finance activity (which therefore includes SRB advisers and arrangers that bring about SRB agreements).

These proposals will not be in place for the start of the full regime. A policy statement is due to be published in June 2010, and this will explain when the rules will come into force. SRB firms should keep up-to-date with developments in this area.

Q7: Do you agree with our approach to dealing with unauthorised business?

- 3.10 The risk posed by unauthorised providers was widely recognised, although responses to this question varied widely, and were largely polarised according to the perspective of the respondent.
- 3.11 SRB firms generally disagreed with our approach, but expressed diverse opinions on 'armchair investors', ranging from that they should be banned to that they benefit consumers by improving competition.
- 3.12 Other respondents generally supported our approach, but recognised the risk to consumers posed by unauthorised providers, and supported further clarification of the 'by way of business' test.

**Our response:** We remain concerned about risks to consumers arising from unauthorised activity in the SRB market, whether undertaken by firms illegally operating without authorisation, or by those who do not require authorisation as they are not conducting SRB activities 'by way of business'.

As set out in our response to Q4 above, we are discussing the 'by way of business' issue with the government.

All firms carrying on regulated SRB activities must be authorised to do so, unless they are exempt or using a legitimate exclusion. Where firms undertake business without being appropriately authorised they are committing a criminal offence.

We are monitoring the market for unauthorised business. Where necessary we will take enforcement action to ensure that only firms properly authorised to undertake SRB business do so.

Q8: Do you have any comments on our FSA fees proposals?

- 3.13 Very few comments were made in response to this question, but the responses that we did receive were generally supportive. One firm raised a concern that SRB firms which are both providers and advisers/arrangers and therefore allocated to both fee blocks (A2 and A18) are unfairly supporting other firms with restricted permissions.

**Our response:** Firms' contributions to the costs of regulation is determined by allocating firms undertaking similar activities to the same fee-block, and then through reference to the volume of business a firm undertakes within this fee-block. This enables us to recover appropriate fees for similar activities. By grouping together firms carrying out similar activities, we minimise the possibility of cross-sector subsidies.

The anticipated annual ongoing costs of regulating SRB firms are expected to be quite small. Where a firm chooses to become an SRB provider, regulatory costs take into account the fact that supervision firms who are providers require more supervision because of their increased risks and their contact with consumers over the life of the SRB agreement. Apart from this factor, whether firms choose to become authorised as both SRB providers/administrators and advisers/arrangers, or one of these, there will be no material difference in supervision. Therefore it is not feasible to separate firms authorised to be both SRB providers/administrators and advisers/arrangers from those firms who have chosen to restrict their authorisation to one or the other of these categories. There are disadvantages to firms being in a small fee-block – for example, if a piece of thematic work in relation to a specific risk in the sector results in an increase in the costs of regulation, they are more likely to be impacted by any significant increase in costs than those firms who form part of a larger fee-block where costs can be spread to a wider group.

**Firms with interim authorisation:** If a firm has an interim permission and will be seeking permission to carry out SRB activities under the full regime, that firm should ensure that their application for full authorisation is submitted before 30 June 2010 in order to get the benefit of off-setting the amount they have paid under the interim regime against the fees payable for authorisation under the full regime.

**Impact of new fee structure:** Since we consulted on proposals for the full regime to regulate sale and rent back in CP09/22, we have issued a proposals for regulatory fees and levies for 2010/11 (CP09/26) which introduces our new fee structure following the outcome of our strategic review of our fees regime. The new fee structure will affect the fee-rates for the period 2010/11; therefore sale and rent back firms will be subject to the new minimum fee and straight-lining proposed in CP09/26, Chapter 1 ([www.fsa.gov.uk/pubs/cp/cp09\\_26.pdf](http://www.fsa.gov.uk/pubs/cp/cp09_26.pdf)).

Q9: Do you agree with our proposed allocation of SRB firms to FOS industry blocks and FSCS contribution groups?

3.14 All those who responded to this question about the Financial Ombudsman Service (FOS) blocks and Financial Services Compensation Scheme (FSCS) groups agreed with the proposal.

**Our response:** We will proceed with this proposal.

Q10: Do you agree with our proposal to apply the SYSC 6 requirements in relation to financial crime and money laundering rules?

3.15 Respondents agreed with this proposal. Those who commented emphasised the potential for money laundering and fraud in SRB transactions and felt that this proposal would help raise standards of anti-money laundering due diligence within firms.

**Our response:** We will proceed with this proposal.

Q11: Do you have any comments on our proposed TC requirements for those undertaking SRB activities?

3.16 Most respondents generally supported our proposals in this area. However, some expressed disappointment that we do not plan to introduce an examination requirement. It was thought that an examination requirement would raise the quality of advice in SRB firms, something that is particularly important given the potential for consumer detriment that has been seen in this market through poor practice and inappropriate sales. Some respondents also thought that the lack of examination requirements would mean that the standards expected of SRB firms would not be clear.

**Our response:** We are not changing our proposals in this area at the current time. We do not plan to introduce an examination requirement at the outset of the full regime as we do not believe that the costs are proportionate to the benefits in this small market (currently fewer than 70 firms). However, we will keep this under review as we see how the market develops under the full regime (in regard to both the number and type of firms), and whether standards improve under the rules we put in place.

In addition, as discussed in Q6 above, the recent consultation on extending the approved persons regime proposes applying the compliance oversight and customer functions to home finance advisers and arrangers that bring about home finance transactions. This will also apply to SRB firms, and should play a part in improving standards.

Q12: Do you have any comments on our proposed approach to supervision of SRB firms?

3.17 Respondents were generally in favour of our proposals. However, some respondents felt that SRB firms should be subject to more intrusive supervision than other small firms, because of the high risk of consumer detriment.

**Our response:** We have not changed our approach to supervision. We will be proactively monitoring the market and using the full range of supervisory tools available to us, including enforcement action, where appropriate.

We are consulting on regulatory reporting requirements for SRB firms alongside this policy statement. This will enable us to gather more comprehensive information on SRB firms and the SRB market to assist us in supervision.

Q13: Do you agree with the capital requirements we propose to apply to:

- (i) SRB providers and administrators?
- (ii) SRB intermediaries that do not handle client assets?
- (iii) SRB intermediaries that do handle client assets?

3.18 All respondents who answered this question supported the proposals, with few reservations being expressed. One respondent asked us to make sure that capital requirements are high enough to protect consumers if the firm fails. Another was concerned that firms would not be able to meet the capital requirements within the short timescale before the full regime begins on 30 June 2010.

**Our response:** We do not propose to make any changes to our policy, and we plan to apply capital resources requirements as set out in CP09/22 to SRB providers, administrators and intermediaries from the outset of the full regime.

Capital requirements are designed to ensure that firms are financially sound and prudently managed, and are not in themselves intended to be a mechanism to protect consumers in the case of a firm failing. There are several measures in place to protect consumers in this circumstance, as outlined in our response to Q40 below. So we do not plan to increase the requirements beyond the levels consulted on.

We did not receive significant feedback during consultation indicating that firms would find these requirements problematic. We signalled our intentions for the full regime both in the CP09/22 and in the consultation for the interim regime CP09/06 back in February 2009, so we believe that firms have had enough time to prepare. So we intend to implement the capital requirements from the outset of the full regime.

Q14: Do you agree with the proposal to apply a PII requirement to firms that undertake SRB mediation activity?

3.19 All respondents who expressed an opinion supported this proposal.

**Our response:** We will proceed with this proposal.

Q15: Do you have any concerns about your ability to obtain appropriate professional indemnity insurance (PII) for your SRB mediation activity?

3.20 Only a small number of comments were received on this question. Several respondents indicated that they already had cover in place or were confident that they were able to get cover. One had concerns over the availability and cost.

**Our response:** While the PII market for SRB is still in its infancy, we have evidence that it is possible to obtain cover, and respondents did not express strong concerns over their ability to obtain cover. So we intend to proceed with this proposal.



Q16: Do you agree with the proposal to require firms to obtain insurance or an agreement with a credit institution to protect consumers in the event that they are not able to meet future obligations that they have to consumers under the terms of the SRB product?

3.21 Most of the respondents who expressed an opinion on this proposal supported it. A minority did not on the basis that it would be expensive, and as a result either the cost would be passed on to the consumer or incentives would be withdrawn, and therefore this proposal would prove detrimental to consumers. One respondent suggested that a suitable alternative would be to secure any future obligations (such as a share of equity) against the property.

**Our response:** We do not propose to change our policy in this area as we do not see any other satisfactory way of protecting future obligations owed to SRB sellers through product incentives, for example we do not believe that registering a charge against the property would provide a guarantee in all cases that the incentive would be honoured.

We recognise that some firms may withdraw incentives as a result of this proposal. However, incentives offered with SRB products can be relatively large, and may persuade consumers to choose SRB products that they would not have done if the incentive had not been offered. So we believe it is preferable for products to be offered without incentives, where the incentive cannot be guaranteed, rather than for consumers to be tempted by unrealistic incentives that may not be met.

Q17: Do you have any comments on the proposed reporting requirements?

3.22 Responses to this question were mixed. Most were in favour of the proposal. Some wanted to see much wider reporting requirements than those in place for the interim regime, so the future development of a full reporting regime was welcomed.

3.23 One respondent was concerned that reporting requirements may be difficult for smaller firms to comply with, particularly if the information required goes beyond that which is required of them as commercial entities.

**Our response:** We are not changing our requirements now. The current reporting proposals will cover only the period until we implement a fuller set of reporting requirements. We are consulting on these fuller requirements alongside this policy statement. See chapters 5 and 6 of this paper.

Q18: Do you agree with our approach to financial promotions communications?

3.24 Most respondents were in favour of our approach to financial promotions, although some had specific concerns.

3.25 The prohibition of cold calling was generally welcomed, as was the prohibition of emotive language, the brand advertising requirements and the risk warning (although some commented on the wording of the risk warning).

3.26 The main issue of contention was the prohibition of leaflet dropping. Some respondents thought that leaflet dropping was a reasonable method of promoting SRB and targeting consumers. Others thought that the ban would be difficult to enforce and loopholes would emerge, or that it would be better to apply rules to the form and content of such leaflets, rather than banning them. However, some respondents did support the leaflet ban, and were pleased that vulnerable consumers would not be targeted by SRB firms.

**Our response:** We have not changed the substance of our proposals. To make them clearer, we have amended some of the financial promotions rules, and we have revised the wording of the risk warning. The financial promotions rules are set out in MCOB3 in Annex E of Appendix 1, and the revised risk warning can be found in MCOB 3.8B.4R.

We continue to believe that leaflet dropping is an exploitative practice when targeted at particular localities towards vulnerable consumers, and that it goes hand-in-hand with high-pressure selling. We want to send a clear message to firms that this practice is unacceptable, and believe that the benefits of retaining this rules outweighs the risks. So we intend to retain the ban.

Q19: Do you agree that there should be an affordability and appropriateness test across all sales?

3.27 Most respondents who answered this question supported this proposal. Comments on how affordability should be assessed are discussed in Q20 below.

**Our response:** We intend to proceed with this proposal, subject to some clarification of the rules as discussed in Q20 below. Revised rules can be found in Annex E of Appendix 1, MCOB 4.11.3R to 4.11.8R.

Firms should note the affordability and appropriateness test is separate to the issue of whether advice has been given. It will still be possible for SRB sales to be advised, where a specific recommendation is made. However, all sales, whether advised or not, must meet the affordability and appropriateness requirements.

Q20: Do you have any comments on how firms should be required to assess affordability?

3.28 Most comments we received were requests for us to make it clearer how affordability should be assessed, in particular:

- what an affordability test should look like, (for example through publication of a prescribed budget planner);
- how rental payments should be stress tested; and
- how the effect of the SRB agreement on SRB sellers' entitlements to benefits, especially those that are means tested, should be confirmed and recorded.

3.29 Some respondents said that SRB firms are not best placed to assess affordability or appropriateness because of the conflict of interest with their business of selling SRB agreements. Others thought that SRB firms do not have the appropriate level of expertise to assess consumers' circumstances (e.g. state benefits), and therefore

suggested that SRB sellers should be referred to an independent money advice service as part of the sales process.

3.30 Some respondents made suggestions about how affordability should be assessed.

**Our response:** We do not plan to change our policy, but we have made some amendments to the rules to clarify firms' responsibilities in this area. The revised rules can be found in Annex E of Appendix 1, MCOB 4.11.3R to 4.11.8R. Areas that we have clarified include the following:

- Affordability must be stress tested on the basis of the rent increases during the fixed term of the tenancy agreement as set out in the key terms statement and offer documents.
- Firms must base their affordability calculation on net disposable income only i.e. income after expenditure has been deducted.
- Information provided by the SRB seller used in the affordability calculation must be actively assessed by the firm (for example through checking items such as payslips, bank statements and proof of benefits).
- The SRB seller must seek external advice on state benefits taken into account in the affordability and appropriateness assessment, where the firm lacks the appropriate expertise (which is likely to be the case in many SRB firms). The firm must wait for the customer to obtain the relevant information before proceeding with its assessment.

We do not plan to publish an affordability template or to prescribe exactly how firms should calculate net disposable income. It will be up to firms to determine how to do this within the framework of our rules.

Firms will be required to keep a record of the assessment. This includes information and evidence obtained about income, expenditure and other resources obtained for the purpose of assessing affordability; a record of the needs, objectives and individual circumstances of the SRB seller; and their entitlement to means-tested benefit, including evidence of state benefits provided by the SRB seller. In every case the record must also explain why the firm concluded that the SRB was both affordable and appropriate.

Q21: Do you agree with our proposals for all firms to provide a factsheet to consumers as part of the sales process?

3.31 All respondents who expressed a view supported this proposal.

**Our response:** We will proceed with this proposal.

Q22: Do you have any comments on the proposed content of the factsheet?

3.32 Several respondents provided useful comments and suggestions on the content of the factsheet.

**Our response:** We have taken the comments provided both here and from discussion with consumer representatives into account when developing the factsheet. A copy of the factsheet is in Appendix 3.

Q23: Do you agree with our proposals to introduce a cooling-off period?

3.33 Most respondents were in favour of a cooling-off period. However, views on the length and the process were very mixed, as discussed in Q24 and Q25 below.

**Our response:** We have not changed our policy, and intend to introduce a cooling-off period.

Q24: Do you agree that the cooling-off period should be 14 days?  
How long do you think the cooling-off period should be?

3.34 Views about the length of the cooling-off period were polarised. Industry respondents tended to favour a shorter period (up to seven days). They thought that other measures in the full regime would offer sufficient protection to consumers, and that many consumers under financial pressure want a fast process, particularly where repossession proceedings are underway. Some consumer bodies favoured a longer period (around a month), in order to give consumers more time to seek debt advice (from free independent sources).

**Our response:** We recognise that some consumers may want a faster process when they are under financial pressure because of arrears on their mortgage commitments. We have discussed this with trade bodies representing lenders, and they have been supportive of the cooling-off period as long as they have some comfort that the SRB application is genuine.

As outlined in CP09/22, this will be addressed by the requirement for SRB firms to write to lenders (both first and subsequent charge holders) at the beginning of the cooling-off period. If the consumer wishes to proceed with the SRB application at the end of the cooling-off period the firm will need to keep the lender informed of the progress of the application.

Consumers can also use SRB documentation at repossession hearings as evidence that they have plans to rectify the default in mortgage payments within a reasonable period of time. This also mitigates the risk that consumers will be repossessed during the SRB application process.

We recognise that it will not always be possible to get advice within 14 days. However, the importance of obtaining advice will have been signposted to the customer before the start of the cooling-off period, during the sales process when the FSA consumer factsheet is given out. Given that a valuation will be carried out in between this and the cooling-off period the consumer will in fact have longer than 14 days to obtain advice.

So on balance we intend to retain a cooling-off period of 14 days.

Q25: Do you have any comments on the cooling-off process?

3.35 Most comments we received on the cooling-off process related to the timing, as discussed in Q24 above. Some respondents suggested that it would be appropriate to make it compulsory for SRB sellers to take legal or independent financial advice during the cooling-off period. Others commented on the timing of the cooling-off process in relation to valuations, as discussed in Q26 below.

**Our response:** We continue to believe that it is not realistic to expect most SRB consumers to pay for independent financial or legal advice. Therefore they are strongly directed, through both the FSA consumer factsheet on SRB and through the disclosure documents given out during the application process, to contact a source of free and independent debt help. Contact details for several such sources are included in the FSA consumer factsheet (see Appendix 3).

We intend to proceed with a cooling-off period of 14 days, and have not changed the cooling-off process.

Q26: Do you agree that our approach to valuations strikes a reasonable balance between the consumer's interest in an unbiased view of the property value and the cost of them commissioning their own valuation?

- 3.36 Most respondents agreed with our approach. Those that did not were concerned over the timing of the valuation and the costs to firms generated by cases that do not proceed after the valuation has been carried out. Under the proposals valuations must be carried out before the cooling-off period, so that the SRB seller has accurate information to consider. Some respondents thought there would be a high proportion of cases that would not go on to complete following the cooling-off period, and the costs of the valuations already undertaken would therefore be borne by the SRB sellers who do proceed. Some respondents also felt that requiring a valuation to be carried out before the cooling-off period would elongate the process and cause unnecessary delays.

**Our response:** An accurate independent property valuation is a key element of the SRB agreement on which consumers will base their assessment of the SRB deal being offered to them. It is important that SRB sellers have accurate information to consider during the cooling-off period.

We believe that most SRB consumers will not be in a position to pay for a valuation upfront, and agreements which tie them in to repaying costs to the firm if they do not proceed may unduly influence some consumers, particularly those who are financially vulnerable, to proceed with the transaction where it is not in their best interests to do so.

So firms will have to treat valuations as a cost of business, and model costs accordingly. We do not propose to change our policy.

Q27: Do you agree with our proposal for the valuer to owe a duty of care to the consumer as well as the firm?

- 3.37 All respondents who answered this question were generally in favour, although some had concerns over the practical application. Some were concerned about the effect on the professional indemnity insurance (PII) of valuers, which could either add costs to the transaction, or make valuers reluctant to carry out SRB valuations.

**Our response:** We have discussed the practical application of this proposal with industry stakeholders. We have worked with the Royal Institution of Chartered Surveyors (RICS) to agree a means of achieving a joint duty of care, and have produced a sample valuation instruction to achieve this, using a joint form of instruction between the SRB seller and the SRB firm. This can be found in Annex E of Appendix 1, MCOB 2 Annex 1G. We have also discussed the PII issue with stakeholders and confirmed as far as possible that the proposal should have a minimal effect on valuers' PII if the joint form of instruction is used.

Although we have not changed our policy around valuations we have made some technical amendments to the draft rules to more accurately reflect our policy intention. These are set out in MCOB 2.6A.12AR to 2.6A.13AG and can be found in Annex E of Appendix 1.

Q28: Do you agree with our initial disclosure proposals?

- 3.38 Respondents generally agreed with our initial disclosure proposals, and supported the requirement for firms to provide information about fees and charges to the consumer at the outset. However, some respondents said they would prefer the format of initial disclosure to be prescribed, as required for mortgages.

**Our response:** The FSA is moving away from a prescribed initial disclosure document (IDD). As indicated in Chapter 6 of DP09/3 – the Mortgage Market Review,<sup>7</sup> evidence shows that the IDD has had little impact on consumer behaviour. In the insurance and investment market the requirement for the IDD has been removed and replaced by a focus on the early disclosure of key information in a free format (usually in letter form).

We intend to follow this general approach for SRB. We believe it is important in this market for consumers to receive clear information upfront on the service they will receive from the firm, and the fees and charges related to that service. So we intend to proceed with our proposal for certain key information to be given both orally and in writing on first contact. However, we do not intend to prescribe the format and presentation of the information, and it will be up to firms to decide how best to do this.

Q29: Do you agree with our proposals regarding a key terms statement?

- 3.39 Most respondents agreed with the proposals, but as in Q28 above many supported a more prescriptive approach to the format, for example through publishing a prescribed template. Others asked us to clarify when the document should be used, who should give out the document when more than one firm is involved in a transaction, and what happens if material changes occur after it has been provided to the customer.

**Our response:** The key terms statement must clearly set out the key terms and information about the SRB agreement, and the information must be given to the SRB seller both verbally and in writing. The purpose is to help the consumer to understand the product they are being offered so they can make an informed decision. The firm may use an estimated valuation figure in order to provide this information at an early stage before undertaking the sales process and valuation. It must be provided by the firm that is dealing with the SRB seller at this stage – whether an intermediary or provider.

We have amended the rules for key terms statements to provide greater clarity and to reflect feedback and changes we have made following consultation (for example in relation to tenancy agreements). However, we do not plan to publish a template for this information or provide any further prescription around the format of the document.

The situation in relation to disclosure when material changes occur is set out in MCOB 5.9.1F R and 5.9.1G R, in Annex E of Appendix 1.

Q30: Do you agree with our proposals for offer stage disclosure?

- 3.40 Respondents who expressed an opinion were generally supportive. Some emphasised the comments made about the cooling-off process and the importance of SRB sellers taking some form of advice before entering into the agreement.

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7 *Mortgage market review* [www.fsa.gov.uk/pubs/discussion/dp09\\_03.pdf](http://www.fsa.gov.uk/pubs/discussion/dp09_03.pdf)

**Our response:** We intend to proceed with this proposal. However, we have made some minor amendments to MCOB 6 Annex 2R and Annex 3R to add clarity. These can be found in Annex E of Appendix 1.

Q31: Do you agree with our proposals not to implement a post-sale disclosure regime?

- 3.41 Respondents were generally supportive of this proposal, although several emphasised the importance of continuing dialogue between the SRB provider and seller after the sale, in particular to prompt consumers to take any necessary steps they are required to take to receive any incentives offered as part of the SRB product, such as buy-back or cashback options.

**Our response:** We do not propose to implement a full post-sale disclosure regime. We expect SRB firms to continue to communicate with their customers in a way that it is clear, fair and not misleading throughout their relationship, according to Principle 7.<sup>8</sup> Firms also have an obligation to treat their customers fairly, according to Principle 6. SRB firms must also keep their obligations as landlords in mind, for example their obligations under the tenancy agreement as well as under legislation and regulations applying to landlords.

However, as a result of consultation feedback we have decided to add a rule in relation to incentives, which requires the SRB firm to inform the SRB seller of the steps that must be taken to receive the incentive. This is set out in MCOB 7.9.1R and can be found in Annex E of Appendix 1.

Q32: Do you agree with our approach not to impose minimum standards for products?

- 3.42 Respondents generally agreed with this proposal on the basis that applying minimum standards is not necessary alongside other measures being introduced for the full regime. However, several respondents did support minimum standards on the basis that they would provide higher standards of consumer protection.

**Our response:** We are not proposing to impose minimum standards to products, for the reasons outlined in CP09/22, other than the minimum tenancy period and the right for the tenant to give notice during the fixed term period, as discussed in Q33 below.

However, we will review this approach as we gather a more comprehensive picture of the SRB market as it develops under the full regime.

Q33: Do you agree with our proposal that to provide consumers with security of tenure, a tenancy agreement under a SRB agreement must be an assured tenancy?<sup>9</sup>

- 3.43 Responses to this question were mixed and comments extensive. There was an even balance between respondents who were in favour and those against the proposal. Some were undecided.

<sup>8</sup> *The principles* [www.fsahandbook.info/FSA/html/handbook/PRIN/2/1](http://www.fsahandbook.info/FSA/html/handbook/PRIN/2/1)

<sup>9</sup> While an assured shorthold tenancy agreement is a type of assured tenancy, we were referring in the consultation to an assured tenancy that is not an assured shorthold tenancy.

- 3.44 Consumer bodies were keen to see greater security for the consumer than is provided under the interim regime, whether achieved through an assured tenancy or through alternative means.
- 3.45 Most SRB firms did not believe that the use of assured tenancies was workable for them on the basis that the additional security of tenure (particularly the indefinite period of tenancy that it provides) would not be viable under their funding models. This would lead to many firms withdrawing from the market, and to greatly reduced availability of SRB and consumer choice. In addition, the restrictions of assured tenancies would result in the SRB providers that did remain in the market offering SRB sellers significantly less for their properties.
- 3.46 A number of respondents raised concerns about the consequences to consumers of introducing assured tenancies into the SRB market. These confirmed the views of providers and included concerns that:
- Many SRB sellers would be excluded from the regulated SRB market because of the lower amount offered to them for their properties, as in many cases their outstanding mortgage debts would exceed the amount offered by SRB providers.
  - The reduced availability of regulated SRB, both through firms exiting the market and lower amount being offered to SRB sellers, would result in consumers seeking unregulated alternatives – leading to an increased risk of consumer detriment.
  - SRB rents would increase as landlords covered the risk of protracted possession proceedings arising from assured tenancies.
- 3.47 Some respondents also commented that the application of an assured tenancy on its own would not provide sufficient consumer protection. They suggested additional measures including, the application of a minimum term, or the removal of certain grounds for eviction that are usually permissible under an assured tenancy (such as mandatory ground 8<sup>10</sup> of the Housing Act 1988 relating to rent arrears, instead restricting recovery on rent arrears grounds to the discretionary grounds 10 and 11).<sup>11</sup>
- 3.48 Some respondents pointed out that an assured shorthold tenancy could be for a fixed term of more than 12 months (contrary to what was indicated in paragraph 9.66 of CP09/22). One respondent also pointed out the different legal structure of tenancy agreements in Northern Ireland.

**Our response:** We have given very careful consideration to these issues, and the effect that they are likely to have on consumers and firms. We recognise that SRB offers a valuable solution for some consumers, and that if they do not have access to regulated SRB products they may feel pressured to consider unregulated alternatives.

As a result we have decided to revisit our approach to tenancy agreements. Instead of requiring that a tenancy agreement under an SRB agreement must be an assured tenancy

<sup>10</sup> Ground 8 (which was amended by the Housing Act 1996) refers to the right of the landlord to take possession of the property due to rent arrears. In summary, for this ground to be applicable rent arrears must exceed eight weeks if the rent is paid weekly or fortnightly, two months if paid monthly, one full quarter if paid quarterly or three months if paid yearly. This ground is mandatory and therefore the court must approve the request for possession.

<sup>11</sup> Ground 10 covers arrears of rent less than the amount specified in mandatory Ground 8. Ground 11 covers persistent delays in rent payments. Both of these grounds are discretionary, and therefore the court can consider mitigating factors e.g. factors outside the tenant's control, such as delays in housing benefit.



we are requiring an assured shorthold tenancy agreement (or the equivalent in Scotland and Northern Ireland) with a fixed term of at least five years.

This will give security of tenure, subject to the SRB seller meeting the terms of the tenancy agreement, for a period of five years. This offers a considerable improvement on the current situation where SRB tenants typically have little security of tenure beyond the initial 6 to 12-month term. We believe this represents a sensible, pragmatic approach balancing the interests of consumers and firms, as:

- Regulated SRB will continue to be available for those for whom it is appropriate; and
- This minimum term of five years will prevent SRB providers entering the SRB market to make a quick profit by swiftly evicting the tenant and then selling the property on. This practice has driven much of the consumer detriment in this market.

Our rules on security of tenure are set out in MCOB 2.6A.5BR and can be found in Annex E of Appendix 1.

We have also made some further amendments to our tenancy agreement requirements, as follows:

- As the legal framework of tenancy agreements varies between England and Wales, Scotland and Northern Ireland, we have set out separate rules for the three jurisdictions in order to achieve equivalent security of tenure as far as possible.
- We will restrict certain grounds for possession being used where we believe that they could be used to evict SRB sellers in a way that may be unfair. This includes Ground 8 of the Housing Act 1988. However we will require that the tenant under the SRB agreement is able to give the SRB firm reasonable (no more than three months) notice to terminate the tenancy during the fixed term of the tenancy agreement.

Q34: Do you agree with our proposal to apply a rule on excessive charges?

3.49 Respondents generally agreed with this proposal. Some respondents wanted clarification on what an excessive charge is.

**Our response:** We have not changed our policy on excessive charges. Guidance on excessive charges can be found in MCOB 12.5.3G.<sup>12</sup>

Q35: Do you have any comments about our approach to record keeping?

3.50 Most respondents were in favour of our proposals. Several supported keeping records for longer than suggested, for example to help in complaints handling.

**Our response:** In response both to comments received and the amended tenancy requirements, we have amended the rules related to record-keeping. In most cases we will require that records are kept for a minimum of one year beyond the expiry of the fixed term of the tenancy agreement. However, please refer to Schedule 1 of Annex E in Appendix 1 for full details of record keeping requirements relating to SRB agreements.

12 *FSA handbook MCOB 12.5* [www.fsahandbook.info/FSA/html/handbook/MCOB/12/5](http://www.fsahandbook.info/FSA/html/handbook/MCOB/12/5)

Q36: Do you have any comments about our transitional arrangements?

3.51 Few respondents commented on these proposals and those that did were generally supportive.

**Our response:** The transitional arrangements remain unchanged, and can be found in MCOB TP3 in Annex E of Appendix 1.

Q37: Do you agree with our proposal to apply DISP to complaints reporting rules to SRB firms?

3.52 All respondents to this question were supportive. Those that commented strongly supported this as essential for supervision and consumer protection.

**Our response:** We have not changed our policy.

Q38: Do you agree with our proposal to continue to cover the issue of rental disputes through disclosure?

3.53 Most respondents who expressed an opinion supported this proposal. However, some respondents disagreed, in particular consumer representatives, with some supporting the idea of regulating rental increases.

**Our response:** We have not changed our policy on this issue. The FOS will cover disputes relating to the SRB agreement, such as where the landlord has raised the rent in breach of the SRB agreement. But they will not cover rental disputes in general. Alternative remedies are available – for example, the Residential Property Tribunal Service, which covers certain types of rental dispute.

We do not propose to regulate the amount by which rent can be increased. However, our rules address rental increases during the fixed term of the tenancy agreement through disclosure and affordability requirements. MCOB 5.9.1R 1A(k) requires that the firm confirms to the SRB seller the circumstances in which rent can be increased or changed under the tenancy agreement during the fixed term. MCOB 4.11.3 and 4.11.4 require assessment of affordability of the rent throughout the fixed term of the tenancy agreement – which requires reference to the expected increases in rent during the fixed term in relation to the likely income of the SRB seller. So firms must be clear from the outset about the way in which rent can be increased during the fixed term of the tenancy. These changes to MCOB can be found in Annex E of Appendix 1.

Q39: Do you agree with our proposal to include advisers and arrangers within the scope of the FSCS?

3.54 All respondents to this question were supportive. One query was raised over whether this would apply retrospectively to existing SRB agreements.

**Our response:** We are proceeding with the policy as proposed. The protection provided under the Financial Services Compensation Scheme (FSCS) will apply to new agreements formed under the full regime, i.e. from 30 June 2010. Agreements entered into before this date will not be covered.

