



## CHANGES TO THE DPB (INVESTMENT BUSINESS) HANDBOOK SINCE OCTOBER 2004

The following lists all the amendments that have and will be made to the October 2004 printed edition of the *DPB (Investment Business) Handbook*.

	Effective from
<a href="#">Renaming of Handbook</a>	1 April 2016
<a href="#">Transition to the Financial Conduct Authority</a>	1 April 2013
<a href="#">Firms' eligibility to be DPB licensed</a>	1 January 2011
<a href="#">Sale and rent back agreements back agreements</a>	1 July 2009
<a href="#">Professional Indemnity Insurance requirements under the Insurance Mediation Directive</a>	1 March 2009
<a href="#">Definition of a pure protection contract</a>	6 June 2007
<a href="#">Home reversion plans and home purchase plans</a>	6 April 2007
<a href="#">Rights under a personal pension scheme</a>	6 April 2007
<a href="#">Guidance on corporate finance activities</a>	6 April 2007
<a href="#">Financial promotions</a>	6 April 2007
<a href="#">Minor amendments</a>	6 April 2007

### 1 Renaming of the Handbook

As a consequence of the approval and implementation of ICAEW's arrangements for consumer credit which also utilise ICAEW's role as a designated professional body (DPB), as from 1 April 2016, the *DPB Handbook* has been renamed the *DPB (Investment Business) Handbook*.

### 2 Transition to the Financial Conduct Authority

On 1 April 2013 the FSA was replaced by two new regulatory bodies, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). The FCA has the lead regulatory interest in the designated professional body regime.

This has meant that we had to make changes to the *DPB Handbook* which contains frequent references to the FSA. Therefore all references to the Financial Services Authority or FSA have been replaced by the Financial Conduct Authority or FCA.

The majority of these changes are presentational. One change that affects firms is that the name of the FSA Register has changed to the Financial Services Register and the website address for the register has also been changed to [www.fca.org.uk/register](http://www.fca.org.uk/register). This means the

text for suggested paragraph for engagement letters in Schedule 1 of Part 4 of the *Handbook* has changed as the text referred to both the FSA and the FSA register and firms will need to make equivalent changes to their engagement letters. Our engagement letter helpsheet has also been updated.

We share a common handbook with CARB and ICAS. These bodies have taken the opportunity to make amendments to the *Handbook* reflecting changes to their own regulatory arrangements. These changes have no impact on ICAEW licensed firms.

### **3 Firms' eligibility to be DPB licensed**

Firms are increasingly adopting more complex structures which may result in all principals being limited companies or LLPs. Under the current DPB licensing arrangements, such firms cannot become or continue to be DPB licensed as the DPB Handbook requires at least one principal to be a natural person. From 1 January 2011, to enable such firms to be DPB licensed, a change has been made to regulation 2.03 to remove the requirement that at least one principal must be a member of one of the Institutes. The Handbook will be changed in time for the 1 January 2011 implementation date.

Consequential amendments have also been made to ensure that in certain circumstances a role or function is undertaken by a natural person - see regulation 2.09 (service of documents), regulation 4.07 (complaints resolution) and the definition of contact partner.

### **4 Sale and rent back agreements**

Sale and rent back involves individuals (often those in financial difficulty) selling their home, usually at a discount, and obtaining an agreement to remain in the property for a set period - typically through an assured shorthold tenancy of six to 12 months. They are being regulated by the FSA because of the risk of consumer detriment.

From 1 July 2009, only FSA authorised firms have been able to recommend to an "agreement seller" (ie the person whose house is to be rented back) or an "agreement provider" (the person who will buy the house) to enter into such an agreement. DPB firms are able to comment on that advice and advise on variations to an agreement (provided this does not effectively produce a new agreement).

Sale and rent back agreements are dealt with in the legislation in a very similar manner to other types of home finance, so the new material has been introduced into the *DPB Handbook* by the addition of a new definition "regulated sale and rent back agreements" and by the inclusion of that expression in the definition of regulated home finance plan. Regulated home finance plans now include regulated mortgages, home reversion plans, home purchase plans **and** regulated sale and rent back agreements.

### **5 Professional Indemnity Insurance requirements under the Insurance Mediation Directive**

Because of an escalation clause in the Insurance Mediation Directive, the PII amounts are increasing with effect from 1 March 2009. The revised amounts of €1,120,200 per claim and €1,680,300 in total apply to policies renewing or commencing on or after 1 March 2009. Although the amounts of required insurance are denominated in euros, there is no need to obtain insurance in euros, just its sterling equivalent. Paragraph 2 in the notes to Part 2 the *DPB Handbook* sets out how to establish appropriate sterling values. The change is only relevant to licensed firms who conduct activities relating to insurance.