Q40: Do you agree that providers and administrators should not be brought into the scope (of the FSCS)?

3.55 The response to this question was mixed, with some respondents agreeing and others (mainly consumer representatives) not. The main concern raised was that SRB providers and administrators pose the risk of loss to consumers, and therefore protection through the FSCS is appropriate.

**Our response:** FSCS provides a safety net for consumers if a firm is unable, or is likely to be unable, to meet its financial obligations towards its customers. SRB consumers generally receive funds owed to them at the outset of the agreement, which to a large extent shields them against the risk of firm failure. However, SRB firms may continue to owe some form of financial obligation to the customer arising from the following:

- Obligations owed to the consumer under the terms of the SRB agreement, usually an incentive such as a refund of a portion of the original discount or a share in the appreciation of the property.
- Issues around security of tenure, for example if the SRB provider experiences financial difficulties and the property is repossessed or sold.

The issue of obligations owed under the terms of the agreement is covered by the prudential requirement discussed in Q16 above, where firms must obtain insurance or an agreement with a credit institution to protect consumers in the event that they are not able to meet future obligations.

Regarding security of tenure, we have strengthened the rule (see Annex E of Appendix 1, MCOB 2.6A.5B R(6)) which requires that where the SRB provider funds the SRB agreement through a mortgage, they must get approval in writing from the lender to the proposed letting under the agreement, and provide a copy of this approval to the SRB seller.

Security of tenure is also protected to a great extent under the terms of the tenancy agreement – which in most circumstances would persist during the fixed tenancy period if the property was sold (i.e. the property would be sold subject to the tenancy agreement).

So we do not intend to bring SRB providers and administrators into the scope of the FSCS.

Q41: Do you agree with our proposals to address the risks of provider default?

3.56 Respondents generally agreed, but those that didn't supported the inclusion of providers in the scope of FSCS.

**Our response:** For the reasons outlined in Q40 above, we do not plan to bring SRB providers into the scope of FSCS.

Q42: Do you agree that the FOS should extend the scope of its voluntary jurisdiction to include SRB activities and operation of multilateral trading facilities?

3.57 FSA regulation and the Financial Ombudsman Service's (FOS's) compulsory jurisdiction cover activities carried on in or from the UK. The FOS's voluntary jurisdiction includes activities carried on elsewhere in the European Economic Area

but directed at customers in the UK. As the compulsory jurisdiction has expanded to reflect extensions in FSA regulation, the FOS needed to consider expanding the voluntary jurisdiction to cover the same activities.

- 3.58 The FOS therefore proposed in CP09/22 to change the date in DISP 2.5.1(2)(c) from 1 July 2007 to 1 July 2009. This would bring into the voluntary jurisdiction activities which (if carried on in the UK) became FSA-regulated during that period – notably sale and rent back, but also the operation of multilateral trading facilities.
- 3.59 All respondents to this question supported the proposal and offered no further comment.

**The FOS's response:** As this proposal received no adverse comment following consultation, the Board of the FOS made this rule change on 17 December 2009. This rule change has been approved by the Board of the FSA and will come into force on 6 February 2010 (as it is not dependent on the other proposals in CP09/22).

Q43: Do you have any comments on our CBA?

- 3.60 Few respondents commented on the cost benefit analysis (CBA). Three felt that costs to both the industry and the FSA may be higher.

**Our response:** Given all of the responses received, we consider that our cost estimates still stand. We have not amended our CBA. However, we address CBA issues arising from amendments to our policy following consultation in Chapter 4.

Q44: Do you agree with the compatibility statement?

- 3.61 The small number of respondents who responded to this question agreed, with no further comments made.

**Our response:** We have not made any changes to the compatibility statement.

# 4 Cost benefit analysis

## **Introduction**

- 4.1 We do not consider that the final rules and guidance for the full sale and rent back (SRB) regime published here differ significantly from the draft rules in our Consultation Paper (CP09/22). Nor do we believe that they give rise to any incremental costs to firms, consumers or the FSA over and above those identified in the cost benefit analysis included in CP09/22. However, we wish to make the following comments on some specific policy areas where we have made changes.

## **Security of tenure**

- 4.2 In CP09/22 we estimated that in order to comply with our proposals, firms would have to produce an assured tenancy template that could be filled in with personalised customer details. We estimated the legal cost for this exercise as a one-off cost of £1,000. The slight changes to a fixed term assured short-hold tenancy should not materially change our cost estimation, as firms should still produce a fixed term assured shorthold tenancy template that could be used for each transaction.

## **Affordability and appropriateness**

- 4.3 We have made a number of changes to the rules and guidance in MCOB 4 in relation to the affordability and appropriateness assessments that SRB firms must undertake as part of the sales process. The changes we have made are designed to make it clearer to firms the basis on which they must undertake this assessment and do not place additional responsibilities on them. The cost implications of these measures are considered to be minimal.

## **Post sale disclosure**

- 4.4 We have added a requirement in MCOB 7 for SRB firms to keep SRB sellers informed of the steps that must be taken to receive incentives owed to them under the SRB agreement. Whilst this rule is new, it amplifies an existing responsibility that firms have under Principles 6 and 7 to treat their customers fairly and communicate

with their customers in a way that is clear, fair and not misleading. So we do not believe that this rule results in additional costs.

### **Other changes to rules and guidance**

- 3.5 We have made a number of other technical amendments to rules and guidance to improve clarity or more accurately reflect the published policy intention. These are listed in the table in Annex B. We believe these measures have minimal cost implications.

# List of respondents to CP09/22

Active-1 Limited  
Association of Mortgage Intermediaries  
Aviva  
Choices Bespoke Compliance Solutions Ltd  
Choices Group  
Churt Property Management Ltd  
Citizens Advice Service  
Compliancy Services Ltd  
EquityPal  
Finance and Leasing Association  
Financial Services Consumer Panel  
Grainger Equity Release management Ltd  
Housing Rights Service  
Money Advice Trust  
National Landlords Association  
New Life Mortgages Ltd  
Property Freedom  
RPS Capital Partners ltd  
Shelter  
Safe Home Income Plans  
The Advertising Association  
The Law Society  
Your Home 4 Life Ltd





# Summary of changes to draft rules

Old rule number	New rule number	Nature of change	Reason for change
2.1.2 R	2.1.2 R	Sections applicable to SRB administrators have been added.	Clarification of the rules applicable to this category of activity.
2.6A.5B R	2.6A.5B R	We have changed how the tenancy must be structured and clarified the differences between jurisdictions. We have set out how the tenancy must be structured and the grounds on which a firm may evict.	Please see our response to the feedback on Q33 of the CP which can be found in Chapter 3.
2.6A.5C G	Note after 2.6A.5B	We have changed the guidance to a note, amended some of the wording and added new information.	Grounds for possession are now set out in 2.6A.5B R (see above). The changes help set out the differences between jurisdictions.
N/A	2.6A.5C G	We have added new guidance to cover ending a tenancy in Northern Ireland.	This provides more consistency between jurisdictions.
N/A	2.6A.12A R	A new rule requiring the SRB firm to ensure that the valuer owes a duty of care to the SRB seller.	Please see our response to the feedback on Q27 of the CP which can be found in Chapter 3.
2.6A.13 E	2.6A.13 E	We have changed some of the wording.	This adds clarity to help compliance with our rules.
N/A	2.6A.13A G and MCOB 2 Annex 1	We have added guidance for firms when instructing a valuer and given a sample form of letter.	The guidance assists firms in complying with our rules on valuations.
3.2.4A R to 3.8B.4 R	3.2.4A R to 3.8B.4 R	We have changed some of the wording and amended the risk warning.	This clarifies the financial promotions rules. Please see our response to the feedback in Q18 of the CP which can be found in Chapter 3.
3.8B.4 R	3.8B.5 R	A new rule on how an SRB agreement can be described in a financial promotion.	This clarifies the financial promotions rules. Please see our response to the feedback in Q18 of the CP which can be found in Chapter 3.

Old rule number	New rule number	Nature of change	Reason for change
4.11.1 R to 4.11.8 R	4.11.1 R to 4.11.8 R	We have amended the structure and wording of this section.	This clarifies the affordability and appropriateness rules. Please see our response to the feedback on Q19 and Q20 of the CP, which can be found in Chapter 3.
5.9.1 R (1A)	5.9.1 R (1A)	We have deleted some sections and changed the wording in others.	This reflects the other changes to our rules shown above.
5.9.1A R	5.9.1A G	We have changed the rule to guidance and amended the wording.	This clarifies our pre-sale disclosure rules.
N/A	5.9.1C R	A new rule requiring firms to ensure SRB sellers are aware of other sources of information in relation to the rental value of their property.	This adds clarity to help compliance with our rules.
5.9.1C G	5.9.1D G	We have amended some of the wording.	To reflect our rules more clearly.
N/A	5.9.2 R and 5.9.8 R	We have changed the rules regarding the length of time records must be kept by firms.	The changes reflect our revised stance on tenancy agreements and record keeping. Please see our response to the feedback on Q33 and Q35 of the CP, which can be found in Chapter 3.
5.9.7 G	5.9.7 G	We have amended the wording.	The changes further clarify our guidance.
6.9.2 R	6.9.2 R	We have amended the wording.	This reflects changes to other rules.
6.9.3 G	N/A	We have deleted this guidance.	This reflects changes to our rules on valuations.
6.9.12 R	6.9.11 R	We have amended the wording.	This reflects changes to our stance on tenancy agreements. Please see our response to the feedback on Q33 of the CP which can be found in Chapter 3.
6 Annex 2R and 3R	6 Annex 2R and 3R	We have amended the wording.	The changes reflect our policy intention more clearly.
N/A	7.1.2 R and 7.9.1 R	A new rule explaining post-sale disclosure requirements for SRB providers and administrators.	Please see our response to the feedback on Q31 of the CP which can be found in Chapter 3.
Schedule 1 Record keeping requirements	Schedule 1 Record keeping requirements	We have amended the wording.	Reflects changes to other rules.

# Final rules for regulated sale and rent back activities for the full regime

## SALE AND RENT BACK INSTRUMENT 2010

### Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 145 (Financial promotion rules);
    - (c) section 149 (Evidential provisions);
    - (d) section 156 (General supplementary powers);
    - (e) section 157(1) (Guidance); and
    - (f) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
  - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

### Commencement

- C. (1) Annex C (FEES) comes into force on 29 January 2010.  
 (2) The remainder of this instrument comes into force on 30 June 2010.

### 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) below.

(1)	(2)
Glossary of definitions	Annex A
General Provisions (GEN)	Annex B
Fees manual (FEES)	Annex C
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex D
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex E
Supervision manual (SUP)	Annex F

### Amendments to material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex G to this instrument.

**Notes**

- F. In this instrument, the “notes” (indicated by “**Note:**”), and the “*Editor’s Note*”, are included for the convenience of readers but do not form part of the legislative text. The *Editor’s Note* will not be reproduced in the Handbook.

**Citation**

- G. This instrument may be cited as the Sale and Rent Back Instrument 2010.

By order of the Board  
28 January 2010

## Annex A

## Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>distance regulated sale and rent back mediation contract</i>	<p>a <i>distance contract</i>, the making or performance of which constitutes, or is part of:</p> <ul style="list-style-type: none"> <li>(a) <i>advising on a regulated sale and rent back agreement</i>; or</li> <li>(b) <i>arranging (bringing about) a regulated sale and rent back agreement</i>; or</li> <li>(c) <i>making arrangements with a view to a regulated sale and rent back agreement</i>; or</li> <li>(d) <i>agreeing to carry on a regulated sale and rent back mediation activity in (a) to (c).</i></li> </ul>
<i>SRB intermediary</i>	a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i> ) to carry on a <i>regulated sale and rent back mediation activity</i> .

Amend the following definitions as shown.

<i>client</i>	<p>...</p> <p>(8) <u>(in relation to a regulated sale and rent back agreement, except in PROF):</u></p> <ul style="list-style-type: none"> <li>(a) <u>the individual or trustee who is the SRB agreement seller or potential SRB agreement seller; or</u></li> <li>(b) <u>an individual who is an unauthorised SRB agreement provider or potential unauthorised SRB agreement provider and who does not have, or would not be required to have, permission to enter into a regulated sale and rent back agreement.</u></li> </ul>
<i>specified investment</i>	<p>...</p> <p>(od) <u>regulated sale and rent back agreement (article 63J(3));</u></p> <p>...</p>

*SRB agreement seller* (in accordance with article 63J(3)(a) of the *Regulated Activities Order*) an individual or trustees, ~~or a related party of his,~~ who sells all or part of the *qualifying interest in land* in the *United Kingdom* to an agreement provider under a *regulated sale and rent back agreement* ~~and who 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.~~

## Annex B

### Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 4.2 Purpose

...

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

...

- (4) for *electronic commerce activities* carried on from an *establishment* in the *United Kingdom*, in *COBS 5.2*, *ICOBS 3.2* and *MCOB 2.8*; ~~and~~
- (5) for *regulated mortgage contracts* and *home purchase plans*, initial disclosure requirements in *MCOB 4*, pre-application disclosure requirements in *MCOB 5*, and disclosure at the offer stage in *MCOB 6*; ~~and~~
- (6) for *equity release transactions*, initial disclosure requirements in *MCOB 8.4*, pre-application disclosure requirements in *MCOB 9.4* and disclosure at the offer stage in *MCOB 9.5*; and
- (7) for *regulated sale and rent back agreements*, initial disclosure requirements in *MCOB 4.11*, pre-sale disclosure requirements in *MCOB 5.9* and disclosure at the offer stage requirements in *MCOB 6.9*.



## Annex C

## Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

**Comes into force on 29 January 2010**

### 3 Annex 1 R Authorisation fees payable

...

#### Part 2 – Complexity Groupings Straightforward Cases

Straightforward cases	
Activity grouping	Description
...	
A.18	<p><i>Home finance providers, advisers and arrangers (excluding home finance providers).</i></p> <p>In the case of applicants for <i>interim RSRB permission</i> within this activity group the specified amount payable is £1,000.</p> <p><del>In the case of applicants for <i>full RSRB permission</i> within this activity group the specified amount payable is £500.</del></p>
...	

#### Moderately Complex Cases

Moderately complex cases	
Activity grouping	Description
...	
A.2	<p><i>Home finance providers and administrators.</i></p> <p>In the case of applicants for <i>interim RSRB permission</i> within this activity group the specified amount payable is £3,000.</p> <p><del>In the case of applicants for <i>full RSRB permission</i> within this activity group the specified amount payable is £2,000.</del></p>
...	

...

**TP Transitional Provisions****TP 1.1**

(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
...					
<u>5.</u>	<u>FEES 3 Annex 1R Part 1 and Activity Groups A.2 and A.18</u>	<u>R</u>	<p>The amount payable under <u>FEES 3 Annex 1R Part 1</u> is modified as follows:</p> <p>(a) for an applicant for <u>full RSRB permission within the A.18 activity group who was granted, up until 29 June 2010, an interim RSRB permission within this activity group that was not an interim variation of permission, the specified amount payable is £500;</u></p> <p>(b) for an applicant for <u>full RSRB permission within the A.2 activity group who was granted, up until 29 June 2010, an interim RSRB permission within this activity group that was not an interim variation of permission, the specified amount payable is £2,000.</u></p>	<u>29 January 2010 to 29 June 2010</u>	<u>29 January 2010</u>
<u>6.</u>	<u>FEES 3.2.7R(p)</u>	<u>R</u>	<u>(1) The fee payable under FEES 3.2.7R(p) is modified in relation</u>	<u>29 January 2010 to 29 June 2010</u>	<u>29 January 2010</u>

		<p><u>to a firm applying for any one or more regulated sale and rent back activity as follows.</u></p> <p><u>(2) Unless (3) applies, if the variation involves the firm applying for any one or more regulated sale and rent back activity and that firm was granted, up until 29 June 2010, an interim RSRB permission that was an interim variation of permission, the fee is 50% of the highest of the tariffs set out in FEES 3 Annex 1R which apply to that application net of any interim RSRB permission application fee paid to the FSA.</u></p> <p><u>(3) If the activity groups applicable to a firm, as specified at Part 1 of FEES 4 Annex 1R, were not altered when it was granted an interim RSRB permission that was an interim variation of permission and will not alter if it is granted a full RSRB permission, no fee is payable.</u></p>		
--	--	---	--	--

## Annex D

**Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and  
Insurance Intermediaries (MIPRU)**

In this Annex, underlining indicates new text.

Regulated sale and rent back agreements: additional requirement

4.4.12     R     If a *SRB agreement provider* agrees, under the terms of a *regulated sale and rent back agreement*, to account to the *SRB agreement seller* for any monetary sum, whether after a qualifying period, over a period of time, on the occurrence of a contingent event or otherwise, the provider must:

(1) take out and maintain adequate insurance from an *insurance undertaking* authorised in the *EEA* or a *person* of equivalent status in:

(a) a *Zone A country*; or

(b) the Channel Islands, Gibraltar, Bermuda, or the Isle of Man; or

(2) enter into a written agreement with a *credit institution*;

to meet these obligations in the event that the *SRB agreement provider* is unable to do so.

4.4.13     G     An example of where this additional requirement would apply would be a term of a *regulated sale and rent back agreement* under which the *SRB agreement seller* was to receive from the *SRB agreement provider* a refund of an agreed percentage of the discount on the sale price of the property to which the agreement relates after an agreed qualifying period.

## Annex E

## Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

### 1.2 General application: who? what?

1.2.1 R (1) This sourcebook applies to every *firm* that:

...

(b) *communicates or approves a financial promotion of qualifying credit, of a home purchase plan, ~~or~~ of a home reversion plan or of a regulated sale and rent back agreement.*

...

...

Firm types and the home finance activities

1.2.2 G ...

(3) ... and PERG 14 contains detailed *guidance on home purchase activities, ~~and reversion activities~~ and regulated sale and rent back activities.*

...

2.1.2 R This table belongs to MCOB 2.1.1R [*Editor's Note: In the following table the order in which some of the categories of firm are listed has been changed. The changes of order are not marked.*]

(1) Category of firm	(2) Applicable section
...	
<i>reversion adviser</i>	...
<u><i>SRB administrator</i></u>	<u><i>MCOB 2.1, MCOB 2.2.1G, MCOB 2.2.2G, MCOB 2.2.3R, MCOB 2.2.6R, MCOB 2.2.7G, MCOB 2.2.8G, MCOB 2.5, MCOB 2.6, MCOB 2.6A.5BR(5), MCOB 2.6A.8R to MCOB 2.6A.11G, MCOB 2.6A.17AR, MCOB 2.6A.18G, MCOB 2.7.1G to MCOB 2.7.5R, MCOB 2.7A, MCOB 2.8.1G to MCOB 2.8.5G.</i></u>

<i>SRB adviser</i>	<p>As for a <i>SRB agreement provider</i> but <i>MCOB 2.6A</i> does not apply</p> <p><u>Whole chapter except <i>MCOB 2.2.5G, MCOB 2.2.6AR, MCOB 2.2.8AR, MCOB 2.2.8BG, MCOB 2.6A.5R, MCOB 2.6A.7G, MCOB 2.6A.17R</i> and <i>MCOB 2.8.6G</i>.</u></p>
<i>SRB agreement provider</i>	<p><del><i>MCOB 2.1, MCOB 2.2.6R to 2.2.7G, MCOB 2.4.1G to MCOB 2.4.3G, MCOB 2.6A.1R to 2.6A.4G, MCOB 2.6A.5AR, MCOB 2.6A.8R to 2.6A.12R, MCOB 2.6A.13E (1) and (4) and MCOB 2.6A.15R to 2.6A.16G.</i></del></p> <p><u>Whole chapter except <i>MCOB 2.2.5G, MCOB 2.2.6AR, MCOB 2.2.8AR, MCOB 2.2.8BG, MCOB 2.6A.5R, MCOB 2.6A.7G, MCOB 2.6A.17R, MCOB 2.6A.17AR, MCOB 2.6A.18G</i> and <i>MCOB 2.8.6G</i>.</u></p>
<del><i>SRB administrator</i></del> <del><i>SRB arranger</i></del>	<p>As for a <del><i>SRB agreement provider</i></del> together with <del><i>MCOB 2.6A.17AR</i></del> and <del><i>MCOB 2.6A.18G</i></del> (which do apply) but the relevant provisions of <del><i>MCOB 2.6A</i></del> only apply when making arrangements for a <del><i>regulated sale and rent back agreement</i></del> to be entered into by a <del><i>SRB agreement seller</i></del> with, or administering a <del><i>regulated sale and rent back agreement</i></del> provided by, an <del><i>unauthorised SRB agreement provider</i></del>.</p> <p><u>Whole chapter except <i>MCOB 2.2.5G, MCOB 2.2.6AR, MCOB 2.2.8AR, MCOB 2.2.8BG, MCOB 2.6A.5R, MCOB 2.6A.7G, MCOB 2.6A.17R</i> and <i>MCOB 2.8.6G</i>.</u></p>
...	

What?

2.1.3 R This chapter applies in relation to:

...

(1A) to the extent specified in *MCOB 2.1.2R Table*, *regulated sale and rent back activity*;

...

(3) the *communication* or *approval* of a *financial promotion of qualifying credit*, of a *home purchase plan*, ~~or~~ of a *home reversion plan* or of a *regulated sale and rent back agreement*.

...

Prescribed terms for regulated mortgage contracts, ~~and~~ home reversion plans and regulated sale and rent back agreements

2.2.3 R In any communication to a *customer*, a *firm* must:

...

(3) describe any *lifetime mortgage* as a ‘lifetime mortgage’; ~~and~~

(4) describe any *home reversion plan* as a ‘home reversion plan’; and

(5) describe any regulated sale and rent back agreement as a ‘sale and rent back agreement’;

...

...

2.2.6A R A *firm* which approves a *financial promotion* of a *home purchase plan* ~~or regulated sale and rent back agreement~~ must take reasonable steps to ensure that the *financial promotion* is clear, fair and not misleading.

...

2.2.8 G ... In respect of *financial promotions* of *qualifying credit*, ~~or~~ of *home reversion plans* or of regulated sale and rent back agreements, *firms* should note the separate requirements of *MCOB 3*.

...

## 2.3 **Inducements: regulated mortgage contracts, ~~and~~ home reversion plans and regulated sale and rent back agreements**

...

### Prohibition of inducements

2.3.2 R A *firm* must take reasonable steps to ensure that it, and any *person* acting on its behalf, does not:

...

(2) direct or refer any actual or potential business in relation to a *regulated mortgage contract*, ~~or~~ *home reversion plan* or regulated sale and rent back agreement to another *person* on its own initiative or on the instructions of an *associate*;

...

...

- 2.3.6 R (1) A *firm* must not operate a system of giving or offering inducements to a *mortgage intermediary*, *reversion intermediary*, *SRB intermediary* or any other third party whereby the value of the inducement increases if the intermediary or third party, such as a packager, exceeds a target set for the amount of business referred (for example, a volume override).

...

#### Quantification of inducements

- 2.3.7 R (1) A *mortgage lender*, ~~or reversion provider~~ or *SRB agreement provider* must quantify, in cash terms, any material inducement it offers to a *mortgage intermediary*, *reversion intermediary*, *SRB intermediary* or a third party.

...

- 2.3.8 R (1) ...

(1A) Quantification of any material inducement offered by a *SRB agreement provider* in connection with the conclusion of a *regulated sale and rent back agreement* must be included in the disclosures made to the potential *SRB agreement seller* under *MCOB 5.9.1R(1A)(c)*.

...

...

#### Fair treatment

- 2.4.2 G ...

(2) For *regulated sale and rent back agreements*, the *firm* should avoid practices that commit *customers* (or lead *customers* to believe they are committed) to any such agreement before they have been able to consider the information that is required by *MCOB 5.9.1R (Pre-sale disclosure)* and before the expiry of the 14 day cooling-off period as required by *MCOB 6.9.4R (Written pre-offer document: Stage One)*.

...

- 2.6A.4 G (1) In the FSA's *FSA's* view, a *customer's* interests will include:

...

(b) protection of any interest (legal or beneficial) that the *customer* retains, acquires or is intended to acquire in the property, including the expectation that such interests will be unencumbered by third party interests; ~~and~~



- (c) ... Or in circumstances where that is not practicable (for example, on *repossession*), that an appropriate amount will be returned to the *customer*; and
- (d) a customer's contractual entitlement to receive certain sums back after a qualifying period, such as where it has been agreed that a certain percentage of discount will be refunded to the customer after a set period of tenancy.

...

Protecting customers' interests under regulated sale and rent back agreements:  
security of tenure

- 2.6A.5B R (1) When entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the regulated sale and rent back agreement:
- (a) the entitlement of the SRB agreement seller (or trust beneficiary or related person) to occupy the property is governed by a tenancy, which is structured:
    - (i) if the property is in England and Wales, as an assured tenancy (including an assured shorthold tenancy) under the Housing Act 1988 (as amended);
    - (ii) if the property is in Scotland, as an assured tenancy (including a short assured tenancy) under the Housing (Scotland) Act 1988, (as amended); and
    - (iii) if the property is in Northern Ireland, as a private tenancy under the Private Tenancies (Northern Ireland) Order 2006;
  - (b) the tenancy is for a fixed term of no less than five years;
  - (c) the terms of the tenancy provide for the tenant to terminate the tenancy during the fixed term on no more than three months' notice (and with no other conditions attached); and
  - (d) each of the terms of the tenancy is fair.
- (2) When entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the regulated sale and rent back agreement, if the property is in England and Wales, the terms of the tenancy do not:
- (a) give the landlord power to determine the tenancy in certain circumstances as referred to in section 5(1) of the Housing Act 1988, as amended; or

- (b) otherwise make provision for the tenancy to be brought to an end by the landlord save on a ground or grounds for possession applicable for an assured tenancy under the Housing Act 1988, as amended; or
- (c) make provision for the tenancy to be brought to an end on any of Grounds 2, 6, 8 or 9 under the Housing Act 1988, as amended.

A firm may not rely during the fixed term of the tenancy on any ground for possession of the property other than a ground for possession on which the terms of the tenancy may under this paragraph (2) make provision for the tenancy to be brought to an end by the landlord, and a firm may only rely on any ground for possession if it is fair for the firm to do so.

- (3) When entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the regulated sale and rent back agreement, if the property is in Scotland, the terms of the tenancy do not include:

- (a) any provision for it to be brought to an end by the landlord during the fixed term other than a ground for possession applicable for an assured tenancy under the Housing (Scotland) Act 1988, as amended; or
- (b) Grounds 2, 6, 8 or 9 under the Housing (Scotland) Act 1988, (as amended).

A firm may not rely during the fixed term of the tenancy on any ground for possession of the property other than the grounds permitted under this paragraph (3) to be included in the terms of the tenancy, and a firm may only rely on any ground for possession if it is fair for the firm to do so.

- (4) When entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the regulated sale and rent back agreement, if the property is in Northern Ireland, the terms of the tenancy do not include:
  - (a) any provision which would permit the landlord to forfeit the lease and obtain possession of the property during the fixed term unless the provision is equivalent to a ground for possession applicable for an assured tenancy under Schedule 2 to the Housing Act 1988, as amended, in England; or
  - (b) any provision which would permit the landlord to forfeit the lease and obtain possession of the property on the basis that:
    - (i) a mortgagee (or chargee) under a mortgage (or charge) entered into by the landlord requires vacant possession

for the purposes of exercising a power of sale of the property; or

- (ii) the landlord intends to demolish or reconstruct, or carry out substantial works on, the property or any part of the property; or
- (iii) there are arrears of rent, unless the conditions applicable to either Ground 9 or Ground 10 under the Housing Act 1988, as amended, in England, are satisfied; or
- (iv) alternative accommodation is available for the tenant.

A firm may not rely during the fixed term of the tenancy on any circumstance to forfeit the lease and obtain possession of the property other than the circumstances permitted under this paragraph (4) to be included in the tenancy agreement, and a firm may only rely on any circumstance if it is fair for the firm to do so.

- (5) A firm must not take, or propose or threaten to take, any steps to evict the SRB agreement seller (or trust beneficiary or related person) other than by applying to the court for a possession order based on the grounds or circumstances, reliance on which is not prohibited by this rule, and enforcing that order in a lawful manner.
- (6) Where a SRB agreement provider enters into or proposes to enter into (whether before or after the commencement of the tenancy) a mortgage (or charge or standard security) over the interest it obtains under a regulated sale and rent back agreement, the firm must ensure that the mortgagee (or chargee or security holder) has agreed in writing to the proposed letting under the agreement, and to the terms of the agreement. The firm must provide to the SRB agreement seller a copy of the agreement in writing of the mortgagee (or chargee or security holder).

[Note: In England, Wales and Scotland a landlord, such as a SRB agreement provider, can only seek possession of a property during the fixed term of an assured tenancy if one or more of a limited number of grounds for possession set out in (in England and Wales) the Housing Act 1988, as amended, or (in Scotland) the Housing (Scotland) Act 1988, as amended, applies and the terms of the tenancy make provision for it to be ended on any of these grounds. Once the fixed term of the assured tenancy has ended, the landlord has the right to seek possession on broader grounds. Where the tenancy is (in England) an assured shorthold tenancy or (in Scotland) a short assured tenancy, the landlord has an additional right to seek possession from the end of the fixed term.

In Northern Ireland, the position is governed by the Private Tenancies (Northern Ireland) Order 2006 and the parties are free to agree the terms of a tenancy including its duration and the grounds on which the landlord may

seek possession, including during any fixed term.

In any event it is for the court to decide whether one or more of the grounds for possession actually applies in the particular circumstances of any case.

In Northern Ireland, a tenant must give at least four weeks' notice to quit. Northern Ireland law implies a fixed term of six months in a private tenancy unless the parties agree an alternative fixed term, so a notice to quit expiring before the first six months of the tenancy may not be effective.]

2.6A.5C G In the light of MCOB 2.6A.5B(1)(c), and in accordance with Principle 6, a firm should not seek to prevent a tenant in Northern Ireland from ending the tenancy on less than the agreed notice period (not exceeding three months in accordance with MCOB 2.6A.5B(1) (c)), where the notice is given in the first six months of the tenancy.

...

2.6A.12A R A firm must ensure that any valuation for the purposes of a regulated sale and rent back agreement is carried out by a valuer who owes a duty of care to the customer in valuing the property.

2.6A.13 E ...

(3) ~~For a home reversion plan, compliance~~ Compliance with (1) and (2) (except, in the case of a *regulated sale and rent back agreement*, (2)(b)) may be relied on as tending to establish compliance with MCOB 2.6A.12R.

(4) ~~For a regulated sale and rent back agreement, compliance with (1) may be relied upon as tending to establish compliance with the competence requirement of MCOB 2.6A.12R. [deleted]~~

(5) For a regulated sale and rent back agreement, contravention of (1) or (2) (except (2)(b)) may be relied on as tending to show contravention of MCOB 2.6A.12R.

2.6A.13A G A firm may wish to use the form of joint instruction letter set out in MCOB 2 Annex 1G with a view to establishing that a valuer owes a duty of care to the customer (see MCOB 2.6A.12AR). That form incorporates the definition of "market value" required by MCOB 6.9.2R(1)(b).

...

#### General provisions related to distance contracts

2.7.4 R During the course of a *distance contract* with a *consumer*, the making or performance of which constitutes or is part of a *regulated mortgage contract*, ~~or home purchase plan~~ or regulated sale and rent back agreement:

(1) the *firm* must, at the *consumer's* request, provide a paper copy of the contractual terms and conditions of the *regulated mortgage contract*, *home purchase plan*, *regulated sale and rent back agreement* or

services being provided by the *firm*; and

- (2) the *firm* must comply with the *customer's* request to change the means of distance communication used, unless this is incompatible with the *regulated mortgage contract, home purchase plan, regulated sale and rent back agreement* or service being provided by the *firm*.

...

After MCOB 2, insert the following new Annex. The text is not underlined.

## **2 Annex 1G Form of joint instruction letter**

This Annex belongs to *MCOB 2.6A.13AG*.

Re: AA property

We the undersigned jointly instruct you to prepare a valuation of the above property at your earliest convenience.

The Firm and the Property Owner will rely on this valuation in deciding whether to enter into a sale and rent back agreement in respect of the above property and in agreeing the terms of that agreement (including the consideration to be provided for the sale of the above property).

The valuation should be produced in accordance with RICS Valuation Standards. The basis of valuation is the Market Value of the property, using the internationally agreed definition, as set out in RICS Valuation Standards, which is:

"The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."

By accepting this instruction you acknowledge that you owe a duty at common law to exercise reasonable skill and care to both XX firm and YY the property owner and in addition you agree with each of XX firm and YY the property owner that you will carry out this instruction with reasonable skill and care.

We confirm that your fees will be met by XX firm.

Please contact YY the property owner to arrange access to the property. We look forward to receiving your valuation in due course.

Signed

XX Firm

YY property owner

Amend the following as shown.

**3 Financial Promotion of qualifying credit, ~~and of home reversion plans~~ and regulated sale and rent back agreements**

**3.1 Application: Who?**

3.1.1 R This chapter applies to every *firm* which *communicates* or *approves* a *financial promotion of qualifying credit, ~~or of a home reversion plan~~ or a regulated sale and rent back agreement.*

3.1.2 G This chapter applies generally to *firms* in relation to all *financial promotions of qualifying credit, ~~or of a home reversion plan~~ or a regulated sale and rent back agreement.* ...

...

3.1.7 G A *financial promotion* may relate to other *controlled investments* in addition to *qualifying credit, ~~and home reversion plans~~ and regulated sale and rent back agreements*, for example a building society leaflet which describes the range of mortgage, savings and insurance products it provides. In such cases, the *financial promotion rules* in this and other sourcebooks will each apply as relevant.

...

Nationals of other EEA States

3.1.11 G A national of an *EEA State* (other than the *United Kingdom*) wishing to take advantage of the exemption in article 36 of the *Financial Promotion Order* in respect of a *financial promotion of qualifying credit, ~~or of a home reversion plan~~ or a regulated sale and rent back agreement* should act in conformity with the *rules* in this chapter.

...

**3.2 Application: what?**

...

Application for a financial promotion of a regulated sale and rent back agreement

3.2.-2A R This chapter applies to the *communication or approval of a financial promotion of a regulated sale and rent back agreement* as follows:

<u>Application, purpose and general</u>	<u>MCOB 3.1 to MCOB 3.5</u>
<u>Form and content of non-real time qualifying credit promotions</u>	<u>MCOB 3.6 in accordance with</u>

	<u>MCOB 3.8B</u>
<u>Unsolicited real time financial promotions of qualifying credit or regulated sale and rent back agreements</u>	<u>MCOB 3.7</u>
<u>Form and content of financial promotions of regulated sale and rent back agreements</u>	<u>MCOB 3.8B</u>
<u>Confirmation of compliance: financial promotions of qualifying credit or regulated sale and rent back agreements</u>	<u>MCOB 3.9</u>
<u>Records: non-real time financial promotions of qualifying credit or regulated sale and rent back agreements</u>	<u>MCOB 3.10</u>
<u>The Internet and other electronic media.</u>	<u>MCOB 3.12</u>

...

- 3.2.4A R This chapter does not apply to a *firm* in relation to a *financial promotion* of a *home reversion plan* or a *regulated sale and rent back agreement* of a kind listed in *MCOB 3.2.5R*, unless the *firm* approves the *financial promotion*. However, for non-real time *financial promotions* of the kind listed in *MCOB 3.2.5R*, the requirements in *MCOB 3.8B.5R* apply in relation to how a *regulated sale and rent back agreement* can be described. Advertisements for other products that could result in the conclusion of *regulated sale and rent back agreements* must carry the sale and rent back risk warning (*MCOB 3.8B.4R*).

...

- 3.2.6 G *MCOB 3.2.5R(2)* exempts a *financial promotion* made by a *firm* or an *appointed representative* which refers to its activities only in general terms in image or brand advertising. The items identified in *MCOB 3.2.5R(2)* do not enable detailed information to be given about the *qualifying credit*, ~~or~~ *home reversion plan* or *regulated sale and rent back agreement* available from the *firm*. Thus *firms* should avoid the use of names, logos or addresses, for example, which attempt to convey additional product or cost-related information.

...

### 3.3 Application: where?

#### Territorial Scope

- 3.3.1 R This chapter applies to a *firm* in relation to:

- (1) the *communication* of a *financial promotion* to a *person* in the *United Kingdom*;
- (2) the *communication* of an *unsolicited real time financial promotion* of *qualifying credit*, ~~or~~ a *home reversion plan* or a *regulated sale and rent back agreement*, unless it is made from a place, and for the purposes of a business which is only carried on, outside the *United Kingdom*;
- (3) the approval of a *non-real time financial promotion* of *qualifying credit*, ~~or~~ a *home reversion plan* or a *regulated sale and rent back agreement* for *communication* to a *person* in the *United Kingdom*; and

...

...

Exceptions to territorial scope: rules without territorial limitation for approval of financial promotions

3.3.3 R Subject to *MCOB* 3.3.5R the following parts of this chapter apply without any territorial limitation if a *firm* approves a *financial promotion* of *qualifying credit*, ~~or~~ a *home reversion plan* or a *regulated sale and rent back agreement*:

...

- (2) *rules* requiring a *financial promotion* to be clear, fair and not misleading (see *MCOB* 3.6.3R(1) in relation to *qualifying credit*, ~~and~~ *MCOB* 3.8A.1R in relation to a *home reversion plan* ~~and~~ *MCOB* 3.8B.1R in relation to a *regulated sale and rent back agreement*); and

...

...

### 3.4 Purpose

...

3.4.2 G (1) The purpose of this chapter is to provide *rules* and *guidance* for a *firm* which wishes to *communicate* or *approve* a *financial promotion* of *qualifying credit*, ~~or~~ a *home reversion plan* or a *regulated sale and rent back agreement*.

...

...

### 3.7 Unsolicited real time financial promotions of qualifying credit, or a home reversion plan or a regulated sale and rent back agreement



...

3.7.1 R ...

- (4) If a *financial promotion* is solicited by a *person* (“R”) it is treated as also having been solicited by any other *person* to whom it is made at the same time as R if that other *person* is a *close relative* of R or is expected to enter into a *home reversion plan*, a regulated sale and rent back agreement or any contract for *qualifying credit* jointly with R.

...

#### Prohibition on unsolicited real time financial promotions to customers

- 3.7.3 R A *firm* must not make an *unsolicited real time financial promotion* of *qualifying credit*, ~~or of~~ a *home reversion plan* or a regulated sale and rent back agreement unless the *customer* has an established existing *customer* relationship with the *firm* and the relationship is such that the *customer* envisages receiving such *financial promotions*.

...

After MCOB 3.8A insert the following new section. The text is not underlined.

### **3.8B Form and content of financial promotions of regulated sale and rent back agreements**

Clear, fair and not misleading

- 3.8B.1 R A *firm* which *communicates* or *approves* a *financial promotion* of a *regulated sale and rent back agreement* must take reasonable steps to ensure that the *financial promotion* is clear, fair and not misleading.
- 3.8B.2 G The guidance on the clear, fair and not misleading standard at *MCOB* 3.6.5G, *MCOB* 3.6.10G and *MCOB* 3.6.14G may be relevant.

[**Note:** A comparative financial promotion will need to comply with regulation 4A of the Business Protection from Misleading Marketing Regulations 2008.]

Ban on SRB leaflet dropping

- 3.8B.3 R A *regulated sale and rent back firm* must not *communicate* an *unsolicited non-real time financial promotion* that relates to a *regulated sale and rent back agreement* to a potential *SRB agreement seller* in the form of a leaflet or brochure.

Non-real time financial promotions to customers and advertisements

- 3.8B.4 R A *non-real time financial promotion* relating to a *regulated sale and rent back agreement* and any other advertisement which is issued by a *regulated sale and rent back firm* that could lead to the conclusion of a *regulated sale*

*and rent back agreement*, must (unless it is of a kind listed in *MCOB 3.2.5R(2)*) contain a risk warning that uses the following wording:

*“If you enter into a sale and rent back agreement you are unlikely to get the market value of your home and, as a tenant, may only be able to remain there for a limited period. There may be other options available. Please ask for a key terms statement.”*

- 3.8B.5 R A *non-real time financial promotion* relating to a *regulated sale and rent back agreement* and any other advertisement which is issued by a *regulated sale and rent back firm* that could lead to the conclusion of a *regulated sale and rent back agreement*, must describe any *regulated sale and rent back agreement* as a “sale and rent back agreement” and not use any other expression such as “equity release” to describe it.
- 3.8B.6 E (1) A *firm* should take reasonable steps to ensure that, for a *non-real time financial promotion*:
- (a) it includes any matters the omission of which causes the *financial promotion* not to be clear, fair and not misleading;
  - (b) if it describes a feature of any *regulated sale and rent back agreement*, it gives no less prominence to the possible disadvantages than to the benefits associated with that feature;
  - (c) it uses plain and intelligible language, and is easily legible (or, in the case of oral promotions, clearly audible);
  - (d) the accuracy of all statements of fact in it can be substantiated;
  - (e) its promotional purpose is not in any way disguised or misrepresented;
  - (f) any statement of fact, promise or prediction is clear, fair and not misleading and any relevant assumptions are clearly and prominently disclosed;
  - (g) any statement of opinion is honestly held and, unless consent is impracticable, given with the written consent of the *person* concerned;
  - (h) the facts on which any comparison or contrast is made are verified, or, alternatively, that relevant assumptions are prominently disclosed and that the comparison or contrast is presented in a fair and balanced way, which is not misleading and includes all factors which are relevant to the comparison or contrast;
  - (i) it does not contain any false indications, in particular as to the *firm*’s resources and scale of activities;
  - (j) the design, content or format does not in any way disguise,

obscure or diminish the significance of any statement, warning or other matter which the *regulated sale and rent back agreement* is required by this chapter to contain; and

- (k) it does not include any reference to approval by the *FSA* or any government body, unless that approval has been obtained in writing from the *FSA* or that body (see also *GEN* 1.2 (Referring to approval by the *FSA*)).
  - (2) (a) Contravention of (1) may be relied on as tending to show contravention of *MCOB* 3.8B.1R.
  - (b) Compliance with (1) may be relied on as tending to show compliance with *MCOB* 3.8B.1R.
- 3.8B.7 G The effect of giving no less prominence to the possible disadvantages than to the benefits associated with a feature will depend on the context of the promotion. The costs, restrictions or conditions relating to a feature such as any option available should be detailed for the following non-exhaustive examples:
- (1) where any part of the discount on the market value of the property is to be repaid to the *consumer* after a qualifying period; and
  - (2) where a *consumer* is to benefit from shared appreciation in the value of the property.

#### Exploitation of customer

- 3.8B.8 R A *firm* must not in any *financial promotion* of a *regulated sale and rent back agreement* exploit the vulnerable nature or circumstances of any *customer* who may be in financial difficulties and at risk of losing his or her home and must accordingly avoid using in the promotion phrases or terms such as “fast sales”, “rescue” or “cash quickly” or any other similar expression.

#### No approval of real time financial promotions of a regulated sale and rent back agreement

- 3.8B.9 R A *firm* must not approve a *real time financial promotion* of a *regulated sale and rent back agreement*.

#### Referring to the FSA

- 3.8B.10 G The guidance on referring to the *FSA* in a *financial promotion* may be relevant (see *MCOB* 3.6.2G(3)).

Amend the following as shown.

### **3.9 Confirmation of compliance: financial promotions of qualifying credit, ~~or~~**

### **home reversion plans or regulated sale and rent back agreements**

- 3.9.1 R (1) Before a *firm communicates* or *approves* a *non-real time financial promotion of qualifying credit, ~~or of~~ a home reversion plan or a regulated sale and rent back agreement* it must confirm that the *financial promotion* complies with the *rules* in this chapter.

...

- 3.9.2 G (1) ‘Appropriate expertise’ will vary depending on the complexity of the *financial promotion* and the *qualifying credit, ~~or home reversion plan~~ or regulated sale and rent back agreement* to which it relates. The individuals engaged by a *firm* to confirm the compliance of its *financial promotions* with this chapter may themselves have different levels of expertise and therefore a different level of authority for confirmation depending on the type of promotion and the *qualifying credit, ~~or home reversion plan~~ or regulated sale and rent back agreement* involved.

...

### **3.10 Records: non-real time financial promotions of qualifying credit, ~~or of~~ a home reversion plan or a regulated sale and rent back agreement**

Requirement to make and retain records

- 3.10.1 R A *firm* must make an adequate record of each *non-real time financial promotion of qualifying credit, ~~or of~~ a home reversion plan or a regulated sale and rent back agreement* which it has confirmed as complying with the *rules* in this chapter. The record must be retained for a year from the date at which the *financial promotion* was last *communicated*.

Content of records

- 3.10.2 G In deciding what is an adequate record, a *firm* should consider including, or providing reference to, where appropriate, such matters as:

...

- (4) the evidence supporting any material factual statement about *qualifying credit, ~~or a home reversion plan~~ or a regulated sale and rent back agreement* in the *financial promotion*. ...

...

...

### **3.12 The Internet and other electronic media**

...

Approach and general guidance

- 3.12.2 G Any material which meets the definition of a *financial promotion* of *qualifying credit*, ~~or of~~ a *home reversion plan* or a regulated sale and rent back agreement, including any video or moving image material incorporated in any website containing such a *financial promotion* should comply with the *rules* in this chapter. ...
- 3.12.3 G As indicated in *MCOB* 3.3 (Application: where?), for the purposes of the *financial promotion rules* there are two types of approach to *financial promotion communicated* via the Internet and other electronic media:  
...  
(2) *non-real time financial promotions* where the *customer* may, for example, choose from reading a description of the *qualifying credit*, ~~or~~ *home reversion plan* or regulated sale and rent back agreement, through to the completion of a contract in a similar way to browsing through a leaflet rack. ...
- 3.12.4 G ...  
(3) When designing websites and other electronic media, *firms* should be aware of the difficulties that can arise when reproducing certain colours and printing certain types of text. These difficulties could cause problems with the presentation and retrieval of required information. Any *financial promotion* of *qualifying credit*, ~~or of~~ a *home reversion plan* or a regulated sale and rent back agreement communicated by the Internet, digital or other forms of interactive television is subject to the requirements on form and content in this chapter.

...

## 4.1 Application

...

- 4.1.2 R This Table belongs to *MCOB* 4.1.1R

(1) Category of firm	(2) Applicable section
...	
<i>reversion provider</i> ...	...
<u><i>SRB adviser</i></u>	<u><i>MCOB</i> 4.1, <i>MCOB</i> 4.2, <i>MCOB</i> 4.5, <i>MCOB</i> 4.6 and <i>MCOB</i> 4.11</u>
<u><i>SRB arranger</i></u>	<u><i>MCOB</i> 4.1, <i>MCOB</i> 4.2, <i>MCOB</i> 4.5, <i>MCOB</i> 4.6 and <i>MCOB</i> 4.11</u>

<u>SRB agreement provider</u>	<u>MCOB 4.1, MCOB 4.2 and MCOB 4.11</u>
-------------------------------	---

...

- 4.1.6 G *MCOB 4.1.5R means that this chapter, MCOB 4, deals with standard regulated mortgage contracts, ~~and~~ home purchase plans and regulated sale and rent back agreements only and therefore firms should note that the scope of service rules in this chapter do not apply in respect of equity release transactions.*

...

**4.5 Additional disclosure for distance mortgage mediation contracts, ~~and~~ distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with retail customers**

- 4.5.1 G (1) *There are certain additional disclosure requirements laid down by the Distance Marketing Directive that will have to be provided by a mortgage intermediary, ~~and~~ a home purchase intermediary and a SRB intermediary to a consumer prior to the conclusion of a distance mortgage mediation contract, ~~or~~ a distance home purchase mediation contract or a distance regulated sale and rent back mediation contract. ...*
- (2) *... MCOB 4.5 and MCOB 4.6 will only be relevant if a mortgage intermediary, ~~or~~ a home purchase intermediary or a SRB intermediary enters into a distance contract in respect of its mortgage mediation activities, ~~or~~ home purchase mediation activities or regulated sale and rent back mediation activities quite independent of any contractual arrangement with a consumer relating to a particular regulated mortgage contract, ~~or~~ home purchase plan or regulated sale and rent back agreement. ...*
- 4.5.2 R *If the initial contact of a kind in MCOB 4.4.1R(1) is with a consumer with a view to concluding a distance mortgage mediation contract, ~~or~~ a distance home purchase mediation contract or a distance regulated sale and rent back mediation contract, a firm must:*
- (1) *in addition to initial disclosure information and any other required information, provide the consumer with the information in MCOB 4 Annex 3R in a durable medium in good time before the conclusion of the distance mortgage mediation contract, ~~or~~ distance home purchase mediation contract or distance regulated sale and rent back mediation contract with that customer unless an exemption in (2), (3), (4) or (5) applies.*

...

- 4.5.3 G ...

- (2) ... However, if a service of a different nature is proposed, the *firm* is expected to provide a fresh initial disclosure ~~document~~ documentation and, in respect of *distance mortgage mediation contracts*, ~~and~~ *distance home purchase mediation contracts* and distance regulated sale and rent back mediation contracts with a consumer, this will need to be accompanied by the information in *MCOB 4 Annex 3R*.

#### **4.6 Cancellation of distance mortgage mediation contracts, ~~and~~ distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts**

- 4.6.1 G A *consumer* has no right to cancel a *home finance transaction* concluded with a *firm* but may have a right to cancel a *distance contract* concluded with a *mortgage intermediary*, ~~or a home purchase intermediary~~ or a *SRB intermediary* for the provision of his services. Whether a *mortgage intermediary*, ~~or a home purchase intermediary~~ or a *SRB intermediary* concludes a *distance mortgage mediation contract*, ~~or a distance home purchase mediation contract~~ or a *distance regulated sale and rent back mediation contract* with a *consumer* will depend on the circumstances. For example, an intermediary may not, in *advising on* or *arranging* ~~a regulated mortgage contract~~, ~~or home purchase plan~~ or *regulated sale and rent back agreement*, act contractually on behalf of, or for, the *customer*. ...

...

##### Cancellation period

- 4.6.4 R (1) A *consumer* has a right to cancel a *distance mortgage mediation contract*, ~~or a distance home purchase mediation contract~~ or a *distance regulated sale and rent back mediation contract* in accordance with this section.

...

##### Exercising the right to cancel

- 4.6.5 R A *consumer* who has a right to cancel a *distance mortgage mediation contract*, ~~or a distance home purchase mediation contract~~ or a *distance regulated sale and rent back mediation contract* may, without giving any reason, cancel the contract by serving notice on the *firm*, before the expiry of the cancellation period in *MCOB 4.6.4R* either:

...

...

After *MCOB 4.10* insert the following new section. The text is not underlined.

#### **4.11 Sale and rent back: advising and selling standards**

## Initial disclosure requirements

- 4.11.1 R (1) *A regulated sale and rent back firm, on first making contact with a potential SRB agreement seller for whom it might reasonably be expected to carry on any regulated sale and rent back activity, must make the following disclosures to him, both orally and in writing:*
- (a) *the service the firm is offering the customer, making it clear whether the firm will be acting as a SRB agreement provider, a SRB adviser or a SRB arranger and the particular regulated sale and rent back activities for which the firm has a Part IV permission;*
  - (b) *if the firm is acting as an intermediary, whether it deals with a single or a range of SRB agreement providers and whether or not those providers are authorised under the Act; and*
  - (c) *how much the firm will receive in connection with the transaction, whether by way of fees, commissions, charges, retentions or otherwise and whether any such sum will be payable out of the sale proceeds of the property, paid directly by the customer or provider or otherwise and whether or not any of these will be payable if the customer decides not to enter into a regulated sale and rent back agreement.*
- (2) *If the precise fees, commissions, charges, retentions or other sums in (1)(c) are not known in advance, the firm should estimate the amount likely to apply in respect of the transaction.*

## FSA consumer factsheet on sale and rent back

- 4.11.2 R (1) *As soon as the customer expresses an interest in becoming a SRB agreement seller, a regulated sale and rent back firm must provide him with the FSA consumer factsheet on sale and rent back in a durable medium which may be accessed through [www.fsa.gov.uk](http://www.fsa.gov.uk).*
- (2) *The firm on providing the FSA consumer factsheet in (1) to the customer must give him an oral explanation of it, so as to ensure that the customer fully understands its contents.*

## Affordability and appropriateness

- 4.11.3 R *A regulated sale and rent back firm must not permit a potential SRB agreement seller to become contractually committed to enter into a regulated sale and rent back agreement unless it has reasonable grounds to be satisfied that:*
- (1) *the customer can afford the payments he will be liable to make under the agreement; and*
  - (2) *the proposed regulated sale and rent back agreement is appropriate to*



the needs, objectives and circumstances of the *customer*.

- 4.11.4 E (1) In assessing whether a *customer* can afford to enter into a particular *regulated sale and rent back agreement*, a *firm* should use the following information:
- (a) the rental payments that will be due under the tenancy agreement which confers the right of the *customer* (or trust beneficiary or related party) to continue residing in the property, stress tested to take account of possible future rental increases during the fixed term of the tenancy agreement by reference to the circumstances in which the agreement permits increases or changes to the initial rent;
  - (b) adequate information, obtained from the *customer* to establish his income and expenditure calculated on a monthly basis, and any other resources that he has available, and verified by the firm using evidence provided by the *customer*;
  - (c) the *customer's* net disposable income, which a *firm* should establish using the information referred to in (b);
  - (d) the *customer's* entitlement to means-tested benefits and housing benefits; and
  - (e) the effect of any likely future change to the *customer's* income, expenditure or resources during the period of the *regulated sale and rent back agreement*.
- (2) The *firm* should explain to the *customer* that it will base its assessment on whether he can afford to enter into the particular *regulated sale and rent back agreement* on the information he provides to the *firm* about his income, expenditure and resources.
- (3) In assessing affordability under (1) the *firm*:
- (a) must not rely to a material extent on the capital of, or income from, any lump sum the *customer* receives which represents the net sale proceeds of the property; and
  - (b) must disregard any discount or any future sum that may be payable to the *customer* under the terms of the *regulated sale and rent back agreement*.
- (4) Contravention of (1), (2) or (3) may be relied upon as tending to show contravention of *MCOB* 4.11.3R(1).
- 4.11.5 E (1) In assessing whether a particular *regulated sale and rent back agreement* is appropriate to the needs, objectives and circumstances of a potential *SRB agreement seller*, a *firm* should have due regard to the following:

- (a) whether the benefits to the *customer* in entering into the proposed *regulated sale and rent back agreement* outweigh any adverse effects it may have for him, including on his entitlement to means-tested benefits and housing benefits; and
  - (b) the feasibility of the *customer* raising funds by alternative methods other than by a sale of his property.
- (2) Contravention of (1) may be relied upon as tending to show contravention of *MCOB* 4.11.3R(2).
- 4.11.6 G In considering the *customer's* entitlement to the means-tested benefits and housing benefits for the affordability and appropriateness assessment, a *firm* may rely on information provided to it by the *customer*, provided it is satisfied on reasonable grounds that the *customer* has received advice from the appropriate HM Government department or other appropriate source of independent advice as to his position.
- 4.11.7 G (1) A consideration of the *customer's* benefits position will need to focus on whether, by entering into the proposed *regulated sale and rent back agreement*, his entitlement to means-tested benefit will be adversely affected because of his receipt of the net proceeds of sale (if any) of the property. The *customer's* possible loss of entitlement to claim housing benefit should also be assessed. Where a *firm* has insufficient knowledge of means-tested and housing benefits to reach a conclusion on this, it should advise the customer to contact the appropriate HM Government department or other appropriate source of independent advice to establish the position. The *firm* should then wait for the customer to obtain the relevant information before proceeding with its assessment.
- (2) The *firm* should consider whether a *customer* in *arrears* under his *regulated mortgage contract* or *home purchase plan* has contacted his *mortgage lender* or *home purchase provider* to discuss possible forbearance options that may be available. Other possible alternative methods of raising funds will include the availability of local authority or other government rescue schemes that might apply in the *customer's* circumstances.
- (3) *Firms* are reminded that under *MCOB* 4.11.2R they are required to provide the *customer* with the *FSA* consumer factsheet on sale and rent back and give him an oral explanation of its contents. The *FSA* expects this to be done in the course of a face-to-face meeting. *Firms* will be expected in the course of this discussion with the *customer* to explain alternative options that may be available to him, such as liaising with his *mortgage lender* or *home purchase provider* to negotiate a forbearance strategy or approaching his local authority about the availability of mortgage rescue schemes.

#### Record keeping

- 4.11.8 R (1) A *firm* must make and retain a record of the *customer* information that has been provided to it, including that relating to:
- (a) the *customer's* income, expenditure and other resources that it has obtained from him for the purpose of assessing affordability, together with the stress testing of the rental payments;
  - (b) the *customer's* needs, objectives and individual circumstances that it has obtained from him for the purpose of assessing appropriateness; and
  - (c) the *customer's* entitlement to means-tested benefits and housing benefits, including any evidence provided by the *customer*, that it has obtained from him for the affordability and appropriateness assessment;
- and which explains why the *firm* concluded that the *customer* could afford, and why it was appropriate for him, to enter into the proposed *regulated sale and rent back agreement*.
- (2) The record in (1) must be retained for a minimum of five years from the date on which the assessment of affordability and appropriateness was made, or one year after the end of the fixed term of the tenancy agreement under the *regulated sale and rent back agreement*, if later.

#### Reliance on another firm

- 4.11.9 R A *firm* need not comply with the requirements imposed on a *regulated sale and rent back firm* in this section to the extent that it is satisfied on reasonable grounds that another *firm* has already done so.
- 4.11.10 G The effect of *MCOB 4.11.9R* is that a *SRB agreement provider* is expected to carry out its own assessments of affordability and appropriateness in relation to a particular *regulated sale and rent back agreement*, unless it is reasonable for it to rely on another *firm* to have done so in relation to a particular transaction.

Amend the following as shown.

**4 Annex 3R Additional information requirements in respect of distance mortgage mediation contracts, ~~and~~ distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with consumers**

This table belongs to *MCOB 4.5.2R*

<b>Additional information for distance contracts with retail customers consumers</b>
All the contractual terms and conditions on which the service will be

provided including, in particular, the following information:	
...	
(6)	<p>details of:</p> <p>(a) the <i>EEA State</i> or States whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>customer</i> prior to the conclusion of the <i>regulated mortgage contract</i>, <del>or home purchase plan or regulated sale and rent back agreement</del>;</p> <p>(b) any contractual clause on law applicable to the <i>regulated mortgage contract</i>, <del>or home purchase plan or regulated sale and rent back agreement</del> or on competent court, or both; and</p> <p>(c) the language in which the contract is supplied and in which the <i>firm</i> will communicate during the course of the <i>regulated mortgage contract</i>, <del>or home purchase plan or regulated sale and rent back agreement</del>.</p>

...

## 5.1 Application

...

5.1.2 R This Table belongs to MCOB 5.1.1R

(1) Category of firm	(2) Applicable section
...	
<i>SRB adviser</i>	<p><del><i>MCOB 5.1.1R, MCOB 5.1.2R, MCOB 5.9.4R and MCOB 5.9.5G</i></del></p> <p><u><i>MCOB 5.1.1R to MCOB 5.1.3R, MCOB 5.2 and MCOB 5.9</i></u></p>
<i>SRB agreement provider</i>	<p><i>MCOB 5.1.1R to 5.1.3R, <u>MCOB 5.2</u>, MCOB 5.9.1R and to MCOB 5.9.2R (including <u>MCOB 5.9.1AR to MCOB 5.9.1FG</u>), MCOB 5.9.6R and MCOB 5.9.7G</i></p>
<i>SRB arranger</i>	<p><del><i>MCOB 5.1.1R, MCOB 5.1.2R, MCOB 5.9.3R to MCOB 5.9.5G</i></del></p> <p><u><i>MCOB 5.1.1R to MCOB 5.1.3R, MCOB 5.2 and MCOB 5.9</i></u></p>

...