The only changes to the handbook are to insert the increased euro amount in regulation 2.07(m) and in the notes to Part 2.

### **6 Definition of a pure protection contract**

As from 6 June 2007, the definition of a pure protection contract has been amended to remove the age and ten-year term condition in the definition.

The definition of a qualifying contract of insurance in part 9 of the handbook, which includes reference to pure protection contracts, has been amended in line with the FSA changes, as follows:

Qualifying contract of insurance	<p>A life policy other than a pure protection policy and including a pension contract. It is a contract of long-term insurance but excludes:</p> <ul style="list-style-type: none"><li>a a reinsurance contract; or</li><li>b a contract in respect of which the following conditions are met:<ul style="list-style-type: none"><li>i) The benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;</li><li>ii) The contract has no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium; and</li><li>iii) The contract makes no provision for its conversion or extension in a manner which could result in it ceasing to comply with any of the above conditions.</li></ul></li></ul>
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## 7 Home reversion plans and home purchase plans

As home reversion plans and home purchase plans are dealt with in the legislation in a very similar manner to regulated mortgages, the new material has been introduced into the handbook mainly by the addition of new definitions. Thus there are new definitions for home reversion plans and home purchase plans, a definition for related party, which is only used in other definitions, and a definition of regulated home finance plan. This is simply an omnibus term to refer to regulated mortgages, home reversion plans and home purchase plans as appropriate in the body of the handbook.

The revised definitions<sup>1</sup> as included in part 9 the handbook are as follows:

Regulated home finance plan	<ul style="list-style-type: none"><li>• <i>Regulated home purchase plan</i></li><li>• <i>Regulated home reversion plan</i></li><li>• <i>Regulated mortgage contract</i></li></ul>
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The term 'regulated home finance plan' means all or any of the above. References to a lender in the Handbook also include, where appropriate, a "home purchase provider" and a "plan provider" as set out in the definitions of *regulated home purchase plan* and *regulated home reversion plan* respectively.

Regulated home purchase plan	<p>A home purchase plan is a regulated home purchase plan if at the time it is entered into the following apply:</p> <ul style="list-style-type: none"><li>a the plan is one under which a person (the "home purchase provider") buys an interest or an undivided share of an interest in land (other than timeshare accommodation) in the United Kingdom;</li><li>b where an undivided share of an interest in land is bought, the interest is held on trust for the home purchase provider and the individual or trustees mentioned in paragraph (c) as beneficial tenants in common;</li><li>c the plan provides for the obligation of an individual or trustees</li></ul>
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<sup>1</sup> These are the revised definitions as at 6 April 2007 and therefore do not include changes after that date. In particular, the definition of regulated home finance plan does not include sale and rent back agreements, as these did not become regulated until 1 July 2009.

(the "home purchaser") to buy the interest of the home purchase provider over the course of or at the end of a specified period; and

- d the home purchaser (if he is an individual) or an individual who is a beneficiary of the trust (if the home purchaser is a trustee), or a *related person*, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling during that period, and intends to do so;

Note, a home purchase plan entered into before 6 April 2007 is not a *regulated home purchase plan* unless it is varied after that date to such an extent that a new plan is created to which the above criteria apply.

#### Regulated home reversion plan

A home reversion plan is a regulated home reversion plan if at the time it is entered into the following apply:

- a the plan is one under which a person (the "plan provider") buys all or part of an interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustee (the "reversion seller");
- b the reversion seller (if he is an individual) or an individual who is a beneficiary of the trust (if the reversion seller is a trustee), or a related person, is entitled under the plan to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so; and
- c the plan specifies one or more qualifying termination events, on the occurrence of which that entitlement to occupy will end.

A qualifying termination event means:

- the person becomes a resident of a care home;
- the person dies;
- the end of a specified period of at least twenty years beginning with the day on which the reversion seller entered into the arrangement.

Note, a home reversion plan entered into before 6 April 2007 is not a *regulated home reversion plan* unless it is varied after that date to such an extent that a new plan is created to which the above criteria apply.

#### Regulated mortgage contract

A mortgage contract is a regulated mortgage contract if at the time it is entered into the following apply:

- a The contract is one under which a person ("the lender") provides credit to an individual or to trustees ("the borrower");
- b The contract provides for the obligation of the borrower to repay to be secured by a first legal mortgage on land (other than timeshare accommodation) in the United Kingdom; and
- c At least 40% of that land is used, or is intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust or a *related person*.