## 5.9 Pre-sale disclosure for regulated ~~Regulated~~ sale and rent back agreements

## Pre-sale disclosure

- 5.9.1 R (1) ~~A *SRB agreement provider* must not enter into a regulated sale and rent back agreement with a *SRB agreement seller* unless the following *firm* must, as soon as a *customer* expresses an interest in becoming a *SRB agreement seller*, ensure that the disclosures and warnings set out in (1A) are ~~have been~~ made to the *SRB agreement seller customer*, both orally and confirmed in writing, and he is given an adequate opportunity to consider them. The *firm* must not demand or accept any fees, charges or other sums from the *customer*, or undertake any action that commits the *customer* in any way to entering into a specific agreement, until:~~
- (a) the written pre-offer document that is required by *MCOB* 6.9.3R has been provided to the *customer*; and
  - (b) the written offer document for signing (Stage Two) that is required by *MCOB* 6.9.10R(1) has been returned to the *firm* duly signed by the *customer*.
- (1A) The disclosures and warnings referred to in (1) are the following:
- (a) where a valuation of the property that is the subject matter of the regulated sale and rent back agreement has already been carried out in accordance with *MCOB* 2.6A.12R, a statement of its the market value of the property that is the subject matter of the regulated sale and rent back agreement, as determined by any independent valuation under *MCOB* 2.6A.12R or, if a valuation of the property has not yet been carried out, the price or value of the property on which the proposed regulated sale and rent back agreement would be based (estimated if necessary);
  - (b) if the valuer that has produced the independent valuation in (a) was not acting for the *SRB agreement seller* in doing so, a prominent warning that this is the case and as such that it is advisable for the *SRB agreement seller* specifically to consider whether he is content with the market valuation in (a); [deleted]
  - (c) any fees, charges or retentions that the *firm* will deduct from the purchase price for the property, and net of any fees or charges otherwise payable, and whether there are any fees, charges or other sums that are payable to any *SRB intermediary* that is involved in the proposed transaction or to a third party;
  - (d) the purchase price that the *firm* ~~will~~ is prepared to pay the *SRB agreement seller* for the property, net of any fees, charges or retentions;

- (e) ...
- (ea) that the *SRB agreement seller* should in his own best interests independently seek whatever information he can on the market value of his property, as explained in the *FSA consumer factsheet* provided to the *customer*, before proceeding with the proposed transaction and how and from where information on its value may be available;
- (f) brief details of the ~~type and period~~ main terms of the tenancy under the proposed *regulated sale and rent back agreement*, including its type, the letting period including the fixed term and the security of tenure the *SRB agreement seller* (or trust beneficiary or related person) will be given under it, an explanation that the seller (or trust beneficiary or related person) cannot be evicted unless the *SRB agreement provider* obtains a possession order from the court and an explanation of the seller's (or trust beneficiary's or related person's) ability to terminate the tenancy;
- (g) ~~the minimum period that the *SRB agreement seller* and his family have a contractual right to remain in the property under the terms of the proposed agreement; [deleted]~~
- (h) ~~if the terms of the tenancy provide for a period of occupancy that is shorter than the minimum contractual period under (g), details of how the *firm* intends to meet the contractual period under (g); [deleted]~~
- (i) a prominent warning that once the ~~minimum contractual period~~ fixed term under ~~(g)~~ (f) expires, the *SRB agreement seller* and his family may be required to leave the property;
- (ia) where the *SRB agreement seller* is to be given an option under the proposed agreement to buy back the property at some future date from the *SRB agreement provider*, a statement confirming that this is the case, together with details of the option, including how it may be exercised and any restrictions such as time limits that will apply to it, and a clear explanation as to how the repurchase price is to be determined;
- ...
- (k) the circumstances in which the rent in (j) can be increased or changed in any way under the terms of the tenancy agreement; ~~and~~
- (l) the risks associated with the transaction from the *SRB agreement seller's* perspective, including in particular:

...

- (ii) that failure to obtain legal or professional advice may mean his interests are not fully protected;
- (m) whether there are any other features or restrictions in the regulated sale and rent back agreement which the SRB agreement seller would reasonably need to know about for the purpose of making an informed judgment about the merits of entering into the proposed agreement;
- (n) information on what the SRB agreement seller should do if he wishes to make a complaint against the firm arising out of or in connection with the proposed regulated sale and rent back agreement, including provision of an address and phone number at which the firm may be contacted should the customer wish to pursue a complaint and that if he cannot settle his complaint with the firm, that he may be entitled to refer it to the Financial Ombudsman Service; and
- (o) information on the circumstances in which the SRB agreement seller might be entitled to compensation under the Financial Services Compensation Scheme, depending on the type of business and the circumstances of the claim, and, if so, details of the relevant coverage.

...

- (3) In making the disclosures in writing to the SRB agreement seller that are required by (1) and (1A), the firm must make prominent use of the key facts logo in accordance with GEN 5.1 (Application and purpose), followed by the text “about this sale and rent back agreement”.

#### Compliance with the pre-sale disclosure requirement

- 5.9.1A    G    A firm may comply with the requirement in MCOB 5.9.1R (Pre-sale disclosure) for disclosures and warnings to be confirmed in writing by providing the potential SRB agreement seller with the written pre-offer document that is required by MCOB 6.9.3R (Written pre-offer document: Stage One) if this can be done as quickly as providing the pre-sale disclosures, provided that (in accordance with MCOB 5.9.1) the firm does not demand or accept any fees, charges or other sums from the customer or undertake any action that commits the customer to the proposed regulated sale and rent back agreement until:
- (1) the written pre-offer document that is required by MCOB 6.9.3R has been provided to the customer; and
  - (2) the written offer document for signing (Stage Two) that is required by MCOB 6.9.10R(1) has been returned to the firm duly signed by

the customer.

Information on valuations and rental values

- 5.9.1B    R    Where the potential *SRB agreement seller* has not commissioned his own valuation of the property, a *firm* must ensure that he realises that there are other possible sources of information on the property's value that are available to him, including local estate agents, local newspapers which carry advertisements for the sale of residential property in the *customer's* locality and on-line sites where details of recent property sales in the locality may be accessed.
- 5.9.1C    R    A *firm* must ensure that the *SRB agreement seller* realises that there are other possible sources of information on the appropriate rental value for the property available to him, including local estate agents, local newspapers and on-line sites which carry advertisements for the rental of residential property in the *customer's* locality.
- 5.9.1D    G    There is no requirement for the property to be valued before making the pre-sale disclosures. However, *MCOB* 6.9.2R requires that an independent valuation of the property be carried out before the provider supplies the *customer* with the written pre-offer document at Stage One (see *MCOB* 6.9.3R).

Disclosure of relevant features or restrictions

- 5.9.1E    G    Examples of features of a *regulated sale and rent agreement* that a *SRB agreement seller* would reasonably need to know about (see *MCOB* 5.9.1R(1A)(m)) would include an arrangement under which the seller is to receive from the *SRB agreement provider* a refund of some agreed percentage of the discount (on the market value of the property) that was reflected in the sale price under the *regulated sale and rent back agreement* after the end of the agreed letting term. Should any restrictions or the payment of any costs or fees be attached to the seller's entitlement to exercise such an option, these should be explained clearly.

Revised pre-sale disclosures

- 5.9.1F    R    Where a *firm* has already provided the required pre-sale disclosures and the terms for the proposed *regulated sale and rent back agreement* are subsequently materially altered, the *firm* must ensure that, at the *firm's* option, either:
- (1)    the pre-sale disclosures are re-issued to the *customer*, incorporating the agreed amendment; or
  - (2)    the agreed amendment is incorporated in the written pre-offer document at Stage One (see *MCOB* 6.9.3R).
- 5.9.1G    G    What constitutes "materially altered" requires consideration of the facts of each individual case. For example, a change in the proposed purchase or valuation price of the property should normally be regarded as material, as



would the introduction of an additional charge applying to the regulated sale and rent back agreement when it did not previously.

#### Records of pre-sale disclosure

- 5.9.2 R A ~~SRB agreement provider~~ firm must keep a record of the disclosures and warnings made to the *SRB agreement seller* under MCOB 5.9.1R for a period of:
- (1) ~~12 months~~ one year after the end of the ~~minimum period that the SRB agreement seller and his family have a contractual right to remain in the property~~ fixed term of the tenancy under the regulated sale and rent back agreement; or
  - (2) five years from the date of the disclosures and warnings;
- whichever is the longer.

#### Initial disclosure information to SRB agreement sellers: unauthorised SRB agreement providers

- 5.9.3 R (1) A ~~firm~~ SRB intermediary must ensure that, on first making contact with a prospective *SRB agreement seller*, whether or not he is the *firm's customer*, who is proposing to enter into a *regulated sale and rent back agreement* with an *unauthorised SRB agreement provider*, it provides him with the written warning in (2) before he enters into any such agreement.

...

#### Initial disclosure information: to unauthorised SRB agreement providers

- 5.9.4 R (1) A ~~firm~~ SRB intermediary must ensure that, on first making contact with a *customer* who is both an individual and an *unauthorised SRB agreement provider*, when it anticipates giving personalised information or advice on a *regulated sale and rent back agreement*, it must provide him with the written warning in (2).

...

- 5.9.5 G A *person* may enter into a *regulated sale and rent back agreement* as agreement provider without being regulated by the *FSA* (or an *exempt person*) if the *person* does not do so by way of business. However, a *SRB intermediary* should at all times be conscious of its obligations under Principle 6 (Customers' interests). Should the *firm* have any reason to believe or entertain any suspicions that the *SRB agreement seller* may be proposing to enter into a *regulated sale and rent back agreement* with an *unauthorised SRB agreement provider* notwithstanding that the provider appears to be doing so by way of business and therefore appears to require authorisation under the *Act*, the *firm* should warn the seller that he should not be proceeding with the transaction.

Uncertainty whether the arrangements constitute a sale and rent back agreement

- 5.9.6 R (1) If, at the point that the required pre-sale disclosures must be provided to a potential *SRB agreement seller*, a *firm* is uncertain whether the arrangement will qualify as a *regulated sale and rent back agreement*, the *firm* must:
- (a) provide the required pre-sale disclosures on the basis that the arrangement might constitute a *regulated sale and rent back agreement*; or
  - (b) seek to obtain from the potential seller information that will enable the *firm* to ascertain whether the contract will qualify as a *regulated sale and rent back agreement*.
- (2) Where (1)(b) applies, pre-sale disclosures must be provided, unless, on the basis of information the potential seller provides, the *firm* has reasonable evidence that the contract would not qualify as a *regulated sale and rent back agreement*.
- 5.9.7 G If the *firm* has reasonable evidence that the contract is not a *regulated sale and rent back agreement*, for example where at least 40% of the property is not going to be occupied as a dwelling by the seller or his family, and has not provided the required pre-sale disclosures and the *firm* subsequently concludes that the contract does qualify as a *regulated sale and rent back agreement*, there is no requirement to provide separate pre-sale disclosures at the time the *firm* reaches that conclusion. However, the requirement to integrate the pre-sale disclosures into the written pre-offer document at Stage One that is required by *MCOB 6.9.3R* will apply.

Record of sale and rent back providers

- 5.9.8 R (1) A *SRB intermediary* must for each *regulated sale and rent back agreement* in relation to which it carries on *regulated sale and rent back mediation activity* keep a record of the contact details of the provider that enters into or is proposed to enter into the agreement, making it clear whether the provider is a *SRB agreement provider* or an *unauthorised SRB agreement provider*.
- (2) The record in (1) must be retained for a period of one year, or one year from the end of the fixed term of the tenancy under the *regulated sale and rent back agreement*, whichever is the longer.

...

## 6.1 Application

...

6.1.2 R This Table belongs to *MCOB 6.1.1R*

(1) Category of firm	(2) Applicable section
...	
<i>reversion provider</i>	...
<u><i>SRB agreement provider</i></u>	<u><i>MCOB 6.1.1R to 6.1.3R, MCOB 6.1.5R, MCOB 6.2, MCOB 6.3 and MCOB 6.9</i></u>

...

After MCOB 6.8 insert the following new section. The text is not underlined.

## 6.9 Regulated sale and rent back agreements

Process for concluding regulated sale and rent back agreements

6.9.1 R A *SRB agreement provider* must not enter into a *regulated sale and rent back agreement* unless it follows the process outlined in this section.

Valuation of the property

- 6.9.2 R (1) A *SRB agreement provider* intending to enter into a specific *regulated sale and rent back agreement* with a *SRB agreement seller* and before it complies with the other requirements in this section, must ensure that the property is properly valued by a valuer:
- (a) that meets the competence and independence requirements (see *MCOB 2.6A.12R, MCOB 2.6A.12AR* and *MCOB 2.6A.13E*); and
  - (b) using the definition of “market value” set out in the Valuation Standard of the Royal Institution of Chartered Surveyors from time to time.
- (2) Where the *SRB agreement provider* has applied to a *mortgage lender* for financing for a proposed *regulated sale and rent back agreement* and the relevant lender in accordance with its standard lending practices requires its own valuation of the property to be carried out, the valuation will only satisfy the requirements of (1) if the property is properly valued by a valuer that meets the competence and independence requirements (see *MCOB 2.6A.12R* and *MCOB*

2.6A.13E).

- (3) The *firm* must ensure that a copy of the valuation report accompanies the written pre-offer document at Stage One (see *MCOB* 6.9.3R).
- (4) This *rule* does not apply if the *SRB agreement seller* has already obtained his own recent valuation of the property from a valuer that meets the competence and independence requirements (see *MCOB* 2.6A.12R and *MCOB* 2.6A.13E).

Written pre-offer document: Stage One

- 6.9.3 R (1) As soon as a *SRB agreement provider* agrees the key terms of a proposed *regulated sale and rent back agreement* with a *SRB agreement seller* and before he becomes contractually committed to enter into the agreement, the *SRB agreement provider* must provide the seller with a written pre-offer document summarising its key terms (Stage One).
- (2) The written pre-offer document must be in the form prescribed by *MCOB* 6 Annex 2R and must be adapted by the *firm*, as appropriate, to the extent specified.
- (3) The written pre-offer document must be accompanied by the *FSA* consumer factsheet on sale and rent back (even if the *firm* has already provided this) which the *firm* must provide to the *customer* in a *durable medium* and which may be accessed through [www.fsa.gov.uk](http://www.fsa.gov.uk).
- (4) On providing the *FSA* consumer factsheet to the *SRB agreement seller*, the *firm* must give him an oral explanation of what it contains, so as to ensure that he understands its contents, unless the *firm* has already done so.
- (5) The *firm* must ensure that the written pre-offer document is accompanied by all associated legal documents in draft form that the seller will need to sign at Stage Two (*MCOB* 6.9.10R) to give effect to the proposed *regulated sale and rent back agreement*.

Cooling-off: No contact between *SRB agreement provider* and *SRB agreement seller*

- 6.9.4 R The *SRB agreement provider* must not instigate any contact or otherwise seek to communicate with the *SRB agreement seller* or a member of his family for a period of 14 *days* from the time that he has been supplied with the written pre-offer document at Stage One, together with the associated legal documentation in draft form.
- 6.9.5 R If the *SRB agreement seller* or a member of his family makes contact with the *SRB agreement provider* during the 14 *day* cooling-off period, for example because he wants to query a term of the written pre-offer document, the provider must endeavour to answer the query in as factual a manner as the circumstances permit but avoid any language or conduct

which could be interpreted as amounting to an attempt to exert pressure on the *SRB agreement seller* to enter into the proposed agreement.

#### Exercise of cooling-off rights: costs and expenses

- 6.9.6 R The *SRB agreement provider* must not charge or seek to charge a potential *SRB agreement seller* for any fee, cost, or expense unless and until the seller has entered into the *regulated sale and rent back agreement* following the 14 day cooling-off period.

#### Responsibility of SRB agreement provider during cooling-off period

- 6.9.7 R The *SRB agreement provider* must not offer to or *enter into a regulated sale and rent back agreement* with the seller until the 14 day cooling off period has elapsed and must not allow the seller to become contractually committed to enter into any such agreement by signing any associated legal documentation to give effect to it within that period.

#### Requirement to notify the mortgage lender or home purchase provider where the seller is in arrears

- 6.9.8 R As soon as a *SRB agreement provider* has provided the written pre-offer document at Stage One to a *SRB agreement seller* who is *in arrears* under his *regulated mortgage contract* or *home purchase plan* on the property to which the proposed *regulated sale and rent back agreement* relates, it must, in a *durable medium*, immediately notify the *mortgage lender*, *home purchase provider* or the providers of other loans that may be secured on the property:
- (1) explaining that the *firm* is proposing to enter into a *regulated sale and rent back agreement* with the seller and that, as required by the *FSA*, he will be given a cooling-off period of 14 days before deciding whether he wishes to enter into the proposed agreement;
  - (2) summarising the key terms of the proposed agreement;
  - (3) advising the lender or provider that the proposed agreement is likely to be relevant to any repossession action or other forbearance option the lender or provider may already be, or may be contemplating, taking with respect to the property; and
  - (4) giving the *firm's* contact details should the lender or provider wish for any further information.

#### Data protection

- 6.9.9 G *Firms* will need to consider the implications of the Data Protection Act 1998 under which personal data that a *firm*, as data controller, holds about its *customer* cannot be disclosed to a third party without his consent. In practice the *firm* is likely to need the *SRB agreement seller's* consent to disclosing the matters covered by *MCOB 6.9.8R* to the relevant *mortgage*

*lender or home purchase provider.*

Written offer document for signing: Stage Two

- 6.9.10 R (1) No sooner than 14 *days* after the *SRB agreement provider* has supplied the *SRB agreement seller* with the written pre-offer at Stage One, the provider must provide him with a written offer document for signing (Stage Two), accompanied by any formal legal documentation that the parties will need to sign to give effect to the proposed *regulated sale and rent back agreement*.
- (2) The written offer document for signing (Stage Two) must be in the form prescribed by *MCOB 6 Annex 3R* and must be adapted by the *firm*, as appropriate, to the extent specified.

Records of written pre-offer documents and written offer documents for signing

- 6.9.11 R The *SRB agreement provider* must keep a record of the written pre-offer document at Stage One and the written offer document for signing at Stage Two for a period of:
- (1) one year after the end of the fixed term of the tenancy under the *regulated sale and rent back agreement*; or
- (2) five years from the date of the disclosures and warnings, written offer documents and cooling-off period notices;
- whichever is the longer.

...

After MCOB 6 Annex 1, insert the following new Annexes. The text is not underlined.

## 6 Annex 2R – Written Pre-offer Document of a regulated sale and rent back agreement.

1. This annex belongs to *MCOB* 6.9.3R.
2. The text in square brackets marked with an asterisk indicates instructions to the firm that must not be included in the Stage One pre-offer document provided to customers.



### About this sale and rent back agreement

Date: [date produced by firm]

## STAGE ONE – PRE-OFFER DOCUMENT

Please take time to consider the details of this sale and rent back pre-offer document and any associated documents such as the draft sale and rent back contract and draft tenancy agreement.

### Is this agreement right for me?

Please consider whether this sale and rent back agreement is the best option for you. You should consider taking independent advice. Please read the enclosed consumer factsheet “Just the facts about sale and rent back schemes” which gives impartial information, including contact details for free advice agencies.

You do not have to agree to the proposed agreement.

### How long do I have to consider this agreement?

You have at least fourteen days from the date of this document to consider the information before [name of firm] can give you the Stage Two documents to sign.

**[name of firm(s)] must not contact you throughout this fourteen day period. This is to give you time to consider whether you wish to go ahead.**

### Should I contact my lender?

If you have arrears on your mortgage or other loan secured on your property, [name of firm] will write to your lender(s) to let them know that you are considering a sale and rent back agreement. However you should also contact your lender(s) to let them know what is happening.

### \*Details of the proposed sale and rent back agreement

**[The text in this section ‘details of the proposed sale and rent back agreement’ is not prescribed – however it must be set out in accordance with MCOB 5.9.1R, but adapted to include the market valuation of the property rather than an estimate] \***

**6 Annex 3R – Cooling-Off Document of a regulated sale and rent back agreement.**

1. This annex belongs to *MCOB* 6.9.10R.
2. The text in square brackets marked with an asterisk indicates instructions to the firm that must not be included in the Stage Two offer document provided to customers.

**About this sale and rent back agreement****STAGE TWO – OFFER DOCUMENT**

Date: [date produced by firm – must be at least fourteen days after the date of the Stage One document ]

Please take time to consider the details of this sale and rent back offer and any associated documents such as the sale and rent back contract and tenancy agreement before signing.

**Is the agreement right for me?**

Please consider whether this sale and rent back agreement is the best option for you. You should consider taking independent advice. The consumer factsheet “Just the facts about sale and rent back schemes” which was enclosed in the stage one pre-offer document, gives impartial information and contact details for free advice agencies.

You do not have to agree to this offer.

**Should I contact my lender?**

If you have arrears on your mortgage or other loan secured on your property, [name of firm] will write to your lender(s) to let them know that you are considering a sale and rent back agreement. However you should also contact your lender(s) to let them know what is happening.

**\*Details of your offer**

**[The text in this section ‘details of your offer’ is not prescribed – however it must be set out in accordance with MCOB 5.9.1R, but adapted to include the market valuation of the property rather than an estimate] \***

I/we wish to accept this offer

Signatures of customer(s):	Date signed:



Amend the following as shown.

7.1.2 R This table belongs to *MCOB 7.1.1R*

(1) Category of firm	(2) Applicable section
...	
<i>reversion provider</i> ...	...
<u><i>SRB administrator</i></u>	<u><i>MCOB 7.9</i></u>
<u><i>SRB agreement provider</i></u>	<u><i>MCOB 7.1 to MCOB 7.3 and MCOB 7.9</i></u>

...

After MCOB 7.8 insert the following new section. The text is not underlined.

## 7.9 Post-sale disclosure for regulated sale and rent back agreements

7.9.1 R Where the terms of a *regulated sale and rent back agreement* include a provision conferring upon the *SRB agreement seller* a right to receive any sum, or exercise any option, in relation to the transaction after it has been concluded, the *SRB agreement provider* must take reasonable steps to inform the *SRB agreement seller* in good time of any steps which the *SRB agreement seller* must take if he wishes to receive the sum or exercise the option.

Amend the following as shown.

12.1.6 R This chapter does not apply to a *firm* carrying on *reversion activities* or *regulated sale and rent back activities* in respect of a *customer* acting in his capacity as an *unauthorised reversion provider* or as an *unauthorised SRB agreement provider*.

After MCOB TP 2 insert the following new Transitional Provisions. The text is not underlined.

### MCOB TP 3 Transitional Provisions

#### 3.1 Transitional Provisions for sale and rent back agreements

(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
1	Every <i>rule</i> in <i>MCOB</i> unless the context otherwise requires and subject to any more specific transitional provision relating to the matter.	R	<p>(1) If, in relation to <i>regulated sale and rent back activities</i>, or the communication of a <i>financial promotion</i> relating to a <i>regulated sale and rent back agreement</i>, provisions in <i>MCOB</i> are dependent on the occurrence of a series of events, the provision applies with respect to the events that occur on or after 30 June 2010.</p> <p>(2) Paragraph (1) is without prejudice to provisions in <i>MCOB</i> that applied before 30 June 2010 to <i>regulated sale and rent back firms</i> that held an interim authorisation or an interim variation of permission to conduct <i>regulated sale and rent back activity</i> in accordance with article 32 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order (SI 2009/1342) that had been granted by the <i>FSA</i>.</p>	From 30 June 2010 for 4 weeks.	30 June 2010
2	-	G	For example if a <i>customer</i> has not entered into a <i>regulated sale and rent back agreement</i> before 30		

			June 2010, a regulated sale and rent back firm will have to comply with the requirements in <i>MCOB</i> when taking any further action (such as issuing a written pre-offer document (Stage One) with cooling-off period ( <i>MCOB</i> 6.9)).		
3	-	G	<i>MCOB</i> applies to regulated sale and rent back agreements entered into on or after 1 July 2009. <i>PERG</i> 14.4A contains guidance on the variation of plans entered into before 1 July 2009).		
4	<i>MCOB</i> 3.8B.4R; <i>MCOB</i> 3.8B.5R	R	(1) A non-real time financial promotion of a regulated sale and rent back agreement communicated:  (a) in a directory (or similar publication) that is updated annually;  (b) otherwise than in (a); on or after 30 June 2010 where the deadline for submission for communication was before that date.	(1)(a) from the later of 30 June 2010 or the date of first communication, for one year;  (1)(b) from 30 June 2010 for three months.	30 June 2010

...

### Schedule 1 Record keeping requirements

...

#### 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u><i>MCOB</i> 4.11.8R</u>	<u>Customer information on which an</u>	<u>Customer information on his income,</u>	<u>The date on which the firm reached a</u>	<u>Five years, or one year after the end of the</u>

	<u>assessment of the affordability and appropriateness for a <i>regulated sale and rent back agreement</i> was based</u>	<u>expenditure, resources, needs, objectives and individual circumstances</u>	<u>conclusion on affordability and appropriateness</u>	<u>fixed term of the tenancy agreement, if later</u>
...				
<i>MCOB 5.9.2R</i>	Each pre-sale disclosure	A record of the main terms of the <i>regulated sale and rent back agreement</i>	The date on which the disclosure is made	The longer of a period of <del>12 months</del> <u>one year</u> from the end of the <del>minimum period that the <i>SRB agreement seller and his family have the contractual right to remain in the property</i></del> <u>fixed term of the tenancy</u> or five years from the date of the disclosure
...				
<i>MCOB 5.9.8R</i>	<u>Provider information</u>	<u>A record of the contact details of the provider, making it clear whether it is a <i>SRB agreement provider</i> or an <i>unauthorised SRB agreement provider</i></u>	<u>The date on which the <i>regulated sale and rent back mediation activity</i> is carried on</u>	<u>The longer of one year, or one year from the end of the fixed term of the tenancy under the <i>regulated sale and rent back agreement</i></u>
...				
<i>MCOB 6.9.11R</i>	<u>Each written pre-offer document (Stage One) required under <i>MCOB 6.9.3R</i></u>	<u>A record of the main terms of the proposed <i>regulated sale and rent back agreement</i></u>	<u>The date on which the document is produced</u>	<u>The longer of a period of one year from the end of the fixed term of the tenancy under the <i>regulated</i></u>

				<u>sale and rent back agreement or five years from the date of the written pre-offer document</u>
<u>MCOB 6.9.11R</u>	<u>Each written offer document for signing (Stage Two) required under MCOB 6.9.10R (1)</u>	<u>A record of the contents of the documents and the cooling-off period</u>	<u>The date on which the document is produced</u>	<u>The longer of a period of one year from the end of the fixed term of the tenancy under the regulated sale and rent back agreement or five years from the date of the written offer document</u>
...				

## Annex F

## Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

## TP 1 Transitional provisions

## TP 1.1 Transitional provisions applying to the Supervision manual only

...

## TP 1.2

(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
...					
<u>15D</u>	<u>SUP 16</u>	<u>R</u>	<p><u>A regulated sale and rent back firm need not comply with the rules in SUP 16 to the extent that they carry on regulated sale and rent back activity. A regulated sale and rent back firm must instead:</u></p> <p><u>(a) within a period of 3 months from becoming authorised (for previously unauthorised persons); or</u></p> <p><u>(b) according to their existing reporting schedules (for firms that previously held an interim authorisation or interim variation of permission in accordance with article 32 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order (SI 2009/1342) or hold a Part IV permission to carry on regulated sale and rent back activity as a result of having made a variation of permission application that has been approved by the FSA);</u></p> <p><u>and every 6 months after such date until 30 June 2011 (unless otherwise advised by the FSA), provide to the</u></p>	<u>30 June 2010 to 29 June 2011</u>	<u>30 June 2010</u>

		<p><u>FSA for the relevant period the following information:</u></p> <p><u>(i) management accounts for the firm, including a balance sheet, profit/loss statement and management report;</u></p> <p><u>(ii) details of the firm's funding arrangements; and</u></p> <p><u>(iii) where the firm is a SRB agreement provider, the number of regulated sale and rent back agreements it has entered into in that period, distinguishing between direct and indirect sales.</u></p> <p><u>If a firm does not submit a complete report by the date on which it is due in accordance with this transitional provision, the firm must pay an administrative fee of £250.</u></p>		
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## Annex G

## Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

...

1.4.2 G Table: list of general guidance to be found in *PERG*

Chapter:	Applicable to:	About:
...		
<p><i>PERG</i> 14: Home reversion, <del>and</del> home finance <u>and regulated sale and rent back activities</u></p>	<p>Any <i>person</i> who needs to know whether his activities in relation to <i>home reversion plans</i>, <del>or</del> <u><i>home purchase plans or regulated sale and rent back agreements</i></u> will amount to <i>regulated activities</i> or whether the restriction in section 21 of the <i>Act</i> will apply to any <i>financial promotions</i> he may make.</p>	<ul style="list-style-type: none"> <li>• the <i>regulated activities</i> that arise in connection with <i>home reversion plans</i>, <del>and</del> <u><i>home purchase plans and regulated sale and rent back agreements</i></u> and any exclusions that may be relevant</li> <li>• the circumstances in which <i>financial promotions</i> about <i>home reversion plans</i>, <del>and</del> <u><i>home purchase plans and regulated sale and rent back agreements</i></u> may be made without breaching the restriction in section 21 of the <i>Act</i></li> </ul>
...		

...

Rights under a regulated sale and rent back agreement

2.6.27C G In accordance with Article 63J(3)(a) of the *Regulated Activities Order*, a regulated sale and rent back agreement is an arrangement under which, at the time it is entered into:

- (1) a person (the “SRB agreement provider”) buys all or part of the qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the “agreement seller”); and
- (2) the agreement seller (if he is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related person, is entitled under the arrangement to occupy at least



40% of the land in question as or in connection with a dwelling, and intends to do so;

but excluding any arrangement that is a regulated *home reversion plan*.

Detailed *guidance* on this is set out in *PERG 14.4A (Activities relating to regulated sale and rent back agreements)*.

...

2.7.7A G There are ~~eight~~ ten arranging activities that are *regulated activities* under the *Regulated Activities Order*. These are:

...

- (7) *arranging (bringing about) a home purchase plan*, which includes arranging for another *person* to vary the terms of a *home purchase plan* entered into by him as home purchaser on or after 6 April 2007 (article 25C(1)); ~~and~~
- (8) *making arrangements with a view to a home purchase plan* (article 25C(2));
- (9) *arranging (bringing about) a regulated sale and rent back agreement, which includes arranging for another person ("A") to vary the terms of a regulated sale and rent back agreement entered into on or after 1 July 2009 by A as agreement seller or agreement provider, in such a way as to vary A's obligations under that agreement (article 25E(1)); and*
- (10) *making arrangements with a view to a regulated sale and rent back agreement (article 25E(2)).*

...

2.7.7B G The activity of *arranging (bringing about) deals in investments* is aimed at arrangements that would have the direct effect that a particular transaction is concluded (that is, *arrangements* that bring it about). The activity of *making arrangements with a view to transactions in investments* is concerned with arrangements of an ongoing nature whose purpose is to facilitate the entering into of transactions by other parties. This activity has a potentially broad scope and typically applies in one of two scenarios. These are where a person provides ~~facilities~~ arrangements of some kind:

- (1) to enable or assist investors to deal with or through a particular firm (such as the arrangements made by introducers); or

...

...

Advising on regulated sale and rent back agreements

2.7.16E G Under article 53D of the *Regulated Activities Order* giving advice to a person in his capacity as an *SRB agreement seller* or an *SRB agreement provider* is a *regulated activity* if it is advice on the merits of the person:

- (1) entering into a particular *regulated sale and rent back agreement*; or
- (2) varying the terms of a *regulated sale and rent back agreement*.

Advice on varying terms as referred to in (2) only comes within article 53D where the agreement is entered into by the person on or after 1 July 2009 and the variation varies the person's obligations under the agreement. Further guidance on the scope of the *regulated activity* under article 53D is in PERG 14.4A (Activities relating to regulated sale and rent back agreements).

...

#### Entering into and administering a regulated sale and rent back agreement

2.7.20BA G Entering into a regulated sale and rent back agreement as an agreement provider and administering a regulated sale and rent back agreement are regulated activities under Article 63J of the *Regulated Activities Order* (Regulated sale and rent back agreements). Guidance on these regulated activities is in PERG 14.4A (Activities relating to regulated sale and rent back agreements).

...

2.8.6 G The various activities that involve *arranging* fall into two general types. These are:

- (1) those relating to arranging a particular transaction or a contract, agreement or plan variation (articles 25(1), 25A(1), 25B(1), ~~and~~ 25C(1), and 25E(1) of the *Regulated Activities Order*); and
- (2) those relating to making arrangements with a view to persons entering into certain transactions (articles 25(2), 25A(2), 25B(2), ~~and~~ 25C(2), and 25E(2) of the *Regulated Activities Order*).

...

2.8.6A G The exclusions in the *Regulated Activities Order* that relate to the various *arranging* activities are as follows.

...

- (5) Under article 29A, an *unauthorised person* is excluded from the *regulated activity* of arranging for another person to vary the terms of a *regulated mortgage contract* entered into on or after 31 October 2004 (article 25A(1)(b)) or a *home reversion plan* or *home purchase plan* entered into on or after 6 April 2007 (articles 25B(1)(b) and

25C(1)(b)) or a regulated sale and rent back agreement entered into on or after 1 July 2009 (article 25E(1)(b)). This is if the *arranging* is the result of:

(a) anything done in the course of the administration, by an *authorised person*:

...

(iii) of a *home purchase plan* in the way set out in article 63G(a); ~~or~~

(iv) of a regulated sale and rent back agreement in the way set out in article 63K(a); or

(b) anything done by the *unauthorised person* in connection with the administration:

...

(iii) of a *home purchase plan* in the way set out in article 63G(b);

(iv) of a regulated sale and rent back agreement in the way set out in article 63K(b).

...

(9) Under article 33, making arrangements under which *persons* will be introduced to third parties who will provide independent services (consisting of advice or the exercise of discretion in relation to certain investments) is excluded from articles 25(2), 25A(2), 25B(2), ~~and~~ 25C(2) and 25E(2) only. The party to whom the introduction is made must be of a specified standing (including that of an *authorised person*). The exclusion does not apply where the arrangements relate to a *contract of insurance*.

(10) ...

is excluded from articles 25A(2), 25B(2), ~~and~~ 25C(2), and 25E(2) subject to certain conditions related to the receipt of client money and the disclosure of certain information.

...

2.8.12 G In certain circumstances, advice that takes the form of a regularly updated news or information service and advice which is given in one of a range of different media (for example, newspaper or television) is excluded from the *regulated activities* of:

...

- (3) *advising on a home reversion plan; ~~and~~*
- (4) *advising on a home purchase plan; and*
- (5) *advising on a regulated sale and rent back agreement.*

...

2.8.12A G ...

More detailed *guidance* on certain of these exclusions is in *PERG 4* (Regulated activities connected with mortgages), *PERG 5* (Insurance mediation activities), ~~and~~ *PERG 14.3*, ~~and~~ *PERG 14.4* and *PERG 14.4A* (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back agreement activities).

...

2.8.14A G ...

These exclusions are subject to certain conditions and are explained in greater detail in *PERG 4.8* (Administering a regulated mortgage contract), ~~and~~ *PERG 14.3*, ~~and~~ *PERG 14.4* and *PERG 14.4A* (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back agreement activities).

2.8.14B G The following exclusions apply in specified circumstances where a *person* is *administering a home finance ~~plan~~ transaction*:

...

...

2.9.4 G .... They apply where the activity relates to a *home finance transaction* under which the borrower, *reversion occupier*, ~~or~~ *home purchaser* or *SRB agreement seller* as the case may be is a beneficiary.

...

2.9.17A G The exclusions for *overseas persons* who carry on certain *regulated activities* related to *home finance transactions* work in a different way. They depend on the residency of the borrower or borrowers, the *reversion occupier* or *reversion occupiers*, ~~or~~ the *home purchaser* or *home purchasers* or the *SRB agreement seller* or *SRB agreement sellers* as the case may be. In addition, some of the exclusions also depend on the residency of the reversion provider or *SRB agreement provider*. *Guidance* on these exclusions is in *PERG 4.11* (Link between activities and the United Kingdom) and *PERG 14.6* (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back agreement activities).

...

## 2 Annex 2G Regulated activities and the permission regime

...

2 Table

...

Table 1 : Regulated Activities [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
...	
(zj)...	
<u>(zk) arranging (bringing about) a regulated sale and rent back agreement (article 25E(1))</u>	<u>rights under a regulated sale and rent back agreement (Article 88C)</u>
<u>(zl) making arrangements with a view to a regulated sale and rent back agreement (article 25E(2))</u>	
<u>(zm) advising on a regulated sale and rent back agreement (article 53D))</u>	
<u>(zn) entering into a regulated sale and rent back agreement (article 63J(1))</u>	
<u>(zo) administering a regulated sale and rent back agreement (Article 63(J)(2))</u>	

...

- 4.1.6 G A person may be intending to carry on activities related to other forms of investment in connection with mortgages, such as advising on and arranging an endowment policy or ISA to repay an interest-only mortgage. Such a person should also consult the *guidance* in PERG 2 (Authorisation and regulated activities), PERG 5 (Guidance on insurance mediation activities) and PERG 8 (Financial promotion and related activities). In addition, PERG 14 (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back agreement activities) has *guidance* on *regulated activities* relating to *home reversion plans*, ~~and~~ *home purchase plans* and regulated sale and rent back agreements.

...

7.3.1D G Under article 53D of the *Regulated Activities Order* (Advising on regulated sale and rent back agreements), advising a *person* is a specified kind of activity if:

- (1) the advice is given to the *person* in his capacity as an *SRB agreement seller* or *SRB agreement provider* or as a potential *SRB agreement seller* or *SRB agreement provider*; and
- (2) it is advice on the merits of his doing any of the following:
  - (a) entering into a particular *regulated sale and rent back agreement*; or
  - (b) varying the terms of a *regulated sale and rent back agreement* entered into by him on or after 1 July 2009 in such a way so as to vary his obligations under that agreement.

7.3.2 G Articles 53 , 53A, 53B~~2~~, ~~and~~ 53C and 53D of the *Regulated Activities Order* contain a number of elements, all of which must be present before a *person* will require *authorisation*. For *guidance* on whether a *person* is carrying on these *regulated activities*, see *PERG* 8 (Financial promotion and related activities), *PERG* 4 (Guidance on regulated activities connected with mortgages)~~2~~, ~~and~~ *PERG* 14.3~~2~~, ~~and~~ *PERG* 14.4 and *PERG* 14.4A (Guidance on home reversion~~2~~, ~~and~~ home purchase and regulated sale and rent back agreement activities).

...

7.3.3 G ... This has been amended by article 18 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2003 (SI 2003/1476) ~~and~~<sup>2</sup> by article 28 of the Financial Services and Markets Act 2000 (Regulated ~~activities~~ Activities) (Amendment) (No 2 ) Order 2006 (SI 2006/2383) and article 27 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) as explained in *PERG* 7.3.3AG.

...

7.4.2 G But the exclusion applies only if the principal purpose of the publication or service is not:

...

- (2) to lead or enable *persons*:

...

- (c) ... ; ~~or~~

- (d) ... on or after 6 April 2007; or
- (e) to enter as SRB agreement seller or SRB agreement provider into regulated sale and rent back agreements or to vary the terms of regulated sale and rent back agreements entered into by them as SRB agreement seller or SRB agreement provider where the agreement was originally established on or after 1 July 2009.

...

7.4.3 G ...

- (3) ...But, in the FSA's view, a news or information 'service' is not restricted only to the giving of ~~only~~ news or information since this would not generally constitute the *regulated activity* of *advising on investments* (see PERG 8.28 (Advice or information)), *advising on regulated mortgage contracts* (see PERG 4.6.13G to PERG 4.6.16G (Advice or information)), *advising on a home reversion plan*, ~~or~~ *advising on a home purchase plan* or advising on regulated sale and rent back agreements. So the exclusion applies to services providing material in addition to news or information, such as comment or advice.

...

7.4.5 G The exclusion applies only if the principal purpose of the publication or service is not:

...

- (2) to lead or enable *persons* to:

...

- (c) ... ; ~~or~~

- (d) ... on or after 6 April 2007; or

- (e) to enter as SRB agreement seller or SRB agreement provider into regulated sale and rent back agreements or to vary the terms of regulated sale and rent back agreements entered into by them as SRB agreement seller or SRB agreement provider where the agreement was originally established on or after 1 July 2009.

...

7.4.8 G ... If the principal purpose of a publication or service is to give to *persons*, in their capacity as investors (or potential investors), as borrowers, as *reversion occupiers* or reversion providers or as *home purchasers* or as SRB

agreement sellers or SRB agreement providers (as the case may be), advice as referred to in *PERG 7.4.5G(1)*, then the publication or service will not be able to benefit from this exclusion.

...

- 8.17.1A G Section 21 also applies to *financial promotions* concerning *home reversion plans*, ~~and~~ *home purchase plans* and regulated sale and rent back agreements. Guidance on these activities and related *financial promotions* is given in *PERG 14* (Guidance on home reversion, ~~and~~ home purchase and regulated sale and rent back activities).

...

- 8.17.12 G Article 28B (Real time communications: introductions ) exempts a *real time financial promotion* that relates to one or more of the *controlled activities* about *regulated mortgage contracts*, as well as *home reversion plans*, ~~and~~ *home purchase plans* and regulated sale and rent back agreements. The exemption is subject to the following conditions being satisfied:

...

...

- 8.23.3 G The *regulated activities* which are likely to be conducted in the circumstances referred to in *PERG 8.23.2G* are:
- (1) giving advice on certain investments (articles 53 (Advising on investments), 53A (Advising on regulated mortgage contracts), 53B (Advising on regulated home reversion plans), 53C (Advising on regulated home purchase plans), 53D (Advising on regulated sale and rent back agreements) and 56 (Advice on syndicate participation at Lloyd's) of the *Regulated Activities Order*) - for example, where the *financial promotion* is the advice;
  - ...
  - (2C) *making arrangements with a view to a home purchase plan* (article 25C(2) of the *Regulated Activities Order* (Arranging regulated home purchase plans)); ~~and~~
  - (2D) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2) of the *Regulated Activities Order* (Arranging regulated sale and rent back agreements)); and
  - ...

- 8.23.4 G The *guidance* that follows is concerned with the *regulated activities* of *making arrangements with a view to transactions in investments* and *advising on investments*. Guidance on the *regulated activities* of *making arrangements with a view to regulated mortgage contracts* and *advising on regulated mortgage contracts* is in *PERG 4* (Guidance on regulated



activities connected with mortgages). *Guidance on the regulated activities of making arrangements with a view to a home reversion plan and advising on a home reversion plan, and making arrangements with a view to a home purchase plan and advising on a home purchase plan, and making arrangements with a view to a regulated sale and rent back agreement and advising on a regulated sale and rent back agreement* is in *PERG 14* (Guidance on home reversion, and home purchase and sale and rent back activities).

...

#### 8.36.3 G Table Controlled activities

...	
<u>18A.</u>	<u>Providing a regulated sale and rent back agreement</u>
<u>18B.</u>	<u>Arranging a regulated sale and rent back agreement</u>
<u>18C.</u>	<u>Advising on a regulated sale and rent back agreement</u>
19.	Agreeing to do anything in 3 to 18 <u>18C</u> above

#### 8.36.4 G Table Controlled investments

...	
<u>17A.</u>	<u>Rights under a regulated sale and rent back agreement</u>
...	

...

### 14.1 Background

...

The Q&As that follow are set out in sections:

- general issues (*PERG 14.2*);
- activities relating to home reversion plans (*PERG 14.3*);
- activities relating to home purchase plans (*PERG 14.4*);
- activities relating to regulated sale and rent back agreements (*PERG 14.4A*);
- the ‘by way of business’ test (*PERG 14.5*);
- carrying on a regulated activity in the United Kingdom (*PERG 14.6*);
- exemptions (*PERG 14.7*); and
- financial promotions (*PERG 14.8*).

## 14.2 General issues

### Q2. What is the purpose of the Regulation of Financial Services (Land Transactions) Act 2005?

...This typically includes:

- schemes (often termed ‘equity release schemes’) where a provider buys an interest in a homeowner's property and allows the homeowner to continue to reside in the property (‘home reversion plans’); and
- certain types of Islamic financing arrangements designed to enable the purchase of a home in a way that is acceptable under Islamic law, such as Ijara or diminishing Musharaka (‘home purchase plans’);
- schemes where a provider buys an interest in a homeowner’s property and allows the homeowner to continue to reside in the property in return for payment of rent (‘sale and rent back agreement’).

### Q3. I propose to carry on activities in relation to home finance arrangements of the kind mentioned in Q2. In what circumstances will I need to be authorised by the FSA or be an exempt person?

You will need to be an authorised or exempt person if you will:

- be carrying in *regulated activities*;
- be doing so by way of business;
- be doing so on or after 6 April 2007 in relation to home purchase plans and home reversion plans or on or after 1 July 2009 in relation to sale and rent back agreements; and
- be doing so in the *United Kingdom*.

### Q4. How will I know if my proposed home finance activities are regulated?

*Regulated activities* are specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (‘the *Regulated Activities Order*’). This was amended, following the enactment of the Regulation of Financial Services (Land Transactions) Act 2005, to extend its scope to cover certain home finance activities. These amendments were made in the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2006 (SI 2006/2383) which came into effect on 6 April 2007 and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) which came into effect on 1 July 2009. Regulated home finance activities are:

- *entering into a home reversion plan*, ~~or entering into a home purchase plan~~ or entering into a regulated sale and rent back agreement as the provider of the plan/agreement or, in the case of *home reversion plans* and regulated sale and rent back agreements only, as a *person* to whom rights or obligations acquired by the provider are transferred or who, during the currency of the plan or agreement, acquires all or part of the interest in land bought by the provider;
- *administering a home reversion plan*, ~~or administering a home purchase plan~~ or administering a regulated sale and rent back agreement;

- *arranging (bringing about) a home reversion plan, ~~or~~ arranging (bringing about) a home purchase plan or arranging (bringing about) a regulated sale and rent back agreement;*
- *making arrangements with a view to home reversion plans, ~~or~~ making arrangements with a view to home purchase plans or making arrangements with a view to regulated sale and rent back agreements;*
- *advising on a home reversion plan, ~~or~~ advising on a home purchase plan or advising on a regulated sale and rent back agreement; and*
- agreeing to do any of the above.

...

### 14.3 Activities relating to home reversion plans

...

#### Q9. What exclusions may be available to me if I am entering into home reversion plans?

The main exclusions are those:

- for trustees who enter into a plan where the reversion occupier is an individual who is a beneficiary under the trust, ~~or a related person~~ (article 66(6B) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

...

#### Q11. What exclusions may be available to me if I am administering home reversion plans?

The other main exclusions are those:

- for trustees who administer a plan where the reversion occupier is an individual who is a beneficiary under the trust ~~or a related person~~ (article 66(6B) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

...

#### Q20. What exclusions may be available to me if I am advising on home reversion plans?

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); and
- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); ~~and~~
- ~~*overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39).~~

...

### 14.4 Activities relating to home purchase plans

...

**Q27. What exclusions may be available to me if I am entering into home purchase plans as a provider?**

The main exclusions are:

- for trustees who enter into a plan where the home purchaser is an individual who is a beneficiary under the trust ~~or a related person~~ (article 66(6C) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

...

**Q30. What exclusions may be available to me if I am administering home purchase plans?**

...

The other main exclusions are those:

- for trustees who administer a plan where the home purchaser is an individual who is a beneficiary under the trust ~~or a related person~~ (article 66(6C) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

...

**Q36. What exclusions may be available to me if I am advising on home purchase plans?**

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); and
- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*); ~~and~~
- ~~*overseas persons* (article 72 of the *Regulated Activities Order*) (see Q39).~~

...

Insert the following new section after PERG 14.4. The text is not underlined.

**14.4A Activities relating to regulated sale and rent back agreements****Q37A. What is a regulated sale and rent back agreement?**

Broadly speaking, this is an arrangement under which, at the time it is entered into, a person (the “agreement provider”) buys all or part of an interest in land (other than time share accommodation) in the *United Kingdom* from a homeowner (being an individual or a trustee whose beneficiary is an individual) (“the agreement seller”) on

the basis that the individual or a related person is entitled under the arrangement, and intends, to use at least 40% of the land as a dwelling. However such an arrangement is not a *regulated sale and rent back agreement* if it is a *home reversion plan*.

This means that an arrangement is not a *regulated sale and rent back agreement* if:

- the agreement seller is not an individual; or
- the land is to be used for the purpose of letting as a dwelling to someone other than a related person of the individual (or beneficiary under the trust) who owns it; or
- the land is used primarily for business purposes; or
- the land is overseas; or
- if it is a *home reversion plan* (see Q5).

A related person, in relation to an individual, means:

- that person's spouse or civil partner;
- a person (whether or not of the same sex) whose relationship with that person has the characteristics of a husband and wife relationship; or
- that person's:
  - parent or grandparent;
  - child or grandchild; or
  - sibling.

As regards the requirement that the conditions need to be met 'at the time the arrangement was entered into', it should be noted that a *regulated sale and rent agreement* is an arrangement that may actually comprise several agreements. For example, a *regulated sale and rent back agreement* may include an agreement for the sale of a freehold interest in land and a subsequent tenancy agreement relating to the occupation of that land. Just because the tenancy agreement was not completed at the same time as the sale of the freehold interest does not mean there is no *regulated sale and rent back agreement*.

**Q37B. Can an arrangement that was established before 1 July 2009 be a regulated sale and rent back agreement?**

Yes it can be. An arrangement may still be a *regulated sale and rent back agreement* even if it was established before 1 July 2009. However, regulated activities carried on in relation to a sale and rent back agreement established before 1 July 2009 will only be subject to regulation:

- when carried on on or after 1 July 2009; and
- in certain circumstances (see Q37Q for a summary).

**Q37C. When will I be carrying on the activity of entering into a regulated sale and rent back agreement?**

This will occur when you enter into the agreement at the outset as the agreement provider. It can also occur at a later stage if all or part of the rights or obligations of the agreement provider are transferred to you or if you acquire all or part of the

interest in land bought by the agreement provider (where you become an 'agreement transferee'). This is so, whether you are acquiring the rights or obligations from the agreement provider or from an existing agreement transferee. This includes acquiring the rights or obligations or the interest in land purely as an investment. However, investors will only be regulated if they satisfy the 'by way of business test' (see 14.5). We refer to agreement providers and agreement transferees collectively in this guidance as 'agreement purchasers'.

So, if you are an agreement transferee under a plan that was established before 1 July 2009, you will only be subject to regulation for carrying on the regulated activity of entering into the plan if you do so on or after 1 July 2009.

**Q37D. What exclusions may be available to me if I am entering into regulated sale and rent back agreements as agreement provider?**

The main exclusions are those:

- for trustees who enter into a plan where the agreement seller is an individual who is a beneficiary under the trust (article 66(6D) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

**Q37E. When will I be carrying on the activity of administering a regulated sale and rent back agreement?**

This will arise if you carry out any one or more of the following functions for an agreement purchaser or an agreement seller in relation to an agreement that was originally entered into on or after 1 July 2009:

- taking necessary steps to make payments to the agreement seller; or
- taking necessary steps to collect or recover payments due from the agreement seller; or
- notifying the agreement seller of changes in payments due under the agreement, or of other matters of which the agreement requires him to be notified.

One effect of this is that you will not become subject to regulation if you are administering an agreement that was originally established before 1 July 2009 and an agreement transferee enters into the plan after that date. See Q37Q for more detail about when activities are regulated if an agreement was originally entered into before 1 July 2009.

It is irrelevant for the purposes of determining if you are administering a regulated sale and rent back agreement whether or not the agreement was entered into by way of business. In this respect the activity is similar to the regulated activity of *administering a home reversion plan*.

**Q37F. If I collect rent due to an agreement purchaser under a regulated sale and rent back agreement or help the agreement seller set up a direct debit in favour of the agreement purchaser do I need to be regulated?**

Yes, it is likely that you will need to be authorised to carry out the *regulated activity* of *administering a regulated sale and rent back agreement*. However the following exclusions may be available:

- where you arrange for an authorised person with the appropriate *Part IV permission* to administer the agreement – this includes where you administer the agreement for a period of up to one month following the termination of such an arrangement; or
- you administer the plan under an agreement with an authorised person which has a *Part IV permission* to administer such an agreement.

**Q37G. Are there any other exclusions available in relation to administering a regulated sale and rent back agreement?**

The other main exclusions are those:

- for trustees who administer a plan where the agreement seller is an individual who is a beneficiary under the trust (article 66(6D) of the *Regulated Activities Order*); and
- for *overseas persons* who satisfy certain conditions (see Q39).

**Q37H. When will I be carrying on the activity of arranging regulated sale and rent back agreements?**

There are three types of arranging activity that are regulated. These are making arrangements:

- (1) for another *person* to enter into a plan as an agreement purchaser or as an agreement seller;
- (2) for another *person*, being an agreement seller or an agreement purchaser, to vary the terms of an agreement that was originally established on or after 1 July 2009, in such a way as to vary his obligations under that agreement; and
- (3) with a view to a *person* who participates in the arrangements entering into an agreement as an agreement seller or as an agreement purchaser.

But none of these arranging activities will apply to you if they relate to an agreement to which, as a result of your arranging activities, you are or will become a party (article 28A of the *Regulated Activities Order*).

You will only be making arrangements under (1) or (2) if your actions are such as to bring about the entry into the agreement or the variation, as the case may be (article 26 of the *Regulated Activities Order*). This means that your involvement must be material to whether the transaction occurs. For example, assisting a person by completing the necessary application forms on their behalf or acting as their agent or attorney in negotiating entry will amount to bringing about the transaction.

Arranging activities under (3) will typically include making regular introductions of

homeowners to agreement providers or of agreement transferees to agreement providers or vice versa or any of these to a *firm* with *permission* (or which ought to have *permission*) to carry on a *regulated sale and rent back mediation activity*.

**Q37I. I understand that any transaction that I have arranged before 1 July 2009 is not subject to regulation. But do I need permission if I arrange for an agreement transferee to enter into or vary a regulated sale and rent back agreement on or after 1 July 2009?**

This depends on the type of arranging you are carrying on. If you are arranging variations, this will only be regulated if the agreement was originally established on or after 1 July 2009. But, if you are arranging for an agreement transferee to enter into an agreement and the arrangements are being made on or after 1 July 2009, you will be regulated for that arranging activity. See Q39Q for more detail about when activities are regulated if a plan was originally established before 1 July 2009.

**Q37J. Will I need to be regulated for arranging for an agreement provider to dispose of his rights and obligations or his interest in land under a regulated sale and rent back agreement to an agreement transferee?**

It is only arranging for a person to enter into or vary the terms of an agreement that is subject to regulation. So, you will not need to seek authorisation for providing arranging services to the existing provider who wishes to dispose of his rights, obligations or interests but you are likely to be regulated if you are arranging for the transferee to enter into the agreement by acquiring the rights, obligations or interests.

**Q37K. What exclusions may be available to me if I am arranging regulated sale and rent back agreements?**

If you are an *unauthorised person* the following exclusions may be available to you:

- where you are arranging for a transaction to be entered into with or through an *authorised person* (article 29 of the *Regulated Activities Order*) (see Q37L); and
- where you have arranged for an authorised person to administer the agreement or are administering it yourself during the period of one month following the termination of your arrangement with the authorised person (article 29A(4) of the *Regulated Activities Order*).

Whether or not you are an unauthorised person, the other main exclusions that may apply include:

- introductions made with a view to the provision of regulated independent advice (article 33 of the *Regulated Activities Order*) (see Q37M);
- introductions made to a regulated person who carries on regulated sale and rent back agreement activities (article 33A of the *Regulated Activities Order*) (see Q37N);



- arrangements that are a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the Regulated Activities Order); and
- *overseas persons* (article 72 of the Regulated Activities Order) (see Q39).

**Q37L. When will the exclusion in article 29 of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements?**

The exclusion will apply to you when, as an *unauthorised person*, you are arranging any of the following:

- for a homeowner (your client) to enter into an agreement with an authorised agreement provider or through an authorised intermediary;
- for an agreement provider (your client) to enter into an agreement with a homeowner or to transfer rights or obligations or an interest in land to an agreement transferee if either the agreement transferee is an authorised person or the transaction is to be effected through an authorised intermediary; or
- for an agreement transferee (your client) to acquire rights or obligations from an authorised agreement provider or through an authorised intermediary;
- for your client to vary the terms of a plan where the agreement purchaser is an authorised person or the variation is arranged through an authorised intermediary.

This is subject to your meeting certain conditions which are, broadly speaking, that:

- you must not advise your client on the merits of his entering into the transaction; and
- you must not be paid by anyone other than your client.

The requirement that you do not receive any payment other than from your client does not prevent you receiving payment from the *authorised person* but you must then treat the sums paid to you as belonging to your client. There is nothing to prevent you then using the sums to offset payments due to you from your client for services rendered to him. This is provided that you have your client's agreement to do so.

**Q37M. When will the exclusion in article 33 of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements?**

Broadly speaking, the exclusion will apply where:

- your arranging activity is limited to *making arrangements with a view to regulated sale and rent back agreements*;
- you make introductions of agreement sellers or agreement purchasers to an *authorised person*, an *exempt person* or an *overseas person*; and
- the introduction is made with a view to the provision of independent advice or the provision of independent discretionary services relating to *regulated sale and rent back agreements*.

**Q37N. When will the exclusion in article 33A of the Regulated Activities Order be available to me if I am arranging regulated sale and rent back agreements?**

Broadly speaking, the exclusion will apply where:

- your arranging activity is limited to *making arrangements with a view to regulated sale and rent back agreements*;
- you make introductions of agreement sellers, agreement purchasers or prospective agreement sellers or agreement purchasers (your client) to an *authorised person* or an *overseas person*;
- you do not receive any money paid by your client in relation to the transaction other than a sum that is due to you for your own account (for example, your fee for providing the introductory service); and
- you disclose to your client certain information about your relationship with the person to whom you are effecting introductions and about any reward you may receive for doing so.

**Q37O. When will I be carrying on the activity of advising on a regulated sale and rent back agreement ?**

This will arise if:

- you are giving advice to a *person* who is or who is contemplating becoming an agreement seller, an agreement provider or an agreement transferee; and
- the advice relates to the merits of his entering into a regulated sale and rent back agreement in that capacity or varying the terms of an agreement that he has already entered into.

Advice on the merits of varying the terms of an agreement will only be regulated where the agreement was originally established on or after 1 July 2009. However, advice given to an agreement transferee on the merits of his entering into an agreement that was originally established before 1 July 2009 will be subject to regulation. See Q37Q for more detail about when activities are regulated if an agreement was originally established before 1 July 2009.

Advice given to a person on the merits of his transferring rights or obligations or interests in land under an agreement to another person is not regulated.

Much of the detailed guidance on *advising on regulated mortgage contracts* in *PERG* 4.6 may be applied to the activity on a *regulated sale and rent back agreement*.

**Q37P. What exclusions may be available to me if I am advising on regulated sale and rent back agreements?**

The main exclusions that are available include:

- advice given in a periodical publication, broadcast or other form of regularly updated news or information service (article 54 of the *Regulated Activities Order*); and
- advice that is a necessary part of other services provided by a person in the course of carrying on a profession or business other than a *regulated activity* (article 67 of the *Regulated Activities Order*).

Detailed guidance on the exclusion in article 54 is in *PERG 7*.

**Q37Q. I can see that the fact that the regulated sale and rent back agreement was originally established before 1 July 2009 can affect whether the services that I provide to parties to the agreement after that date are regulated. Can you summarise the position in this respect?**

Yes. This all depends on the combination of the date of entry or variation and the capacity in which your customer enters or entered into the agreement. The following table clarifies when your services will be regulated activities and when they will not.

<b>Potential regulated sale and rent back activity</b>	<b>Whether the activity is regulated if undertaken on or after 1 July 2009 when the agreement was originally established before 1 July 2009</b>
Entering into an agreement as agreement provider (see Q37C)	N/A - this activity will only take place when the plan is first established
Entering into an agreement as agreement transferee (see Q37C)	Yes, any transfer of the agreement provider's interest in land will be caught
Administering an agreement (see Q37E)	No
Arranging (see Q37H) for a person to enter into an agreement as:	
(a) an agreement provider or an agreement seller	N/A - this activity will only take place when the agreement is first established
(b) an agreement transferee	Yes
Arranging variations (see Q37H) of an agreement	No
Advising (see Q37O) a person on entering into an agreement in his capacity as:	
(a) an agreement provider or an agreement seller	N/A - this activity will only take place when the agreement is first established
(b) an agreement transferee	Yes
Advising (see Q37O) a person on varying the terms of an agreement	No

**Q37R. Will changes involving the circumstances of the agreement seller that may take place after the agreement has been entered into (such as moving house, marriage or change of occupants) have any implications in terms of regulated activity?**

This depends on the facts and is a question of degree that requires an assessment against the criteria that make up the definition of a regulated sale and rent back agreement. There are two main issues that would need to be considered. These are:

- is the change likely to cause a new agreement to be entered into ; and
- does the change involve a variation of the terms of the agreement (if it was originally entered into on or after 1 July 2009) such as to vary the obligations of the provider or the seller?

Broadly speaking, it would seem likely that if the occupier were to move house, the *regulated sale and rent back agreement* would cease as the tenancy agreement would come to an end and the agreement seller would no longer have the right of occupation.

Changes such as may occur due to marriage or change of occupants, change of other relevant details or drawdown of funds under a staggered payment arrangement may necessitate a new agreement or may involve a variation in the existing agreement depending on the extent to which they alter the obligations of the provider or the occupier. Where such changes do involve a variation, anyone arranging or advising on the variation would potentially need to be authorised or exempt. But this applies only where the agreement was originally entered into on or after 1 July 2009.

**Q37S. I am an exempt professional firm. Do I need to be authorised in relation to regulated sale and rent back agreement activities?**

Yes, you may need to be authorised. See Q42 for more detail.