Note, a mortgage contract entered into before 31 October 2004 is not a *regulated mortgage contract* unless it is varied after that date to such an extent that a new contract is created, to which the above

criteria apply.

Related person

- A person's spouse or civil partner;
- A person (whether or not of the opposite sex) whose relationship with another person has the characteristics of the relationship between husband and wife; or
- A person's parent, brother, sister, child, grandparent or grandchild.

In the case of a person who is a trustee, a related person is a beneficiary of the trust.

Note: this definition is only used in the definitions of *regulated home purchase plan*, *regulated home reversion plan* and *regulated mortgage contract*.

Part 3, schedule 1, has been amended to include home reversion plans and home purchase plans in the list of prohibited activities.

The other main changes are to use the new definitions in the following sections:

- Part 3, schedule 2, tables 2A, 2B, 2C and 2D– activities that a licensed firm can undertake.
- Part 3 schedule 4, list B- guidance on work that is not a regulated activity.
- Part 3, schedule 7 – guidance on mortgage business activities, now renamed as guidance on home finance business activities. (Also added, a new example of assisting a client with completing a application form for a regulated home finance plan.)
- Part 3, schedule 9 guidance to assist on deciding whether an activity can be undertaken within the scope of the Designated Professional Body arrangements, lists A and B.
- Part 4 Regulation 4.23.

## 8 Rights under a personal pension scheme

Rights under a personal pension scheme became regulated as “securities”. This is in addition to the regulation of any underlying life assurance contract, which is a “qualifying contract of insurance” and forms the basis of many personal pension schemes.

The new definition of personal pension scheme is included in part 9 the handbook as follows:

Personal pension scheme

A scheme or arrangement which is not an occupational pension scheme or a stakeholder pension scheme and which is comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people:

- a on retirement,
- b on having reached a particular age, or
- c on termination of service in an employment.

“Rights under a *personal pension scheme*” are regulated as “*securities*”. This is in addition to the regulation of any underlying life assurance contract, which is a “*qualifying contract of insurance*” and which forms the basis of many *personal pension schemes*.

However, “rights under a *personal pension scheme*” is a wider concept. A *personal pension scheme* now describes the vehicle in which the investment sits and includes Self Invested Personal Pension schemes (SIPPs). The rights include some or all of the rights to:

- make payments to the scheme,
- withdraw sums from the scheme in certain circumstances,
- transfer value to another scheme,
- place property into the scheme,
- receive benefits from the capital or income of the assets in the scheme,
- instruct the scheme operator on the assets to buy or sell for the scheme,
- instruct the scheme operator to switch funds,
- appoint a manager,
- instruct the scheme operator to borrow money to purchase assets.

Consequential amendments to the handbook to reflect the above definition are as follows:

- Part 9, deletion of the reference to 'stakeholder' in the definition of security.
- Part 3, schedule 1 – list of prohibited activities.
- Part 3, schedule 2, table 2A – guidance on regulated activities that may be provided by a licensed firm.
- Part 3 schedule 4, list B - guidance on work that is not a regulated activity. (Also added, a new example of arranging to place an asset in a scheme at the client's request.)
- Schedule 9 - guidance to assist on deciding whether an activity can be undertaken within the scope of the Designated Professional Body arrangements, lists A and B.

## **9 Corporate finance**

Further examples have been added to part 3, schedule 5, which offers guidance on corporate finance activities. These cover company formations, valuations, share issues, minority sale of shares and a family reorganisation of shareholdings. The insertion of the new examples has led to a renumbering of the situations listed in schedule 5. Example 13 (previously 12) has been amended to include a reference to company secretarial work.

## **10 Financial promotions**

The need for additional wording in the engagement letter about financial promotions at the point where the client signs (part 4, schedule 1) has been deleted.

## **11 Minor amendments**

- The transitional arrangements have been reduced to details of major changes to the Handbook.
- The list of key legislation in paragraph 19 of the introduction has been amended.
- The flow chart of types of investment in the introduction has been amended.
- Regulation 2.07d has been amended as the previous version could have been interpreted as only requiring notification to the Institute if a principal changes his name, not if a new principal joined the firm.
- Schedule 1 of part 3 now includes two further activities that DPB firms cannot undertake, the issue of electronic money and giving basic advice on stakeholder products (i.e. selecting which product to have). This has resulted in the re-numbering of the schedule.
- Example 7 of part 3, schedule 6 insurance activities has been amended from any firm to a DPB or authorised firm to better reflect what is likely to happen in practice, as indicated in the 'is it regulated' column.