**Q37T. I am an estate agent. Do I need to be authorised where the vendor of a property has approached me to sell their property but has expressed a desire to remain in the property as tenant?**

Yes, it is likely that you will need to be authorised unless you are an exempt person or exclusions apply (see Q37K). This is because it is likely that you will be making arrangements with a view a person who participates in the arrangements entering into an agreement as *SRB agreement provider* and/or *SRB agreement seller*.

**Q37U. I am a receiver appointed under the Law of Property Act 1925. Will my activities need to be regulated by the FSA?**

Your activities in relation to properties subject to regulated sale and rent back agreements could amount to *administering a regulated sale and rent back agreement* where the agreements have been entered into on or after 1 July 2009. Accordingly you may need to be authorised unless you are an exempt person or exclusions apply

(see Q37E for the relevant administering activities and Q37F and Q37G for the available exclusions).

**Q37V What happens when the agreement seller’s right to occupy the land in question under an assured shorthold tenancy (‘AST’) ends?**

A regulated sale and rent back agreement must, at the time it is entered into, give the agreement seller, or related person, an entitlement to occupy at least 40% of the land in question. In the absence of such an entitlement there is no regulated sale and rent back agreement.

As the definition of a regulated sale and rent back agreement refers to ‘an arrangement comprised in one or more instruments or agreements’, in considering the effect of the end of the tenancy you should look at the arrangement as a whole rather than just any tenancy agreement that may comprise the arrangement. So –

- (1) if the arrangement expressly grants the agreement seller an entitlement to occupy the land in question for a specified period of time then the agreement seller retains this entitlement under the regulated sale and rent back agreement even where the AST ends before the specified period ends; and
- (2) if the regulated sale and rent back agreement is expressly stated to end after the termination of the AST then it ceases to be a regulated sale and rent back agreement at that point unless the arrangements are varied by, for example, granting the agreement seller a new AST.

Amend the following as shown.

**14.5 The “by-way-of-business” test**

**Q38. How do I know if I am carrying on regulated activities by way of business?**

A person will only need to be an *authorised* person or exempt if he is carrying on a *regulated activity* 'by way of business' (see section 22 of the *Act* (Regulated activities)). There are, in fact, three different forms of business test applied to the *home finance transactions* (see Q38A).

Whether or not any particular *person* will meet the requirement that he carries on a *regulated activity* by way of business and so needs *authorisation* or exemption will invariably depend on that person's individual circumstances. A number of factors need to be taken into account in determining whether the test is met. These include:

- the degree of continuity;
- the existence of a commercial element;
- the scale of the activity;
- the proportion which the activity bears to other activities carried on by the same person but which are not regulated; and
- the nature of the particular regulated activity that is carried on.

Corporate plan providers and those who provide professional services to them or to home occupiers are likely to be carrying on their activities by way of business. Unpaid individuals who act as trustees for home occupiers are not likely to be.

~~With *home reversion plans*, it is quite possible that the reversion provider may be an individual who is acting purely in the capacity of investor. Such a person may not be acting by way of business when the criteria listed above are applied to his particular circumstances.~~

**Q38A. What are the three different forms of business test referred to in Q38?**

They are:

- (1) the 'by way of business' test in section 22 of the Act applies unchanged in relation to the activity of *entering into a home finance transaction*;
- (2) the 'by way of business' test in section 22 of the Act applies unchanged in relation to the activity of *administering a home finance transaction*, but another 'by way of business' test arises in relation to *administering a home purchase plan* because the plan being administered by way of business must itself have been entered into by way of business (see Q28); and
- (3) in the case of arranging and advising, the effect of articles 3B to 3D of the *Business Order* is that a *person* is not to be regarded as acting 'by way of business' unless he is 'carrying on the business of engaging in one or more of those activities'.

**Q38B. How does the business test in the Business Order differ from the business test in section 22 of the Act?**

The 'carrying on the business' test in the *Business Order* is a narrower test than that of *carrying on regulated activities* 'by way of business' in section 22 of the Act as it requires the *regulated activities* to represent the carrying on of a business in their own right.

**Q38C. Can you give me some examples where the business test is unlikely to be satisfied?**

Examples are:

- (1) when an individual enters into a one-off sale and rent back agreement as *agreement provider for an agreement seller who is a friend or member of his family* whether at market interest rates or not; and
- (2) when a person provides a service without any expectation of reward or payment of any kind (but see *PERG 7.3.4* for examples of when the giving of

‘free’ advice in relation to *home finance transactions* might still amount to a business).

**Q38D. Will I meet the business test if I only enter into one home purchase plan, home reversion plan or regulated sale and rent back agreement a year?**

Yes, you might meet the business test. Whether or not you do will depend largely on the facts. The following issues may be helpful to bear in mind:

- the relevant business test here is not the narrower business test under the *Business Order* but the wider one under section 22 of the *Act*: that is whether the activity is being carried on by way of business (see Q38B);
- the expression “carrying on business” suggests the need for a degree of continuity in the activity. Hence, one-off or extremely infrequent acts would usually not be thought to be enough to satisfy the test. However, it is unlikely that a person could successfully claim that entering into a plan or agreement was a “one-off” or very infrequent act if, in all the circumstances, it cannot be shown that they intended this to be the case. This is because there is always a first time that any regular activity is carried on;
- some individuals are clearly in business as sole traders – they will represent themselves as running a business and be registered for VAT etc. Other individuals may not so clearly be in business. In the latter case, it is necessary to consider the scale of the potential regulated activity. Where a person expects to make a living, or a substantial part of their living, from entering into *home finance transactions* it is likely that they are carrying on such activities by way of business.

With this in mind, if you intend on entering into just one sale and rent back agreement, home reversion plan or home purchase plan each year this may be enough to meet the ‘by way of business’ test if the scale of this activity is likely to be significant in relation to your other activities.

## 14.6 Carrying on a regulated activity in the United Kingdom

**Q39. Does a person who acts as provider, administrator, arranger or adviser in relation to home reversion plans, ~~or~~ home purchase plans or regulated sale and rent back agreements from overseas and without maintaining an office in the UK need to be an authorised or exempt person?**

...In very broad terms, however, as an overseas person, you are more likely than not to be carrying on a home finance activity in the UK if the home occupier, ~~or~~ reversion ~~provider~~ occupier or agreement seller is normally resident in the UK at the time that he enters into the plan. ...

Table indicating whether authorisation or exemption is likely to be needed by a person who is carrying on home finance or sale and rent back activities from overseas.

Activity carried on by overseas person	Where the reversion occupier, or home purchaser or agreement seller is or was normally resident in the UK at the time he enters or entered into the plan			Where the reversion occupier, or home purchaser or agreement seller is or was not normally resident in the UK at the time he enters or entered into the plan		
	Home reversion plan	Home purchase plan	<u>Regulated sale and rent back agreement</u>	Home reversion plan	Home purchase plan	<u>Regulated sale and rent back agreement</u>
Entering into or administering	Yes	Yes	<u>Yes</u>	No	No	<u>No</u>
Arranging for persons to enter into plans.	Yes	Yes	<u>Yes</u>	No, provided the reversion purchaser or the reversion transferee, as the case may be, is or was also not normally resident in the UK.	No	<u>No, provided the agreement provider or agreement transferee, as the case may be, is or was also not normally resident in the UK.</u>
Arranging variations	Yes	Yes	<u>Yes</u>	No	No	<u>No</u>
Advising	Yes	Yes	<u>Yes</u>	No, unless the reversion occupier, reversion provider or reversion transferee is located in the UK at the time the advice is given to him.	No, unless the home purchaser is located in the UK at the time the advice is given.	<u>No, unless the regulated sale and rent back agreement adviser is located in the UK at the time the advice is given.</u>

## 14.7 Exemptions



...

**Q41. What home finance activities can I carry on as an appointed representative?**

...

You will not be able to carry on any of the following ~~regulated activities~~ regulated activities

- ~~entering into a home reversion plan,~~ entering into a home purchase plan or entering into a regulated sale and rent back agreement; or
- ~~administering a home reversion plan,~~ administering a home purchase plan or administering a regulated sale and rent back agreement; or
- arranging (bringing about) a regulated sale and rent back agreement; or
- making arrangements with a view to a regulated sale and rent back agreement; or
- advising on a regulated sale and rent back agreement; or
- agreeing to do ~~either~~ any of the above.

**Q42. I am an exempt professional firm. Will I be able to carry on any of the regulated activities relating to home reversion plans, and home purchase plans and regulated sale and rent back agreements without needing FSA authorisation?**

This depends on the activity in question. Subject to your being able to satisfy the general requirements of Part XX of the Financial Services and Markets Act 2000 you will be able:

- to carry on the ~~regulated activities~~ regulated activities of:
  - ~~entering into a home reversion plan~~; or
  - ~~entering into a home purchase plan~~; or
  - entering into a regulated sale and rent back agreement; or
  - ~~administering a home reversion plan~~; or
  - ~~administering a home purchase plan~~; or
  - administering a regulated sale and rent back agreement; or
  - agreeing to do any of these things,

but only where you are acting as a trustee or personal representative and the *reversion occupier*, ~~or home purchaser~~ or SRB agreement seller is a beneficiary under the trust, will or intestacy;

- to carry on the ~~regulated activities~~ regulated activities of:
  - ~~arranging (bringing about) a home reversion plan~~; or
  - ~~arranging (bringing about) a home purchase plan~~; or
  - arranging (bringing about) a regulated sale and rent back agreement; or
  - ~~making arrangements with a view to home reversion plans~~; or
  - ~~making arrangements with a view to home purchase plans~~; or
  - making arrangements with a view to regulated sale and rent back agreements; or
  - agreeing to do any of these things,

without any further restriction; and

- to carry on the ~~regulated activities~~ regulated activities of:
  - ~~advising on a home reversion plan~~; or
  - ~~advising on a home purchase plan~~; or

- advising on a regulated sale and rent back agreement; or
  - agreeing to do ~~either~~ any of these things,
- but only provided that:
- the advice is given to a trustee or a reversion provider or agreement purchaser who is not an individual; or
  - the advice is given to an individual but does not amount to a recommendation to enter into a plan as reversion provider, *reversion occupier*, ~~or home purchaser~~ or agreement seller; or
  - the advice is given to an individual and does amount to a recommendation to enter into a plan as reversion provider, *reversion occupier*, agreement seller, agreement provider or *home purchaser* with a reversion provider, agreement provider or a *home purchase provider* but only if the advice endorses a corresponding recommendation that has been given to the individual by a suitably authorised or exempt person.

## 14.8 Financial promotions

### Q43. Are there any restrictions if I wish to promote my home finance activities?

Yes. The restriction in section 21 of the Financial Services and Markets Act 2000 will apply, broadly speaking, to any communication which:

- is made in the course of business; and
- invites or induces persons to:
  - become a *reversion occupier*, SRB agreement seller or *home purchaser*; or
  - become a reversion provider or SRB agreement provider; or
  - vary the terms of a *home reversion plan* or a *home purchase plan* that was originally established on or after 6 April 2007 or a regulated sale and rent back agreement that was originally established on or after 1 July 2009; or
  - be provided, as a reversion occupier, SRB agreement seller or home purchaser or as a reversion provider or SRB agreement provider, with arranging or advisory services.

...

The following table summarises when the restriction will apply.

**Table indicating when the financial promotion restriction will apply to communications about home finance plans**

<b>A communication inviting or inducing...</b>	<b>To...</b>	<b>Will be a financial promotion?</b>
...potential reversion occupiers, <u>SRB agreement sellers</u> or home purchasers	...enter into a home reversion plan, <u>regulated sale and rent back agreement</u> , or a home purchase plan	Yes
...potential home reversion purchasers or transferees <u>or SRB agreement providers or transferees</u>	...enter into a home reversion plan <u>or regulated sale and rent back agreement</u>	Yes (in the case of transferees, regardless of whether the plan was originally established before 6 April 2007 <u>in the case of</u>

		<i>home reversion transferees and 1 July 2009 in the case of <u>regulated sale and rent back agreement transferees</u>)</i>
...potential home purchase providers	...enter into a home purchase plan	<del>No</del> <u>Yes</u>
...potential or existing: <ul style="list-style-type: none"> <li>• reversion occupiers, <u>SRB agreement sellers</u> or home purchasers; or</li> <li>• reversion or home purchase providers <u>or SRB agreement providers</u></li> </ul>	...be provided with administration services	No
...potential or existing: <ul style="list-style-type: none"> <li>• reversion occupiers, <u>SRB agreement sellers</u> or home purchasers; or</li> <li>• reversion purchasers or transferees <u>or SRB agreement providers or transferees</u></li> </ul>	...be provided with arranging or advisory services	Yes (but where the promotion relates to such a person varying the terms of a plan <u>or agreement</u> , this is only where the plan <u>or agreement</u> was originally established on or after 6 April 2007 <u>in the case of home reversion plans or home purchase plan and 1 July 2009 in the case of regulated sale and rent back agreements</u> )
...potential or existing home purchase providers	...be provided with arranging or advisory services	No <u>in relation to advisory services</u>  <u>Yes in relation to arranging services</u>
...potential or existing: <ul style="list-style-type: none"> <li>• reversion occupiers, <u>SRB agreement sellers</u> or home purchasers; or</li> <li>• reversion or home purchase providers <u>or SRB agreement providers</u></li> </ul>	...decline from entering into or varying the terms of a plan <u>or agreement</u>	No
...potential or existing: <ul style="list-style-type: none"> <li>• reversion occupiers, <u>SRB agreement sellers</u> or home</li> </ul>	...dispose of rights, obligations or interests in land that they have under a plan <u>or agreement</u>	No

purchasers; or • reversion or home purchase providers <u>or</u> <u>SRB agreement</u> <u>providers</u>		
--	--	--

**Q44. What are the restrictions that apply if I am making a financial promotion about home finance plans or activities?**

...

If you are an authorised person who is communicating or approving the financial promotion and it is not exempt you will need to comply with the provisions of the Mortgages and Home Finance: Conduct of Business Sourcebook (*MCOB 3* for financial promotions of home reversion plans and *MCOB 2.2.6AR* for financial promotions of home purchase plans and regulated sale and rent back agreements).



# FOS Instrument

**DISPUTE RESOLUTION (VOLUNTARY JURISDICTION AND SALE AND RENT  
BACK AMENDMENTS) INSTRUMENT 2009**

**Powers exercised**

- A. The Financial Ombudsman Service Limited makes the rules and guidance in the Annex to this instrument for VJ participants relating to the Voluntary Jurisdiction in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:
- (a) section 227 (Voluntary Jurisdiction);
  - (b) paragraph 14 (the Scheme Operator's rules) of Schedule 17;
  - (c) paragraph 18 (Terms of reference to the scheme) of Schedule 17.
- B. The making of these rules and guidance by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

**Commencement**

- C. This instrument comes into force on 6 February 2010.

**Amendments to the Dispute Resolution: Complaints sourcebook**

- D. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex A to this instrument.

**Citation**

- E. This instrument may be cited as the Dispute Resolution: (Voluntary Jurisdiction and Sale and Rent Back Amendments) Instrument 2009.

By order of the Board of the Financial Ombudsman Service Limited  
17 December 2009

## ANNEX A

**Amendments to the Dispute Resolution: Complaints sourcebook (DISP)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:
- (1) it is not covered by the *Compulsory Jurisdiction* or the *Consumer Credit Jurisdiction*; and
  - (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:
    - (a) an activity carried on after 28 April 1988 which:
      - (i) was not a *regulated activity* at the time of the act or omission, but
      - (ii) was a *regulated activity* when the *VJ participant* joined the *Voluntary Jurisdiction* (or became an *authorised person*, if later);
    - (b) a financial services activity carried on after *commencement* by a *VJ participant* which was covered in respect of that activity by a *former scheme* immediately before the *commencement day*;
    - (c) activities which (at 1 July ~~2007~~ 2009) were *regulated activities* or would be *regulated activities* if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);
    - (d) activities which would be *consumer credit activities* if they were carried on from an establishment in the *United Kingdom*;
    - (e) lending *money* secured by a charge on land;
    - (f) lending *money* (excluding *restricted credit* where that is not a *consumer credit activity*);
    - (g) paying *money* by a *plastic card* (excluding a *store card* where that is not a *consumer credit activity*);
    - (h) providing ancillary banking services;



- (i) acting as an intermediary for a loan secured by a charge over land;
- (j) acting as an intermediary for *general insurance business* or *long-term insurance business*;
- (k) National Savings and Investments' business;
- (l) activities which (at 1 November 2009) were *payment services* or would be *payment services* if they were carried on from an establishment in the *United Kingdom*;

or any ancillary activities, including advice, carried on by the *VJ participant* in connection with them.

...

## 2 Annex 1 G **Regulated activities for the Voluntary Jurisdiction at 1 July 2007 2009**

This table belongs to DISP 2.5.1R

The activities which (at 1 July ~~2007~~ 2009) were *regulated activities* for the Voluntary Jurisdiction were, in accordance with section 22 of the *Act* (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

- (1) *accepting deposits* (article 5);
- (2) *issuing electronic money* (article 9B);
- (3) *effecting contracts of insurance* (article 10(1));
- (4) *carrying out contracts of insurance* (article 10(2));
- (5) *dealing in investments as principal* (article 14);
- (6) *dealing in investments as agent* (article 21);
- (7) *arranging (bringing about) deals in investments* (article 25(1));
- (8) *making arrangements with a view to transactions in investments* (article 25(2));
- (9) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));
- (10) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (11) *arranging (bringing about) a home reversion plan* (article 25B(1));
- (12) *making arrangements with a view to a home reversion plan* (article 25B(2));
- (13) *arranging (bringing about) a home purchase plan* (article 25C(1));
- (14) *making arrangements with a view to a home purchase plan* (article 25C(2));
- (14A) *operating a multilateral trading facility* (article 25D);

- (14B) *arranging (bringing about) a regulated sale and rent back agreement* (article 25E(1));
- (14C) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2));
- (15) *managing investments* (article 37);
- (16) *assisting in the administration and performance of a contract of insurance*(article 39A);
- (17) *safeguarding and administering investments* (article 40);
- (18) *sending dematerialised instructions* (article 45(1));
- (19) *causing dematerialised instructions to be sent* (article 45(2));
- (20) *establishing, operating or winding up a collective investment scheme* (article 51(1)(a));
- (21) *acting as trustee of an authorised unit trust scheme* (article 51(1)(b));
- (22) *acting as the depositary or sole director of an open-ended investment company* (article 51(1)(c));
- (23) *establishing, operating or winding up a stakeholder pension scheme* (article 52(a));
- (24) *providing basic advice on a stakeholder product* (article 52B);
- (25) *establishing, operating or winding up a personal pension scheme* (article 52(b));
- (26) *advising on investments* (article 53);
- (27) *advising on regulated mortgage contracts* (article 53A);
- (28) *advising on a home reversion plan* (article 53B);
- (29) *advising on a home purchase plan* (article 53C);
- (29A) *advising on a regulated sale and rent back agreement* (article 53D);
- (30) *advising on syndicate participation at Lloyd's* (article 56);
- (31) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's* (article 57);
- (32) *arranging deals in contracts of insurance written at Lloyd's* (article 58);
- (33) *entering into a regulated mortgage contract* (article 61(1));
- (34) *administering a regulated mortgage contract* (article 61(2));
- (35) *entering into a home reversion plan* (article 63B(1));
- (36) *administering a home reversion plan* (article 63B(2));
- (37) *entering into a home purchase plan* (article 63F(1));
- (38) *administering a home purchase plan* (article 63F(2));
- (38A) *entering into a regulated sale and rent back agreement* (article 63J(1));
- (38B) *administering a regulated sale and rent back agreement* (article 63J(2));
- (39) *entering as provider into a funeral plan contract* (article 59);
- (40) *agreeing to carry on a regulated activity* (article 64);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (20), (21), (22) and (23), is carried on in relation to property of any kind.



Moneymadeclear  
consumer factsheet –  
Just the facts about sale  
and rent back schemes

# No selling. No jargon. Just the facts about sale-and-rent-back schemes

**This factsheet, from the Financial Services Authority (FSA), tells you what to consider before agreeing to a sale-and-rent-back scheme.**

You may be tempted to consider these schemes if you are having problems paying your mortgage. In this kind of scheme, you sell your home at a discounted price and in return you stay living there as a rent-paying tenant for a fixed term. This may allow you to clear your mortgage and other debts, but you will face new risks.

## Risks of sale-and-rent-back schemes

- You will no longer own your home.
- You may still have to leave your home after the fixed term of your new tenancy agreement.
- Your rent could go up both during and after the fixed term of your tenancy.
- You could still be evicted during the fixed term if you breach the terms of your tenancy, for example if you fall behind with your new rental payments.
- The amount you get for your home may be much lower than its price if you sold it normally.
- If the person or firm buying your home gets into financial difficulties, the property could still be repossessed and you might have to leave.
- If you sell your home at a discounted price, this may affect your eligibility for bankruptcy or other forms of insolvency.

**Consider these schemes only as a last resort.**

Make sure you have looked at all other options first.

## Before considering sale-and-rent-back schemes

- **Speak to your mortgage lender.** They may be able to help you to make an arrangement to repay your mortgage arrears – read our **Problems paying your mortgage** guide – see *Useful contacts*.
- **Speak to your other creditors.** You may be able to arrange a repayment plan to help you manage your debts and keep your home.
- **Get free and independent debt help** online, by telephone or face to face from a debt adviser – see *Useful contacts*. They may also deal directly with your lenders on your behalf.
- **Check whether you're eligible for Government help**, including benefits, a loan or Homeowner Mortgage Support. Or you may qualify for a Mortgage Rescue Scheme, where your council or a social landlord buys your home and rents it back to you. Speak to a housing or debt adviser for help – see *Useful contacts*.
- **Consider selling your home on the open market.** Use a local estate agent or go online to check property sale prices in your area.
- **Check whether equity release is a suitable option** (if you're 55 or over). It's a way of raising money from your home that allows you to stay there. Read our **Equity release** guide – see *Useful contacts*.

If a sale-and-rent-back scheme is your only option, make sure you can afford it and that you understand the agreement, so you get the right deal for you.

**Remember, this is general information and isn't the same as getting financial or other professional advice. For advice based on your own circumstances, talk to a professional adviser.**

## When choosing a sale-and-rent-back scheme

- **Make sure you deal with a regulated firm** so you will have access to complaints and compensation procedures if things go wrong. Contact us to check if a firm is regulated – see *Useful contacts*.
- **Check the **keyfacts**<sup>®</sup> document** the firm will give you for important details of the scheme – see **Get the key facts**.
- **Shop around** using firms' **keyfacts**<sup>®</sup> documents to compare schemes.
- **Check how these schemes affect your right to State benefits including Housing Benefit** – speak to your local council or Citizens Advice Bureau – see *Useful contacts*.
- **Check you can afford the rent.** A free and independent advice service can help you work out your budget – see *Useful contacts*.
- **Read the terms of your tenancy carefully,** so you know what you must do to avoid being evicted.

## Get the key facts

Firms must tell you in a **keyfacts**<sup>®</sup> document important information about the scheme, including:

- the market value of the property (or an estimate if it has not been valued at the time);
- the price the firm will pay for the property;
- the minimum period you have a right to stay in your home;
- the rent due under the agreement;
- the circumstances when the rent can be increased; and
- what happens if you fall behind with your rent.

## If things go wrong

**Complaints about the sale of the scheme** – if you deal with a regulated firm, they must have complaints procedures. Complain to the firm first. If your complaint is not resolved to your satisfaction, you can take it to the Financial Ombudsman Service. Get our **Making a complaint** guide – see *Useful contacts*.

**Complaints about how you are treated as a tenant** – contact Shelter or your local Citizens Advice Bureau for advice on your rights – see *Useful contacts*.

## How you can help us

Report to us any unregulated firm you may find or any advertising of these schemes that you think may be unfair, unclear or misleading – see *Useful contacts*.



## Useful contacts

### Financial Services Authority (FSA)

To order other **Moneymadeclear**<sup>™</sup> guides, check our Register, report an unregulated firm or misleading advert, or for general information or guidance

Helpline: 0300 500 5000

Typetalk: 1800 1 0300 500 5000

(Calls should cost no more than 01 or 02 UK-wide calls, and are included in inclusive mobile and landline minutes.) To help us maintain and improve our service, we may record or monitor calls.

If you would like this factsheet in Braille, large print or audio format, please call our Consumer Helpline.

### Other **Moneymadeclear**<sup>™</sup> guides

- Equity release schemes – raising money from your home
- Making a complaint
- Problems paying your mortgage

For more titles, call us or go online [www.moneymadeclear.fsa.gov.uk](http://www.moneymadeclear.fsa.gov.uk)

### Other organisations that can help

Call rates may vary – check with your provider

#### Consumer Credit Counselling Service (CCCS)

Mortgage arrears helpline: 0800 975 9558

[www.cccs.co.uk](http://www.cccs.co.uk)

For free and independent advice on budgeting and all types of debt.

#### Citizens Advice Bureau (CAB)

[www.adviceguide.org.uk](http://www.adviceguide.org.uk)

For free and independent advice on budgeting, debt, State benefits, understanding schemes and their consequences, and your rights as a tenant. Look in the Phone Book or on the website for your local bureau.

#### Shelter (England and Scotland)

Homeowner helpline: 0300 3300 515

Housing advice helpline: 0808 800 4444

[www.shelter.org.uk](http://www.shelter.org.uk)

For free and independent advice on mortgage debt, understanding schemes and their consequences, and your rights as a tenant. They have online information about the effect of these schemes on Housing Benefit claims.

#### Local council

For information on whether they offer a 'mortgage rescue' scheme or whether you qualify for Housing Benefit if you plan to enter into a sale-and-rent-back scheme. Look on [www.direct.gov.uk](http://www.direct.gov.uk) or in your phone book for contact details.

#### Directgov – Benefits adviser

[www.direct.gov.uk/benefitsadviser](http://www.direct.gov.uk/benefitsadviser)

Information about State benefits.



# Consultation on regulatory reporting for sale and rent back firms

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<b>Appendix 4:</b>	Draft Handbook text



# 5 Introduction to regulatory reporting

- 5.1 In this section, we consult on the full reporting approach we intend to implement for the sale and rent back (SRB) regime.
- 5.2 SRB involves individuals (often those facing financial difficulties) selling their home at a discount in return for the right to remain in their property as a tenant for a set period.
- 5.3 We began regulating SRB under our interim regime on 1 July 2009. On 30 June 2010 we will be implementing a full regime. Our proposals for the full regime were outlined in CP09/22<sup>12</sup> and the final rules are included in the first section of this paper (the Policy Statement).
- 5.4 All regulated firms must give us information about the levels of business they undertake, their financial resources and profitability, and details concerning the volume and/or timing of specified events. This data is a key part of our risk based approach to supervising regulated firms. The frequency of these reports depends on the size and nature of the activities that firms undertake.
- 5.5 As we explained in Chapter 8 of CP09/22, for an initial period at the outset of the full SRB regime we are continuing with the reporting approach put in place for the interim regime. This will continue for a temporary period until we have consulted on and published the final rules for the full reporting requirements, and then given firms time to put these new requirements in place.
- 5.6 In this Consultation Paper (CP), we outline the full reporting approach that we intend to apply for the full SRB regime. The approach is similar to that applied to other home finance firms. We propose to gather a range of information from SRB firms that we will use in supervision, both from a prudential and conduct of business perspective. Collecting this information will help us to develop a better understanding of the SRB market, in terms of the type of products sold and the profile of SRB business undertaken by specific firms and across the market. This data will also help us assess the effectiveness of the measures we have put in place for the full regime, and consider whether outcomes for consumers have improved.
- 5.7 SRB firms currently submit data to us manually. We are considering the best way to manage the collection of data, in a way that is proportionate to firms and to us. We

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12 *Regulating sale and rent back – the full regime* [www.fsa.gov.uk/pubs/cp/cp09\\_22.pdf](http://www.fsa.gov.uk/pubs/cp/cp09_22.pdf)

may decide that data collection will be done through full or partial automation i.e. firms will be required to enter all or some data directly into a secure area of the FSA website. We will provide further information on this when we publish our feedback statement on this consultation.

### **Purpose of this CP**

- 5.8 This CP seeks comments on our proposals for collecting information about firms that have permission to carry out one or more of the following activities:
- arranging a regulated sale and rent back agreement;
  - advising on a regulated sale and rent back agreement;
  - entering into a sale and rent back agreement; and
  - administering a sale and rent back agreement.

### **Why do we need this information?**

- 5.9 To supervise firms effectively we need to receive, on a timely basis, relevant information about firms and their activities. This will help us monitor firms, and allow us to identify trends in individual firms and in the market as a whole. It will also help us identify where we should target supervisory attention.
- 5.10 This information will also help us calculate the periodic fees that firms will be required to pay to the FSA, the Financial Ombudsman Service (FOS) and the Financial Services Compensation Scheme (FSCS).

### **Structure and content of this CP**

- 5.11 The rest of this paper is structured as follows:
- Chapter 6 outlines our proposals for regulatory reporting for SRB firms.
  - Annexes C and D contain a cost benefit analysis of our proposals and an analysis of their compatibility with our statutory objectives and the principles of good regulation.
  - Annex E lists the consultation questions.
  - Appendix 4 includes the draft instrument containing the proposed rules.

### **Pre-consultation**

- 5.12 We have consulted a number of SRB firms about the proposals outlined in this paper. We have also received a number of comments on SRB reporting in our consultations on SRB,<sup>13</sup> which were generally supportive of more detailed reporting requirements for SRB firms. We would like to thank all those that have contributed to these discussions, which have helped us inform our proposals.

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13 *Regulating sale and rent back: an interim regime* [www.fsa.gov.uk/pubs/cp/cp09\\_06.pdf](http://www.fsa.gov.uk/pubs/cp/cp09_06.pdf)  
*Regulating sale and rent back – the full regime* [www.fsa.gov.uk/pubs/cp/cp09\\_22.pdf](http://www.fsa.gov.uk/pubs/cp/cp09_22.pdf)

### **Who should read this paper?**

- 5.13 This paper will be of interest to firms active in the SRB market and relevant trade bodies.

### **Next steps**

- 5.14 Following the consultation period we plan to publish another Policy Statement and our final rules in Summer 2010. This will include the timetable for firms to implement our requirements. Firms will then have a period make the necessary preparations before they begin submitting data to us.

### **CONSUMERS**

While the material in this CP is not directly relevant to retail consumers or consumer groups, the proposals will help us to meet our statutory objectives including providing the appropriate degree of protection to consumers.

# 6 Our proposals

- 6.1 This chapter sets out in detail our proposals for regulatory reporting requirements for sale and rent back (SRB) firms, and is set out according to the SRB activities that the firms undertake. These are:
- advising on or arranging a regulated SRB agreement;
  - entering into a regulated SRB agreement; and
  - administering a regulated SRB agreement.
- 6.2 We are proposing that SRB firms would be required to submit data to us about their businesses through a suite of returns already used by other home finance firms. SRB firms may be required to submit up to three different returns to us according to the types of activity that they undertake, as follows:
- Firms undertaking advising and/or arranging SRB activities – the Retail Mediation Activities Return (RMAR).
  - Firms entering into SRB agreements – the Mortgage Lending & Administration Return (MLAR) and Product Sales Data (PSD).
  - Firms administering SRB agreements – the Mortgage Lending and Administration Return (MLAR).
- 6.3 Where a firm undertakes more than one type of SRB activity they will be required to complete all the returns relevant to that activity. For example, a firm that advises on and enters into SRB agreements will be required to submit all three returns (RMAR, MLAR and PSD), whereas a firm that only undertakes advising or arranging activities would submit the RMAR only (see table 1).
- 6.4 The proposed frequency of reporting is also set out in table 1. This is based on reporting requirements for other home finance firms.

**Table 1: Summary of proposed reporting requirements for SRB firms showing frequency of submission by type of SRB activity**

	<b>RMAR</b>	<b>PSD</b>	<b>MLAR</b>
Advisers/arrangers	Half-yearly		
Providers		Quarterly	Quarterly
Administrators			Quarterly

6.5 We recognise that firms will need time to prepare for our reporting requirements, both to make systems changes and to start collecting the data that we require. We typically allow a 12-month period for firms to prepare, but this can vary according to the complexity of changes involved, and the type of data that firms already submit to us. In the final rules for the full regime that are published alongside this document there is a transitional requirement in place which means that we will continue with the current manual reporting requirements until 29 June 2011 (see Annex F of Appendix 1, SUP TP1.2 15D). So we will not begin compulsory reporting under the proposals set out in this consultation paper until then. More detailed information on the timing of the implementation of these proposals and how firms will be required to submit data to us will be provided when we publish the Policy Statement to this consultation later this year.

Q1: Do you have any comments on the timetable for implementing these reporting requirements?

Q2: Do you have any comments on the proposed frequency of reporting?

## **Regulatory proposals**

### **Advisers and arrangers**

6.6 We propose that firms that carry out advising and arranging activities for SRB will be required to submit the Retail Mediation and Activities Return (RMAR). This return will be submitted on a half-yearly basis. This information from this return is used mainly in the supervision of small firms, in particular to assess compliance with prudential requirements. The main elements of information we collect are:

- balance sheet;
- profit and loss;
- client money and assets;
- regulatory capital;
- professional indemnity insurance (PII) cover;
- compliance with other key criteria for authorised firms (threshold conditions);
- training and competence;
- conduct of business issues; and
- data required for the calculation of regulatory fees.

- 6.7 We do not propose to make any amendments to the existing form of the RMAR as it is primarily designed to collect firm-specific rather than product-specific information, and is largely applicable to SRB firms without modification. Any areas that are not applicable to SRB firms are covered in the accompanying guidance notes to firms (see SUP16 Annex 18B in Appendix 4).
- 6.8 Firms should note that some of the headings within the RMAR form refer to 'mortgages'. We have considered whether to change these headings to reflect other home finance products, including SRB, but we do not think it proportionate to change this at the current time. So SRB firms must report under the existing headings as set out in the guidance notes.
- 6.9 The rules governing the submission of the RMAR can be found in Chapter 16 of the Supervision manual (SUP).
- 6.10 The RMAR form is available on our website:  
[www.fsa.gov.uk/pubs/other/sup\\_chapter16\\_annex18ar.pdf](http://www.fsa.gov.uk/pubs/other/sup_chapter16_annex18ar.pdf);
- 6.11 The current guidance notes are available here:  
[www.fsa.gov.uk/pubs/other/sup\\_chapter16\\_annex18bg.pdf](http://www.fsa.gov.uk/pubs/other/sup_chapter16_annex18bg.pdf).
- 6.12 The minor amendments that are proposed for the guidance notes to take account of SRB firms can be found in Appendix 4 of this paper in SUP16 Annex 18B.
- Q3: Do you have any comments on the reporting requirements for SRB advisers and arrangers?
- Q4: Is there any other information you think we should collect from SRB advisers and arrangers?

### **SRB providers**

- 6.13 We propose that firms that enter into SRB agreements are required to submit data to us through the Mortgage Lending and Administration Return (MLAR) and Product Sales Data (PSD).

#### **MLAR**

- 6.14 The information we propose to collect from SRB providers through the MLAR is collected on a quarterly basis and includes the following information:
- balance sheet;
  - profit and loss;
  - capital;
  - data required for the calculation of regulatory fees (collected annually only); and
  - SRB new business flows and business profile.
- 6.15 Information on balance sheet, profit and loss and capital would be collected through sections A to C of the existing MLAR form, and data required for FSA fees would

be collected through section J. The existing MLAR form is available on our website: [www.fsa.gov.uk/pubs/other/sup\\_chapter16\\_annex19ar.pdf](http://www.fsa.gov.uk/pubs/other/sup_chapter16_annex19ar.pdf).

- 6.16 Firms should note that some of the headings within sections A to C of the MLAR form may not appear directly relevant to SRB firms. The accompanying guidance notes to firms explain how SRB firms should complete these sections.
- 6.17 The information we propose to collect on SRB new business flows and business profile would be collected through a new section of the MLAR, section K. The data we propose to collect includes the following data on both regulated and non-regulated SRB agreements:
- new SRB agreements reported by discount on open market value;
  - new SRB agreements reported by fees charged as a percentage of purchase price;
  - new SRB agreements reported by annual rent as a percentage of sales value;
  - SRB agreements terminated or transferred during the quarter;
  - SRB properties disposed of during the quarter; and
  - SRB agreements in arrears, reported by arrears as a percentage of annual rent.
- 6.18 Section K is set out in Appendix 4 of this paper, in SUP16 Annex 19A.
- 6.19 The current guidance notes, which explain to firms how to complete the MLAR are available here: [www.fsa.gov.uk/pubs/other/sup\\_chapter16\\_annex19bg.pdf](http://www.fsa.gov.uk/pubs/other/sup_chapter16_annex19bg.pdf).
- 6.20 The amendments we propose to make to the guidance notes explaining how SRB firms should complete the MLAR, including guidance on the new section K, can be found in Appendix 4 of this paper, in SUP16 Annex 19B.

## PSD

- 6.21 PSD is information on every regulated SRB agreement that the firm has entered into during the reporting period. The data is collected on a quarterly basis. The information that we propose to collect for each agreement is as follows:
- unique identifier (e.g. account number);
  - date of SRB agreement (i.e. date agreement entered into);
  - market value of the property;
  - purchase price paid to the SRB seller;
  - net amount paid to the SRB seller (following the deduction of any fees and expenses);
  - monthly rent;
  - term of tenancy agreement;
  - postcode of property;
  - income basis used in the affordability assessment (i.e. single or joint);

- employment status of main SRB seller;
- total net disposable income (of SRB seller used in affordability calculation);
- date of birth of main SRB seller;
- product incentives; and
- funding source used by SRB provider to fund the SRB agreement.

6.22 The proposed PSD reporting requirements are set out in Appendix 4, in SUP 16 Annex 21R.

Q5: Do you have any comments on the reporting requirements for SRB providers?

Q6: Is there any other information you think we should collect from SRB providers?

### **SRB administrators**

6.23 We propose that firms that administer regulated SRB agreements are required to submit data to us through the Mortgage Lending and Administration Return (MLAR).

#### **MLAR**

6.24 The information we propose to collect from SRB administrators through the MLAR is collected on a quarterly basis and includes the following information:

- balance sheet;
- profit and loss;
- capital;
- data required for the calculation of regulatory fees (collected annually only);
- the number of regulated SRB contracts that the firm administers in total; and
- the number of regulated SRB contracts on behalf of third parties, further broken down by the number of regulated SRB agreements administered for the largest five firms that they administer regulated SRB agreements for.

6.25 Information on balance sheet, profit and loss and capital would be collected through sections A to C of the MLAR as it already stands for other home finance firms. Data required for FSA fees would be collected through section J of the existing MLAR. The existing MLAR form is available on our website: [www.fsa.gov.uk/pubs/other/sup\\_chapter16\\_annex19ar.pdf](http://www.fsa.gov.uk/pubs/other/sup_chapter16_annex19ar.pdf).

6.26 The information we propose to collect on SRB administration would be collected through a new section of the MLAR, section K.

6.27 Section K is set out in Appendix 4 of this paper, in SUP16 Annex 19A.

6.28 The current guidance notes, which explain to firms how to complete the MLAR are available here: [www.fsa.gov.uk/pubs/other/sup\\_chapter16\\_annex19bg.pdf](http://www.fsa.gov.uk/pubs/other/sup_chapter16_annex19bg.pdf).



6.29 The amendments we propose to make to the guidance notes to explain to SRB firms how to complete the MLAR, including guidance on the new section K, can be found in Appendix 4 of this paper, in SUP16 Annex 19B.

Q7: Do you have any comments on the reporting requirements for SRB administrators?

Q8: Is there any other information you think we should collect from SRB administrators?

# Market failure and cost benefit analysis

## Market failure analysis

- 1 The OFT published a report in October 2008 recommending FSA regulation of the sale and rent back (SRB) market. Consultations by both the Treasury and FSA followed, resulting in our interim regime being introduced in June 2009,<sup>14</sup> and a full regime consulted on in September 2009<sup>15</sup> (CP09/22), which will come into force on 30 June 2010.
- 2 We included a market failure analysis of the SRB market in Annex A of CP09/22. The market failure analysis pointed out that the SRB market is fragmented with little competitive pressure on SRB providers, either on price or quality of SRB products.
- 3 SRB firms are typically small firms or sole traders, acting locally and offering sale and rent back as a solution to consumers in financial difficulties. These consumers are often in arrears with their mortgage or facing repossession and are looking for ways to avoid further difficulties but remain in their home.
- 4 SRB products are being offered as a quick solution to these financially distressed consumers, who may enter into an agreement without fully understanding it. We have identified the existence of informational asymmetries, mainly arising from the lack of knowledge and understanding from the consumers about the value of their property and the terms of the agreement. It is likely that this lack of knowledge has been exploited by some SRB providers and induced consumers to enter into a transaction when it is not the best option for them.
- 5 The interim regime was designed to quickly address the regulatory gap and target the worst cases of consumer detriment. The full regime aims to bring greater protection for consumers by improving the quality of contracts offered and materially reduce the risk of inappropriate sales. However, as this is a newly regulated market, we have limited information available to understand the evolution of the market, identify potential risks to consumers, supervise firms' compliance and assess the effectiveness of our rules.

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14 *Regulating sale and rent back: an interim regime:* [www.fsa.gov.uk/pubs/policy/ps09\\_09.pdf](http://www.fsa.gov.uk/pubs/policy/ps09_09.pdf)

15 *Regulating sale and rent back – the full regime:* [www.fsa.gov.uk/pubs/cp/cp09\\_22.pdf](http://www.fsa.gov.uk/pubs/cp/cp09_22.pdf)

- 6 Regulatory reporting is therefore important as it will enable us to gather information about the SRB market. Analysis of such information should enhance supervision and enable us to assess the effectiveness of the SRB regulatory regime. Below is our analysis of the incremental cost and benefits of regulatory reporting for the SRB market.

### **Cost benefit analysis (CBA)**

- 7 Section 155 of FSMA requires us to publish a cost-benefit analysis (CBA) defined as ‘an estimate of the costs together with an analysis of the benefits’ of our proposed reporting needs and collection methods relative to the position if these proposals were not made.
- 8 Our approach to CBA considers the following incremental impacts of our proposals:
- the direct costs to us;
  - the compliance costs to firms; and
  - the market impacts.
- 9 The CBA compares a scenario where the proposed requirements are in place with a scenario in which they are not introduced (counterfactual). For each requirement we estimate the incremental costs of complying with our proposals (that is the additional cost of our requirements compared with the costs that firms already face).
- 10 The Policy Statement in Part 1 of this paper outlines the final rules for regulating the SRB market. The scope of this CBA relates only to our proposed reporting requirements. The proposals we are putting forward will enable us to collect data from SRB firms according to the activities that they undertake. We are looking to collect more details from firms about the SRB transactions they enter into, including information on sales, the levels of transactions, profiles of the consumers and financial situation of the firm. We propose that this information is entered on to our automated reporting systems by firms and then used for analysis, risk assessment and supervision by ourselves.
- 11 To research the costs, we carried out a small qualitative survey of representative SRB firms that will be affected by our proposals, to ask for details on their expected compliance costs and other market implications.

### *Estimated population of firms*

- 12 There are currently 65 interim authorised firms on our register, including 14 firms with a variation of permission (VoP). We are working in this CBA on the assumption that some additional firms, who have currently adopted a ‘wait and see’ approach, will apply under the full regime. This is in keeping with our analysis in CP09/22. We therefore believe that 100 is a realistic estimate for the number of firms likely to apply to carry on SRB business and be affected by our proposals under the full regime.
- 13 However, given that there is some uncertainty around this figure, we have based our assessment of the likely costs of the proposed regulatory regime on a ‘per firm’ basis. We have used the interim register to judge how the total population of the SRB market might look and estimate the likely cost to the industry as a whole.

### *Direct costs to the FSA*

- 14 Direct costs for the FSA will arise from developing, setting up and maintaining the reporting systems. Additional costs will arise from formulating our proposals and from ensuring the quality of the submitted data. These include the costs of:
- setting up changes to our reporting systems, so firms can submit accurate and relevant information on SRB transactions and activity. This is estimated at £1m to £2m;
  - developing our proposals. This will be minimal as this has been managed as part of our existing resourcing; and
  - ensuring the quality of the data. This will be minimal as many of our systems are automated and it will be managed with our existing resources.

### *Compliance costs to firms*

- 15 Under our proposals, firms need to submit information to us according to the regulated activity or activities they are involved in. For reporting purposes, sale and rent back activities can be separated into:
- advisers/arrangers;
  - providers; and
  - administrators.
- 16 There are three types of reports and these are described below.
- **Retail Mediation Activities Return (RMAR):** As set out in Chapter 6, we propose to collect information on firms' financial standing and compliance with our prudential requirements on a half-yearly basis.
  - **Product Sales Data (PSD).** As set out in Chapter 6 we propose to collect information on all sale and rent back agreements entered into, including details of location, price, tenancy, profile of the seller and funding sources, on a quarterly basis.
  - **Mortgage Lending and Administration Return (MLAR):** As set out in Chapter 6 we propose to collect information on the business profile of the firm on a quarterly basis. This will include the number of sales, fees and charges, levels of discount against market value and the number of agreements ending.
- 17 Under our proposals, advisers and arrangers will submit a Retail Mediation Activities Return (RMAR). Providers will submit Product Sales Data (PSD) and a Mortgage Lending and Administration Return (MLAR). Administrators will submit part of the Mortgage Lending and Administration Return (MLAR), referring to their administration function.
- 18 We have estimated that introducing reporting requirements will lead to the following total one-off and on-going costs per firm. Our estimates are based on the responses we received to our survey and represent the range of costs firms might occur to

implement our proposals. These costs vary according to the firm's size and record keeping characteristics.

- 19 In some cases the annual ongoing cost seems to exceed the set up cost, as some of the SRB firms view that the highest cost will come from the engagement of extra personnel to collate the information every quarter or half-year and not from the set-up of a sophisticated system. The set-up of a sophisticated system is not considered necessary as most of the SRB firms have only a small number of agreements or already capture the information in their existing business systems.

**Table 1: Total one-off and on-going incremental compliance cost per firm**

	Advisers/arrangers	Providers	Administrators
Total one-off cost	£500 to £3,500	£500 to £7,000	£500 to £1,000
Total on-going cost	£1,000 to £3,000	£1,500 to £8,000	£500 to £4,000

- 20 Table 2 shows a breakdown of the estimated costs by activity. These are discussed in detail below. In each section we divide the estimates between one-off costs from introducing the proposals and the annual costs of complying with them, counting both for collection and submission of the data.

**Table 2: Initial and ongoing costs of reporting per firm**

	Advisers/arrangers		Providers		Administrators	
	Initial cost	Annual ongoing cost	Initial cost	Annual ongoing cost	Initial cost	Annual ongoing cost
Cost of collecting and submitting data through our retail mediation activities return (RMAR)	£500 to £3,500	£1,000 to £3,000	N/A	N/A	N/A	N/A
Cost of collecting and submitting product sales data (PSD)	N/A	N/A	£250 to £5,000	£500 to £4,000	N/A	N/A
Cost of reporting on business flows and administration activity, captured in our mortgage lending and administration return (MLAR)	N/A	N/A	£250 to £2,000	£1,000 to £4,000	£500 to £1,000	£500 to £4,000
<b>Total cost</b>	<b>£500 to £3,500</b>	<b>£1,000 to £2,000</b>	<b>£500 to £7,000</b>	<b>£1,500 to £8,000</b>	<b>£500 to £1,000</b>	<b>£500 to £4,000</b>

### *Details*

- 21 Characteristics of firms, in relation to their record keeping, will influence their cost estimates and their ability to provide timely information. These include whether the firm:
- has an in-house finance or compliance function;
  - uses electronic record keeping; and
  - has finance expertise and a financial software package available.

- 22 As many of the firms affected by the regulatory requirements are sole traders or small firms with no in-house finance function, it is unlikely that most will display these characteristics. Responses to the questionnaire show most firms do not have an in-house compliance function either.
- 23 Firms are therefore expecting to have set-up costs, incurred by the development and implementation of new or existing finance and compliance systems, and ongoing costs of collection and submission.
- 24 When a firm outsources financial or compliance support an extra cost is expected. They may need to pay an extra fee to an accountant, a solicitor or a compliance consultant, take management/owners away from other work, or employ extra people.
- 25 The different cost patterns arising from the different firm characteristics were clear in the responses to our questionnaire. A few firms responded saying our reporting requirements would result in minimal cost increases, while others estimated a maximum cost of up to £4,000.
- 26 **Advisers/arrangers:** Advisers and arrangers will submit a Retail Mediation Activities Return (RMAR). The advisers and arrangers who responded to our questionnaire said they already have data available on the annual income raised from sale and rent back activities, the number of staff that give advice and those who are assessed as competent to do so. However, some of the firms are not collecting information on prudential requirements and gave the need to collect this for reporting purposes as a reason for additional cost.
- 27 Overall, firms estimated a range from £500 to £3,500 as initial cost and from £1,000 to £3,000 as ongoing cost. These costs are driven mainly by the need to purchase and set up an accounting package, engage extra people or use their own time and pay for the advice of an external consultant.
- 28 **Providers:** Providers will submit Product Sales Data (PSD) and a Mortgage Lending and Administration Return (MLAR). The providers who responded to our survey said that they already collect the business profile and transaction data (including the date and origin of the sale, terms of the SRB agreement, value of property and actual advance to the seller). Deviations in the responses were observed on collecting details for the SRB seller, the product characteristics of the agreement and whether advice was given at the point of sale.
- 29 The firms estimated that the cost of the collection and submission of transaction data (PSD) will be around £250 to £5,000 (set-up) and £500 to £4,000 (ongoing) and the costs of the business profile data (MLAR) will be £250 to £2,000 and £1,000 to £4,000 respectively. Drivers of these costs were again the need for system changes, extra personnel and consultancy advice.
- 30 **Administrators:** Administrators will submit a part of the Mortgage Lending and Administration Return (MLAR) giving information on the number of agreements they administer for others (the top five firms). Responses to the questionnaire pointed out that firms already hold this information and most of the cost is related to engaging extra personnel to extract the information and submit it. Costs were estimated around £500 to £1,000 as initial cost and £500 to £4,000 as ongoing cost.

### *Total compliance cost to the industry*

- 31 Some firms will carry out all three activity types, while others only one or two. We have used information from our interim register and from responses to our questionnaire to calculate the levels of population involved in each activity and therefore the total cost to the industry of complying with our requirements.
- 32 From the interim authorised firms:
- 29 are in all three activities (45%);
  - 22 are advisers/arrangers only (34%);
  - eight are providers and administrators (12%);
  - three are administrators only (5%);
  - two are advisers and administrators (3%); and
  - one is a provider only (1%).
- 33 Anticipating a similar distribution in our estimated 100 regulated SRB firms we have calculated the total cost to the industry of our proposals to be around £100,000 to £800,000 (set-up cost) and £200,000 to £1,000,000 (annual ongoing cost). The total cost of reporting is summarised in table 3 below.

**Table 3: Summary of initial and ongoing costs per firm by data type**

		<b>Initial cost</b>	<b>Annual Ongoing Cost</b>
Anticipated distribution of 100 regulated SRB firms	45 firms in all three activities	£67,500 to £517,500	£135,000 to £675,000
	34 firms as advisers/arrangers only	£17,000 to £119,000	£34,000 to £102,000
	12 providers and administrators	£12,000 to £126,000	£30,000 to £132,000
	five administrators only	£2,500 to £5,000	£2,500 to £20,000
	three advisers and administrators	£3,000 to £13,500	£4,500 to £21,000
	one provider only	£500 to £7,000	£1,500 to £8,000
	<b>Total cost</b>	<b>£102,500 to £788,000</b>	<b>£207,500 to £958,000</b>

- 34 Given that the initial cost for a SRB firm includes the set up of systems to collect and form the requested information, our calculation may include some double counting for those firms that are involved in more than one activity. They are likely to set up one system to cover both aspects of the reporting. However, we still believe that our calculations provide a good estimate of the cost that a firm and the industry will incur to fulfil the reporting requirements.

### *Indirect Costs*

- 35 We do not envisage that the proposed reporting requirements on their own will have any material adverse market impacts. The implementation cost of our reporting proposals relative to the rest of the regime should be low and have no material adverse effects on the quantity and quality of products offered and the effectiveness of competition.

## *Benefits*

36 Our proposed reporting requirements will allow us to understand how the SRB market evolves, identify potential risks to consumers and respond accordingly, target our supervisory resources efficiently, ensure compliance of the SRB firms with our rules, and assess the effectiveness of the SRB regime. These should ensure that the benefits of the SRB regime identified in the CBA in CP09/22 arise (i.e. that consumers only enter in an SRB transaction when it is appropriate for them). This section analyses how these benefits arise as a result of:

- the type of information we propose to collect;
- our proposals for frequency and timelines; and
- electronic submission.

### *Increased market intelligence and identification of potential risks*

37 Most of the benefits of our proposals will arise from identifying potential risks to consumers and being able to respond in time to limit or prevent consumer's detriment. Collecting and analysing the data will improve our understanding of the market, and help us to identify the embedded risks and inform our future policy development. For example, our thematic work will make use of a combination of different data items such as the product sales data and the conduct of business information. Also, data gained from both MLAR and PSD returns has been essential in the analysis undertaken for the Mortgage Market Review,<sup>16</sup> so we expect similar data will influence a future SRB market review.

38 We will use additional data in identifying risks and trends in the SRB market, allowing us to assess the effectiveness of our full regime in limiting the risk and minimising consumer detriment. It will also allow us to respond proactively to changes and areas of high risk to consumers.

### *Improved supervision and assessment of the effectiveness of our rules*

39 The OFT market study identified bad practices in the SRB market. The rules under our full regime should lead to improvements and by imposing reporting requirements on SRB firms we will be able to see these improvements. Supervisors will also be able to identify any firms whose practices are not yet satisfactory.

40 Data will be used to alert supervisors on which firms or which activities are considered more risky, allowing them to take appropriate action and reduce the adverse effects on consumers. Supervisors rely on alerts and risk indicators from various sources, in particular from regulatory reporting. If our proposals for a fuller set of data are adopted, and collected through automated systems, supervisors will have a wider set of alerts to consider which will help them supervise this market effectively.

41 Information submitted aims to help us confirm the compliance of firms with our rules and assess the effectiveness of the new regulatory regime (as proposed in Part 1

16 Mortgage Market Review Discussion Paper published in October 2009: [www.fsa.gov.uk/pubs/discussion/dp09\\_03.pdf](http://www.fsa.gov.uk/pubs/discussion/dp09_03.pdf)



of this paper) in realising the benefits outlined in CP 09/22. Table 4 presents in detail the link between the policy proposals, the data requested and the benefit that might arise from their collection.

### *Effectiveness of FSA resources*

- 42 The approach we suggest would also be consistent with the reporting approach taken for other home finance firms, reducing manual data processing costs and improving the effectiveness of FSA resources.
- 44 Overall, we expect our reporting requirements to help us meet our objectives to maintain market confidence and secure the appropriate degree of consumer protection. The OFT market study, the Treasury consultation and our previous publications on SRB all pointed out the high risk of consumer detriment associated with SRB. By recording compliance with our prudential requirements through the RMAR we encourage only firms who are financially sound to remain in the market, reducing the possibility of losses for consumers.

**Table 4: SRB data required with relevant policy or rule and benefits**

<b>Data required</b>	<b>Relevant policy or rule</b>	<b>Benefit</b>
Market value, purchase price and net amount paid to the seller	Creating a more comprehensive regime to address consumer detriment (CP09/22 Chapter 3)	Improves market intelligence by understanding the level of discounts against market value being achieved. Improves risk analysis by showing trends in SRB property transactions.
Monthly rent and net disposable income of seller	Affordability and appropriateness (MCOB 4.11.3)	Protects the consumer by showing the rent is less than the disposable income and therefore affordable.
Income basis, employment status and date of birth of seller	Affordability and appropriateness (MCOB 4.11.3)	Helps towards protection for the consumer by showing a profile of the seller. This in turn helps determine the appropriateness of the transaction. Improves market intelligence as it gives us a greater understanding of consumers' circumstances.
Term of tenancy	Security of tenure (MCOB 2.6A.5B)	Protects the consumer by proving that our minimum requirement for a five-year fixed term is met.
Product incentives and funding sources	Creating a more comprehensive regime to address consumer detriment (CP 09/22 Chapter 3)	Reduces prudential risks to consumers by giving a clear understanding of how the firm's business model is being applied.
Balance sheets and other financial information	Prudential requirements (MIPRU 4.4)	Confirms a firm's compliance with our rules, which in turn reduce the risks to consumers.
Number of sales, fees and charges	Fees Manual	Improves market intelligence by understanding the level of business being conducted. Maintains the appropriate FSA fees charging based on a firms business levels.
Number and timing of agreements ended by the seller	Affordability and appropriateness (MCOB 4.11.3)	Indicates levels of appropriateness to SRB sellers by showing how long they choose to remain in their properties.
Rental arrears	Affordability and appropriateness (MCOB 4.11.3)	Gives an early indication that ongoing affordability testing is being carried out by firms.

Q9: Do you have any comments on our CBA?

# Compatibility statement

## Introduction

- 1 This section sets out our assessment of the compatibility of the reporting proposals outlined in Chapter 6 with our general duties under section 2 of the Financial Services and Markets Act 2000 (FSMA) and with the regulatory objectives set out in sections 3 to 6.

## Compatibility with our statutory objectives

- 2 Our four statutory objectives are set out below, with a description of how our proposals take account of these objectives.

## *Consumer protection*

- 3 The market failure analysis, outlined in the CBA section (Annex A) of CP09/22 identified consumer detriment is arising as a result of informational asymmetries in the sale and rent back (SRB) market. Our proposals are designed to address these asymmetries and bring greater protection for consumers. However, as this is a newly regulated market, we have limited information to monitor firms' compliance with our rules and assess the effectiveness of the regime.
- 4 The ability to understand the SRB market and to identify potential issues proactively, within individual firms and in the market as a whole, will give us an opportunity to address potential risks promptly, helping us to reduce future instances of consumer detriment.
- 5 The regular collection of information from authorised firms will enable us to monitor firms' compliance with our rules in an efficient manner and assess the effectiveness of the new regulatory regime in leading to better outcomes for consumers.

## *Market confidence*

- 6 Our proposals support the market confidence objective in a number of ways:
  - The information we gather will help us to improve our understanding of the SRB market and to monitor firm's adherence to our full regime regulatory requirements and therefore enable us to respond effectively to potential risks that could

undermine market confidence. For example, by monitoring compliance with our prudential requirements we can check that only firms who are financially sound remain in the market and can act promptly if their situation changes, reducing the possibility of losses for consumers and therefore increasing market confidence.

- Our reporting requirements will help to promote awareness in the industry of FSA rules and will increase the likelihood that firms will comply with them.

### *Public awareness*

- 7 The proposals are not expected to increase public awareness directly. However, additional information on the SRB market will improve consumer awareness of the risks of sale and rent back. We expect to increase our market knowledge, identify the potential risks and then seek to improve consumers' awareness of those risks.

### *The reduction of financial crime*

- 8 It is possible that there is a scope for money laundering and mortgage fraud to occur as part of an SRB transaction. By gathering additional information on SRB transactions such as the source of funds, there may be an increased opportunity for us to identify incidences of financial crime.

### *Principles of good regulation*

- 9 Section 2(3) of FSMA requires that, in carrying out our general functions, we have regard to the principles of good regulation.

### *The need to use our resources in the most efficient and economic way*

- 10 SRB is a newly regulated market that carries a high risk of consumer detriment. Consequently, it is very important that we receive useful information from SRB firms, regularly, to allow us to target our resources more efficiently on those firms and issues that require our attention. Without the appropriate information we will need more supervisory resources to effectively monitor this market.
- 11 The data we propose to collect is consistent with the data collected for other home finance firms, making our reporting requirements easier to add to the FSA database. Also integrating SRB into our fully automated reporting systems is the most efficient way of collecting, processing and analysing data.

### *The responsibilities of those who manage the affairs of authorised persons*

- 12 We expect a member of the SRB firm's senior management to verify the accuracy of the data submitted to the FSA. Our requirements will serve as reminder of Boards', Chief Executives' and senior management teams' responsibilities to comply with the FSA rules.

### *The restrictions we impose on the industry must be proportionate to the benefits that are expected to result from those restrictions*

- 13 We have carried out a cost-benefit analysis (in Annex C), showing an estimate of the costs and an analysis of the benefits that will arise as a result of our proposals. Cost

calculations are based on responses to a qualitative survey sent to a representative sample of SRB firms that will be affected by our proposals. We are satisfied that the costs of our proposals are proportionate to the benefits.

*The desirability of facilitating innovation in connection with regulated activities*

- 14 Our requirements are aimed at consumer protection. These requirements are not expected to unduly inhibit future beneficial product innovations for the industry.

*The international character of financial services and markets and the desirability of maintaining the competitive position of the UK*

- 15 Currently this is mainly a national market. We do not consider that these proposals will adversely affect the competitive position of the UK.

*The need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions*

- 16 As we point out in our cost-benefit analysis, in Annex C we do not consider that our proposals on reporting requirements will have materially adverse effects on the competition.

*The desirability of facilitating competition between those who are subject to any form of regulation by the FSA*

- 17 We do not consider that our proposals on reporting requirements will have an impact on facilitating competition.

*Acting in a way which we consider most appropriate for the purpose of meeting our statutory objectives*

- 18 Within this CP we discuss our proposed approach to collect information from the regulated SRB firms. Chapter 6 sets out the data we are looking to gather from the firms and explains why the data and frequency selected are the most appropriate. In Annex C we included a discussion of the cost and benefits arising from our proposals.
- 19 Our reporting requirements have been carefully considered and verified being compatible with our statutory objectives. We have aimed to ensure that we only request information that is important to our supervisory strategy, thereby minimising costs to individual firms and the industry.
- 20 Overall, we believe that to protect consumers in the best way possible we must gather information regularly about the SRB market. Using this information will increase our knowledge for the SRB market, help us maintain an orderly market and meet our consumer protection and market confidence objectives.

Q10: Do you agree with the compatibility statement?



# Consultation questions

- Q1: Do you have any comments on the proposed timetable for implementing these reporting requirements?
- Q2: Do you have any comments on the proposed frequency of reporting?
- Q3: Do you have any comments on the reporting requirements for SRB advisers and arrangers?
- Q4: Is there any other information you think we should collect from SRB advisers and arrangers?
- Q5: Do you have any comments on the reporting requirements for SRB providers?
- Q6: Is there any other information you think we should collect from SRB providers?
- Q7: Do you have any comments on the reporting requirements for SRB administrators?
- Q8: Is there any other information you think we should collect from SRB administrators?
- Q9: Do you have any comments on our CBA?
- Q10: Do you agree with the compatibility statement?



# Draft Handbook text



## **SALE AND RENT BACK (REGULATORY REPORTING) INSTRUMENT 2010**

### **Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

### **Commencement**

- C. This instrument comes into force on [*date*].

### **Amendments to the Handbook**

- D. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

### **Citation**

- E. This instrument may be cited as the Sale and Rent Back (Regulatory Reporting) Instrument 2010.

By order of the Board  
[*date*]

## Annex

### Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### Content of the report

16.11.5 R The data report must contain sales data in respect of the following products:

...

(4) *home purchase plans*; ~~and~~

(5) *home reversion plans*; ~~and~~

(6) *regulated sale and rent back agreements*.

...

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
<i>RAG number</i>	<i>Regulated Activities</i>	Provisions containing		
		<i>applicable data items</i>	<i>reporting frequency/ period</i>	<i>Due date</i>
...				
<i>RAG 9</i>	<ul style="list-style-type: none"> <li>• <del>mortgage</del> <u><i>home finance</i></u></li> <li><i>mediation activity</i></li> <li>• insurance mediation activity (non-investment insurance contracts)</li> </ul>	<i>SUP</i> 16.12.28R	<i>SUP</i> 16.12.28R	<i>SUP</i> 16.12.28R
...				

...

- 16.12.28A R The applicable *data items*, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of <i>data item</i>	<i>Data item</i> (note 1)	Frequency	Submission deadline
...			
Fees and levies	Section J MLAR	Annually	30 <i>business days</i>
<u>Sale and rent back</u>	<u>Section K MLAR</u>	<u>Annually</u>	<u>30 <i>business days</i></u>
Note 1	When submitting the completed <i>data item</i> required, a <i>firm</i> must use the format of the <i>data item</i> set out in SUP 16 Annex 19AR. Guidance notes for the completion of the data items is set out in SUP 16 Annex 19BG.		
...			

...

### SUP 16 Annex 18B Notes for Completion of the Retail Mediation Activities Return ('RMAR')

...

#### NOTES FOR COMPLETION OF THE RMAR

...

#### Section B: Profit & Loss Account

...

Note: *Home purchase, and reversion and regulated sale and rent back activity* should be included under the existing mortgage headings in this section of the RMAR.

...

#### Section C: Client Money and assets

Note: *Home purchase, and reversion and regulated sale and rent back activity* should be included under the existing mortgage headings in this section of the RMAR.

...

**Section D: Regulatory Capital**

Note: *Home purchase, and reversion and regulated sale and rent back activity* should be included under the existing mortgage headings in this section of the RMAR.

...

**Section E: Professional Indemnity Insurance**

Note: *Home purchase, and reversion and regulated sale and rent back activity* should be included under the existing mortgage headings in this section of the RMAR.

...

**Section E: guide for completion of individual fields**

...

Part 2

At this point, if the *firm* has PII policy details to report, it should do so by clicking on the ‘add PII policy’ button in the summary screen. This will then prompt you to name the sub-section, e.g. ‘policy1’. You may also add further sub-sections if the *firm* has two or more policies (up to a maximum of ten).

What activities are covered by the policy(ies)?	You should indicate which <i>regulated activities</i> are covered by the <i>firm’s</i> PII policy or policies.
If your policy excludes all business activities carried on prior to a particular date (i.e. a retroactive start date), then insert the date here, if not please insert ‘n/a’	Required terms of PII are set out for <i>personal investment firms</i> in IPRU(INV) 13.1.5R and for <del>mortgage</del> <i>home finance intermediaries</i> and <i>insurance intermediaries</i> in MIPRU 3.2.4R. ...
...	
Annual income as stated on the most recent proposal form	This should be the income as stated on the <i>firm’s</i> most recent PII proposal form. For a <i>personal investment firm</i> , this is relevant income arising from all of the <i>firm’s</i> activities for the last accounting year before the policy began or was renewed (IPRU(INV) 13.1.8R). For <i>insurance intermediaries</i> and <del>mortgage</del> <i>home finance intermediaries</i> this is the annual income given in the <i>firm’s</i> most recent annual financial statement from the relevant <i>regulated activity</i> or activities (MIPRU 4.3.1R to 4.3.3R).

...	
-----	--

...

**Section F: the *threshold conditions***

...

**Sub-heading: ~~approved persons~~**

The approved persons regime is one of the ways in which the *FSA* satisfies itself that *firms* are operating in accordance with *threshold conditions* 4 (adequate resources) and 5 (suitability).

An “approved person” is a *person* in relation to whom the *FSA* has given its approval under the *Act* for the performance of a *controlled function*. In broad terms, the individuals the *FSA* approves fall into the following categories:

- individuals exerting significant influence over the *firm’s regulated activities*;
- individuals dealing directly with *customers*; and
- individuals dealing with the property of *customers*.

For *retail investment firms*, all individuals undertaking *controlled functions* in relation to the above categories are subject to the *approved persons* regime.

For *firms* carrying on *home finance mediation activity* and/or *insurance mediation activity* relating to *non-investment insurance contracts*, the ‘significant influence’ category is subject to the *approved persons* regime, but not the ‘customer functions’.

See, generally, *SUP 10.4* for specification of *significant influence functions* and *customer functions*.

...

**Section G: Training & Competence (‘T&C’)**

Note: *Home purchase, and reversion and regulated sale and rent back activity* should be included under the existing mortgage headings in this section of the RMAR.

...

**Section G: guide for completion of individual fields**

...	
Number of advisers that have passed appropriate examinations	This is a subset of the total in ‘number of staff that give advice’ above.  In the case of certain activities, <i>TC 2</i> imposes requirements on <i>firms</i> in relation to their <i>employees</i>

	<p>and passing examinations. See, for example, requirements relating to <i>employees</i> engaged in <i>advising a customer on a home finance transaction other than a home finance transaction regulated mortgage contract</i> for a non-business purpose (TC Appendix 1.1.1(20)) that the firm has concluded solely for a business purpose (Table TC 2.1.4R (1)(p)), and requirements relating to <i>employees</i> engaged in <i>advising on investments</i> which are <i>packaged products</i> (Table TC 2.1.4R (1)(f)) (TC Appendix 1.1.1(4)).</p> <p>...</p>
...	

...

**Section H: Conduct of Business (‘COBS’) Data**

Note: *Home purchase and reversion activity* should be included under the existing mortgage headings in this section of the RMAR.

...

**Section I: supplementary product sales data**

...

**Sub-heading: (iii) Dealing as agent for *non-investment insurance contracts***

This section captures transactions with *retail customers* by *firms* with delegated authority (e.g. where the *firm* can bind risks on behalf of the *insurance undertaking* without further reference to the *insurance undertaking*). *Firms* are required to submit aggregate volumes and value of this business, and to indicate which products they have dealt in.

*Firms* are also required to indicate whether this business is significant. ‘Significant’, in this context, is where the premium collected in relation to business where the *firm* dealt as agent amounts to (a) more than 40% of premium collected for all non-investment insurance business, or (b) more than 40% of premium collected for all business in a particular product). Again, this enables us to ascertain the importance of this business to the *firm* and to target thematic work in this area.

**Sub-heading: (iv) claims handling**

The activity of ‘**assisting in the administration and performance of a contract of insurance**’ encompasses claims handling on behalf of *customers*, and this section aims to capture information on claims handling that is not collected from product providers as part of PSD.

This enables us to ascertain the importance of this activity to the *firm* and to target thematic

~~work in this area. *Firms* should note that where claims are handled on behalf of an *insurer* only, this does not constitute a *regulated activity*.~~

~~**Sub-heading: (v) Lloyd's brokers — product sales data**~~

~~This information is required because data on business placed through Lloyd's is not collected as part of product sales data. To fill the gap, this section requires Lloyd's brokers to submit data on the percentage of revenue earned through their *regulated activities* that is derived from retail, commercial and reinsurance business. This information is used alongside the product sales data to inform our thematic supervision work.~~

~~...~~

~~**Section J: data required for calculation of fees**~~

~~Note: *Home purchase*, ~~and~~ *reversion* and *regulated sale and rent back* activity should be included under the existing mortgage headings in this section of the RMAR.~~

~~...~~

**SUP 16 Annex 19A Mortgage Lending and Administration Return ('MLAR')**

After the existing section J, insert the following new section. The text is not underlined.

**K(1) SALE & RENT BACK (SRB) BUSINESS****(£000s)****K(1)**

	Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8
	<b>Regulated</b>			<b>Non-Regulated</b>			<b>TOTAL</b>	
	<b>Number</b>	<b>Amount</b>		<b>Number</b>	<b>Amount</b>		<b>Number</b>	<b>Amount</b>
K1 <b>Overall business summary</b> (opening & closing stocks with key transactions )								
K1.1 SRB agreements at start of qtr	_____	_____		_____	_____		_____	_____
K1.2 New Sales in qtr	_____	_____		_____	_____		_____	_____
K1.3 Disposals in qtr	_____	_____		_____	_____		_____	_____
K1.4 Fees & charges	_____	_____		_____	_____		_____	_____
K1.5 Business transfer: acquisitions	_____	_____		_____	_____		_____	_____
K1.6 Business transfer: sales	_____	_____		_____	_____		_____	_____
K1.7 Other	_____	_____		_____	_____		_____	_____
K1.8 SRB agreements at end of qtr	_____	_____		_____	_____		_____	_____

For 'Numbers':  $K1.8 = K1.1(\text{Col } 7) + K1.2(\text{Col } 7) - K1.3(\text{Col } 7) + K1.5(\text{Col } 7) - K1.6(\text{Col } 7)$

For 'Amounts':  $K1.8 = K1.1(\text{Col } 8) + K1.2(\text{Col } 8) - K1.3(\text{Col } 8) - K1.4(\text{Col } 8) + K1.5(\text{Col } 8) - K1.6(\text{Col } 8) + K1.7(\text{Col } 8)$



<b>K(2) SALE &amp; RENT BACK (SRB) BUSINESS</b>		<b>(£000s)</b>						<b>K(2)</b>	
		Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8
		<b>Regulated</b>		<b>Non-Regulated</b>		<b>TOTAL</b>			
<b>K2</b>	<b>New business in Qtr</b>	<b>Number</b>	<b>Amount</b>	<b>Number</b>	<b>Amount</b>	<b>Number</b>	<b>Amount</b>		
Sales : analysed by discount on Open Market value (OMV)									
K2.1	Under 10%	_____	_____	_____	_____	_____	_____	_____	_____
K2.2	10 - 20 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.3	20 - 30 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.4	30 - 40 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.5	40 - 50 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.6	50 - 60 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.7	60 - 70 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.8	Over 70%	_____	_____	_____	_____	_____	_____	_____	_____
K2.9	All sales	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

<b>K(3) SALE &amp; RENT BACK (SRB) BUSINESS</b>		<b>(£000s)</b>						<b>K(3)</b>	
		Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8
		<b>Regulated</b>		<b>Non-Regulated</b>		<b>TOTAL</b>			
		<b>Number</b>	<b>Amount</b>	<b>Number</b>	<b>Amount</b>	<b>Number</b>	<b>Amount</b>		
Sales : analysed by fees charged as % sale value									
K2.10	Under 1%	_____	_____	_____	_____	_____	_____	_____	_____
K2.11	1 - 2 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.12	2 - 4 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.13	4 - 6 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.14	6 - 8 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.15	8 - 10 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.16	10 - 15 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.17	15 - 20 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.18	Over 20%	_____	_____	_____	_____	_____	_____	_____	_____
K2.19	All sales	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

<b>K(4) SALE &amp; RENT BACK (SRB) BUSINESS</b>		<b>(£000s)</b>						<b>K(4)</b>	
		Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8
		<b>Regulated</b>		<b>Non-Regulated</b>		<b>TOTAL</b>			
		<b>Number</b>	<b>Amount</b>	<b>Number</b>	<b>Amount</b>	<b>Number</b>	<b>Amount</b>		
Sales : analysed by annual rent as % sale value									
K2.20	Under 4 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.21	4 - 6 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.22	6 - 8%	_____	_____	_____	_____	_____	_____	_____	_____
K2.23	8 - 10 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.24	10 - 15 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.25	15 - 20 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.26	20 - 25 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.27	Over 25 %	_____	_____	_____	_____	_____	_____	_____	_____
K2.28	All sales	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

K(5) SALE & RENT BACK (SRB) BUSINESS		(£000s)						K(5)	
		Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8
		Regulated Number Amount		Non-Regulated Number Amount		TOTAL Number Amount			
K3	<b>SRB agreements terminated or transferred in the qtr:</b>								
	Agreements terminated where seller fails to meet terms & conditions :								
	Analysed by duration of agreement in months								
K3.1	Under 3 m	_____	_____	_____	_____	_____	_____	_____	_____
K3.2	3 - 6 m	_____	_____	_____	_____	_____	_____	_____	_____
K3.3	6 - 12 m	_____	_____	_____	_____	_____	_____	_____	_____
K3.4	12- 24 m	_____	_____	_____	_____	_____	_____	_____	_____
K3.5	24 - 36 m	_____	_____	_____	_____	_____	_____	_____	_____
K3.6	36 - 60 m	_____	_____	_____	_____	_____	_____	_____	_____
K3.7	Over 60 m	_____	_____	_____	_____	_____	_____	_____	_____
K3.8	All cases	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Agreements redeemed by seller								
	Analysed by duration of agreement in months								
K3.9	Under 3 m	_____	_____	_____	_____	_____	_____	_____	_____
K3.10	3 - 6 m	_____	_____	_____	_____	_____	_____	_____	_____
K3.11	6 - 12 m	_____	_____	_____	_____	_____	_____	_____	_____
K3.12	12- 24 m	_____	_____	_____	_____	_____	_____	_____	_____
K3.13	24 - 36 m	_____	_____	_____	_____	_____	_____	_____	_____
K3.14	36 - 60 m	_____	_____	_____	_____	_____	_____	_____	_____
K3.15	Over 60 m	_____	_____	_____	_____	_____	_____	_____	_____
K3.16	All cases	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

<b>K(6) SALE &amp; RENT BACK (SRB) BUSINESS</b>		<b>(£000s)</b>						<b>K(6)</b>	
		Col 1	Col 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8
		<b>Regulated</b>			<b>Non-Regulated</b>			<b>TOTAL</b>	
		<b>Number</b>	<b>Amount</b>		<b>Number</b>	<b>Amount</b>		<b>Number</b>	<b>Amount</b>
K3.17	Original SRB values		_____			_____			_____
K3.18	Current SRB book values		_____			_____			_____
K3.19	Actual re-sale values		_____			_____			_____
Agreements transferred to third parties ( a breakdown of "Business transfer: Sales" in section K1.6 )									
(i) where seller is currently meeting terms & conditions of SRB agreement									
K3.20	Original SRB values		_____			_____			_____
K3.21	Current SRB book values		_____			_____			_____
K3.22	Actual sale or transfer values		_____			_____			_____
(ii) where seller fails to meet terms & conditions of SRB agreement									
K3.23	Original SRB values		_____			_____			_____
K3.24	Current SRB book values		_____			_____			_____
K3.25	Actual sale or transfer values		_____			_____			_____

**K(7) SALE & RENT BACK (SRB) BUSINESS** **(£000s)** **K(7)**

Col 1      Col 2      Col 3      Col 4      Col 5      Col 6      Col 7      Col 8

**K4 Properties disposed of in qtr ( a breakdown of "Disposals in qtr" in section K1.3 )**

Original & disposal values

K4.1	Original SRB values						
K4.2	Current SRB book values						
K4.3	Actual disposal values						

**K5 SRB agreements at end of qtr: cases 10% or more in arrears**

Arrears categorisation		Regulated			Non-Regulated		
		Cases in arrears at end qtr			Cases in arrears at end qtr		
		Number	Amount of arrears	Annual rentals	Number	Amount of arrears	Annual rentals
K5.1	10 < 20 %						
K5.2	20 < 30 %						
K5.3	30 < 40 %						
K5.4	40 < 50 %						
K5.5	50 < 75 %						
K5.6	75% or more %						
K5.7	All cases						

**K(8) SALE & RENT BACK (SRB) BUSINESS** **(£000s)** **K(8)**

Col 1      Col 2      Col 3      Col 4      Col 5      Col 6      Col 7      Col 8

**K6 SRB administrators**

Regulated SRB contracts administered

K6.1 Number of SRB agreements administered \_\_\_\_\_

K6.2 Number of SRB agreements administered for other firms \_\_\_\_\_

Number of SRB agreements administered for other firms - top 5 firms

	Name of firm		Number of SRB agreements administered
K6.3	1: _____		_____
K6.4	2: _____		_____
K6.5	3: _____		_____
K6.6	4: _____		_____
K6.7	5: _____		_____

Amend the following as shown.

**SUP 16 Annex 19B Notes for Completion of the Mortgage Lending and Administration Return ('MLAR')**

**NOTES FOR COMPLETION OF THE MORTGAGE LENDING & ADMINISTRATION RETURN ('MLAR')**

**Contents**

...

Section J                      Fee tariff measures

Section K                      Sale and rent back business

...

**INTRODUCTION: GENERAL NOTES ON THE RETURN**

**1. Introduction**

...

- *Home Reversion plans and Home Purchase plans*
- Sale and rent back business

...

**2. Overview of reporting requirements**

...

- a firm carrying on *administering a home finance transaction* , but not also *home finance providing activity* , will need to complete sections A, B, C, G, H and J of the *MLAR*.
- *SRB agreement providers and SRB administrators should complete sections A,B, C, J and K of the MLAR. (See section 4b for more information for sale and rent back firms.)*

**3. Purpose of reporting requirements**

...

**Table J**                      provides information on fee tariff measures for *home finance providers and administrators*.



**Table K** provides the framework for the *FSA's* monitoring of *SRB agreement providers* and *SRB administrators*

...

**4a. Home reversion and home purchase plans**

...

...and hence such information should be excluded from section H.

**4b. Sale and rent back business**

**Definitions**

Regulated sale and rent back agreement.

This is defined in the Handbook as follows:

(in accordance with article 63J(3)(a) of the *Regulated Activities Order*) 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:

(a) the arrangement is one under which a *person* (an agreement provider) buys all or part of the *qualifying interest in land* in the *United Kingdom* from an individual or trustees (the "agreement seller"); and

(b) the agreement seller (if he is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so;

but excluding any arrangement that is a regulated *home reversion plan*.

**Guidance to sale and rent back (SRB) firms on the completion of the MLAR**

This section explains how *SRB firms* should complete the *MLAR*.

SRB providers and administrators should complete the following sections of the *MLAR*:

- Section A (balance sheet)
- Section B (profit and loss account)
- Section C (capital)
- Section J (fees tariff measures)
- Section K (sale and rent back business).

SRB *firms* should **not** complete sections D to H in respect of their SRB business.

It is recognised that SRB products are not loans. However, in order to use the *MLAR* as a vehicle for capturing data on these products, they are to be treated in **some** sections of

the MLAR as if they were loan products. Therefore SRB providers should note the following in relation to their reporting of SRB agreements:

**In section A**

- Do not enter any information on SRB agreements in A1.6 ‘Loans to customers’.
- Report SRB assets in A1.11.
- Details of SRB agreements should be entered in A3.5 ‘Other loans’, in the ‘Unsecuritised balances’ section.

**In Section B**

- Where applicable information on SRB agreements should be entered in B2.5 ‘Other loans’.

As a consequence the FSA will be able to capture key information on these products.

**5. Accounting conventions**

...

After SECTION J: FEE TARIFF MEASURES, insert the following new section. The text is not underlined.

**SECTION K: SALE AND RENT BACK BUSINESS**

**Introduction**

This section must be completed as follows:

- SRB providers must complete K1 to K5
- SRB administrators must complete K6
- *Firms* that are both SRB providers and administrators must complete K1 to K6.

**K SRB: Residential sales by individuals**

It is expected that *firms* will have the following to report:

- regulated SRB agreements: in respect of transactions entered into since SRB became a *regulated activity*, and
- non-regulated SRB agreements: in respect of transactions of a similar nature entered into before SRB became a *regulated activity*; and also any new contract that, while not meeting the precise conditions for a regulated contract, nonetheless has similar characteristics (for example cases where the *firm* has purchased a property under value and rents an alternative property to the seller).

This approach means that all new and existing sale and rent back agreements – whether regulated or not, and whether transacted before or after SRB became a *regulated activity* – must be reported by the *firm* in section K.

## K1 Overall business summary

This section looks at the *firm's* SRB position at the start of the reporting quarter, at the various movements in the quarter, and the end quarter position. Details required are:

**K1.1 SRB agreements at start of qtr:** those contracts that existed at the end of the previous quarter. This line should normally agree with figures reported as at the previous quarter end.

**K1.2 New sales in qtr:** new SRB agreements transacted in the quarter, where the *firm* has obtained title to the property and monies have been paid to the SRB seller. 'Amount' is the sale value (paid to seller) and should be reported gross, that is before the deduction of any fees and charges.

**K1.3 Disposals in qtr:** SRB agreements where the *firm* has sold the actual property. 'Amount' is the SRB value of the contract as used for the same contract reported in K1.1. Transfers or sales of SRB contracts should be reported under 'Business transfers-sales' below.

**K1.4 Fees & charges:** those in connection with SRB contracts reported as new sales in the quarter

**K1.5 Business transfer-acquisitions:** where the *firm* acquires one or more.

**K1.6 Business transfer- sales:** where the *firm* sells one or more existing SRB agreements to another party. Include also transfers of such contracts to any party.

**K1.7 Other:** include any other amounts which affect the balances reported in K1.1 and K1.8, that is which reflect any change in the book value of any SRB contracts during the quarter.

**K1.8 SRB contracts at end of qtr:** the number and book value of SRB contracts in existence at the end of the quarter.

**NB:** it is expected that figures in K1.8 will reconcile with those in other rows as follows:

- For 'Numbers':  $K1.8 = K1.1 + K1.2 - K1.3 + K1.5 - K1.6$
- For 'Amounts':  $K1.8 = K1.1 + K1.2 - K1.3 - K1.4 + K1.5 - K1.6 + K1.7$

## K2 New business in the quarter

This section looks at various aspects of new business that has been transacted in the quarter: each is described below. For each aspect:

- The ‘**sale value**’ means the gross amount paid to the seller before any fees and charges have been deducted.
- The ‘All sales’ line should agree with figures reported in K1.2.

#### K2.1 to 2.9 Sales: analysed by **Discount on open market value (OMV)**

Here SRB transactions are classified into different bands, according to the amount of **discount** expressed as a percentage of the open market value of the property that is subject to the SRB contract. Discount is open market value minus sales value.

So for example, for those SRB agreements where the discount is 20% to under 30%, enter the total number of such sales and the total sales values of those contracts in the relevant boxes on the K2.3 line.

#### K2.10 to 2.19 Sales: analysed by **Fees charged as percent of sale value**

Here SRB transactions are classified into different bands, according to the amount of **Fees & charges** expressed as a percentage of the sales value of the property that is subject to the SRB contract. Enter the total number of such sales and the total sales values of those contracts.

#### K2.20 to 2.28 Sales: analysed by **Annual rent as percent of sale value**

Here SRB transactions are classified into different bands, according to the amount of **Annual rent** expressed as a percentage of the sales value of the property that is subject to the SRB contract. Enter the total number of such sales and the total sales values of those contracts.

### K3 **SRB agreements terminated or transferred in the quarter**

This analyses SRB agreements terminated by either the provider or seller, and also those SRB agreements transferred to other parties.

#### K3.1 to K3.8 **Contracts terminated where seller fails to meet terms & conditions**

This is where the seller has breached the terms and conditions of the SRB agreement and the provider has exercised the right to terminate the contract. Here, terminations are analysed according to the duration of the contract in particular time bands.

For each time band, enter the total number of such terminations and the total original sales values of those contracts.

At the end of the quarter, some or possibly all of these contracts in K3.1 to K3.6 will also be included in end quarter figures at K1.7. Those not so included may already have been disposed of (reported at K1.3), or sold or transferred to third parties (reported at K1.6).

#### K3.9 to K3.19 **Contracts redeemed by seller**

This is where the seller has exercised the right to buy back the property under the SRB agreement; or where the seller has terminated the tenancy agreement before the end of the fixed term. Here, redemptions are analysed according to the duration of the contract in particular time bands.

For each time band, enter the total number of such transactions and the total original sales values of those agreements.

In the supplementary analysis, provide summary totals for:

- original SRB values: the gross sales value paid to the seller
- current SRB values: the book value of the contract at time of re-sale
- actual resale values (i.e. the price at which either the property was sold back to the seller; or the seller left the property after giving notice) inclusive of any fees or charges levied as part of this resale transaction.

### **K3.20 to K3.25 Agreements transferred to third parties**

This covers SRB agreements which are sold or transferred to third parties, but where the contract itself remains in being.

The analysis looks into the status of each SRB agreement when it is sold or transferred, distinguishing between:

- contracts which are fully performing, and
- those where the seller is not currently meeting the terms and conditions of the contract.

For both types of contract, *firms* should report:

- original SRB values: the gross sales value paid to the seller
- current SRB values: the book value of the contract at time of sale/transfer
- actual sale or transfer value: the value of the contract as recognised in the agreement with the acquiring party.

### **K4 Properties disposed of in the quarter**

This covers disposals made during the normal course of business, and does not include business transfers. This is a further analysis of ‘disposals’ reported in K1.3.

#### **Original & disposal values**

Here, *firms* should report:

- original SRB values: the gross sales value paid to the seller
- current SRB values: the book value of the contract at time of disposal
- actual disposal values: the price obtained on sale (before deducting any costs of sale).

### **K5 SRB agreements at end of qtr: cases 10% of more in arrears**

*Firms* should report those SRB contacts where the total amount of arrears on rental payments is 10% or more of the annual rental amount. Cases should be allocated to the relevant arrears band according to the percentage in arrears.

For each arrears band, report the number of such cases, and the amount of arrears, and the amount of the expected annual rent on these cases.

## K6 SRB administration

*Firms* holding SRB administration permissions must complete the number of regulated SRB contracts that they administer, as well as the number of regulated SRB contracts that they administer for third parties.

The contracts administered for third parties must be further broken down by the number of SRB agreements administered for the largest five *firms* that they administer regulated SRB agreements for.

...

Amend the following as shown.

## 16 Products covered by the reporting requirement in SUP 16.11 Annex 20G

...

### Table 4 – OTHER HOME FINANCE TRANSACTIONS

Relevant products include:

*Home reversion plans*

*Home purchase plans*

*Regulated sale and rent back agreements*

...

### Part 2: Supporting product definitions/guidance for product sales data reporting

...

#### Other home finance transactions

Finance Type	Description
<i>Home reversion plan</i>	Defined in the Handbook <i>Glossary</i>
<i>Home purchase plan</i>	Defined in the Handbook <i>Glossary</i>
<u><i>Regulated sale and rent back agreement</i></u>	Defined in the Handbook <i>Glossary</i>

SUP 16  
Annex  
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## REPORTING FIELDS

...

### 2 SPECIFIC REPORTING FIELDS

...

#### d) Other home finance transactions

...

#### iii) Sale and rent back agreements

**The following data reporting fields must be completed, where applicable, for all regulated sale and rent back agreements.**

Insert the following new table. The text is not underlined.

Data reporting field	Code (where applicable)	Notes
Unique identifier		Use code that enables the sale and rent back provider to identify the individual sale and rent back agreement
Date of sale and rent back agreement	DD/MM/YYYY	Date the sale and rent back agreement was entered into
Market value of the property	Numeric £	Indicate the market value of the property according to the independent valuation carried out in accordance with <i>MCOB 6.9.2R</i>
Purchase price	Numeric £	Purchase price of the property
Net amount paid to the sale and rent back seller	Numeric £	Net amount paid to the sale and rent back seller, following the deduction of fees and any other expenses
Monthly rent	Numeric £	Monthly rent as agreed at the outset of the tenancy agreement
Term of tenancy agreement	months	Length of the initial fixed term of the

		tenancy agreement
Postcode of property	XY45 6XX	
Income basis	S = single, J= joint	Use code to indicate whether the affordability assessment has been made on a single or joint basis
Main sale and rent back seller employment status	E = employed, S = self employed, B = benefits, R = retired, 0 = other	Applies to main sale and rent back seller only
Total net disposable income	Numeric £	The total net disposable income for all parties to the sale and rent back agreement used in the affordability assessment
Date of birth of main sale and rent back seller	DD/MM/YYYY	Report the age of the main sale and rent back seller only
Product incentives	CB = cash back, BB = buy back option, SA = share of appreciation	<p>Use code to indicate incentives that form part of the sale and rent back agreement, if applicable</p> <p>Where more than one code applies, report all</p> <p>‘Cash back’ is the promise of a future payment to the sale and rent back seller, for example a portion of the original discount</p> <p>‘Buy back’ is where the sale and rent back seller is offered the option to buy the property back</p> <p>‘Share of appreciation’ is where the sale and rent back seller is promised a share in the appreciation of the</p>



		property value
Funding source for sale and rent back agreement	C = commercial funding, B = BTL mortgage, O = other	Use code to indicate the source of funding used for the sale and rent back agreement

...



**PUB REF: 002024**

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