

2014 No. 366

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014

Made - - - - *13th February 2014*

Coming into force in accordance with article 1

In accordance with paragraph 26 of Schedule 2 to the Financial Services and Markets Act 2000(a), a draft of this Order has been laid before Parliament and approved by a resolution of each House.

The Treasury are of the opinion that one of the effects of the proposed order would be that an activity which is not a regulated activity would become a regulated activity.

The Treasury make the following Order in exercise of the powers conferred by sections 22(1) and (5) and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(b) and section 118 of the Financial Services Act 2012(c):

PART 1

Introduction

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014.

(2) This article and articles 15, 17 and 29(4) come into force on the day after the day on which this Order is made.

(3) This Order comes into force on the day after the day on which this Order is made for the purposes of the FCA(d)—

- (a) making rules;
- (b) giving guidance;
- (c) issuing information sheets under the Consumer Credit Act 1974(e);
- (d) imposing requirements or giving directions.

(a) 2000 c.8. Paragraph 26 of Schedule 2 was substituted by the Financial Services Act 2012 (c.21), section 8.
(b) Section 22 amended by the Financial Services Act 2012, section 7. Paragraph 25 of Schedule 2 amendment by the Financial Services Act 2012, section 7
(c) 2012 c.21.
(d) Section 417 of the Financial Services and Markets Act 2000, as amended by the Financial Services Act 2012, section 48, defines the “FCA” as meaning the Financial Conduct Authority.
(e) 1974 c.39.

(4) This Order comes into force on 1st April 2014, to the extent it is not already in force, immediately after—

- (a) the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (citation, commencement and interpretation)(a) comes into force, to the extent that it is not already in force, in accordance with article 1(6) of that Order, and
- (b) the Financial Services Act 2012 (Consumer Credit) Order 2013 (citation, commencement and interpretation)(b) comes into force, to the extent that it is not already in force, in accordance with article 1(1)(b) of that Order.

PART 2

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

2.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c) is amended as follows.

(2) In article 3(1) (interpretation)—

(a) after the definition of “the Act”, insert—

““acting as an insolvency practitioner” is to be read with section 388 of the Insolvency Act 1986(d) or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989(e) and, in any provision of this Order which provides for activities to be excluded from a specified activity, references to things done by a person acting—

(a) as an insolvency practitioner, or

(b) in reasonable contemplation of that person’s appointment as an insolvency practitioner,

include anything done by the person’s firm in connection with that person so acting;”;

(b) after the definition of “pension fund management contract”(f), insert—

““the person’s firm”, in relation to a person acting as an insolvency practitioner or in reasonable contemplation of that person’s appointment as an insolvency practitioner, means—

(a) the person’s employer;

(b) where the person is a partner in a partnership other than a limited liability partnership, that partnership;

(c) where the person is a member of a limited liability partnership, that partnership;”.

(3) After article 9AB (funds received for payment services)(g), insert—

“Local authorities

9AC. Article 5 is subject to the exclusion in article 72G (local authorities).”.

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- (a) S.I. 2013/1881. Article 1(6) of that Order brings that Order into force on 1st April 2014 to the extent that it is not already in force.
 - (b) S.I. 2013/1882. Article 1(1)(b) of that Order brings that Order into force on 1st April 2014 to the extent that it is not already in force.
 - (c) S.I. 2001/544, as amended by S.I. 2013/1881. Other relevant amending instruments are noted below.
 - (d) Amended by the Bankruptcy (Scotland) Act 1993 (c.6), section 11, the Insolvency Act 2000 (c.39), section 4, and S.I. 1994/2421, S.I. 2002/1240, S.I. 2002/2708 and S.I. 2009/1941.
 - (e) S.I. 1989/2405 (N.I.19). Amended by S.R. 1995/225, S.R. 2002/334, S.I. 2002/3152 (N.I.6), S.R. 2003/660, S.R. 2004/307.
 - (f) There are amending instruments but none is relevant.
 - (g) Inserted by S.I. 2009/209 and amended by S.I. 2011/99.

(4) In article 20 (dealing in investments as principal: other exclusions)(a), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)”.

(5) In article 24 (dealing in investments as agent: other exclusions)(b) for “and 72D (large risks contracts where risk situated outside the EEA)” substitute “, 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)”.

(6) In article 36 (arranging deals in investments: other exclusions)(c)—

(a) in paragraph (1), for “and 72D (large risks contracts where risk situated outside the EEA)” substitute “, 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)”;

(b) in paragraph (2), for “and 72AA (managers of UCITS and AIFs)”, substitute “, 72AA (managers of UCITS and AIFs) and 72G (local authorities)”;

(c) in paragraph (3), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)”.

(7) For the heading to article 36G (information society services), substitute “Other exclusions”.

(8) In that article 36G, after “article 72A (information society services)” insert “and the exclusion in article 72G (local authorities)”.

(9) In article 36H (operating an electronic system in relation to lending)—

(a) in paragraph (1), for “condition in paragraph (2) is” substitute “conditions in paragraphs (2), (2A) and (2C) are”;

(b) in paragraph (2), after “condition” insert “in this paragraph”.

(c) after paragraph (2), insert—

“(2A) The condition in this paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to—

(a) receive payments in respect of interest and capital due under the article 36H agreement from C, and

(b) make payments in respect of interest and capital due under the article 36H agreement to B.

(2B) For the purposes of paragraph (2A)—

(a) an agreement by A to appoint X to perform the activities in that paragraph is to be treated as an undertaking by A within the meaning of that paragraph;

(b) it is immaterial that—

(i) payments may be subject to conditions;

(ii) A, or X, may be entitled to retain a portion or the entirety of any payment received from C.

(2C) The condition in this paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to perform, or A undertakes to appoint or direct another person to perform either or both of the following activities—

(a) taking steps to procure the payment of a debt under the article 36H agreement;

(b) exercising or enforcing rights under the article 36H agreement on behalf of B.”;

(d) after paragraph (9), insert—

“(10) For the purposes of the application of section 22(1) of the Act (regulated activities) to an activity of a kind specified by this article, article 88D (credit agreement), and article

(a) Amended by S.I. 2002/1776 and S.I. 2013/1773.

(b) Amended by S.I. 2002/1776, S.I. 2003/1476 and S.I. 2013/1773.

(c) Amended by S.I. 2002/1776, S.I. 2003/1475, S.I. 2003/1476, S.I. 2006/2383, S.I. 2006/3384, S.I. 2009/1342, and SI 2013/1773.

73 (investments: general) in so far as it relates to that article, has effect as if the reference to a credit agreement in article 88D includes a reference to an article 36H agreement.”.

(10) After article 36I (information society services), insert—

“Activities in relation to debentures and bonds

36IA. There is excluded from article 36H (operating an electronic system in relation to lending) any activity of a kind specified by article 14 (dealing in investments as principal), 25 (arranging deals in investments), 37 (managing investments) or 53 (advising on investments).”.

(11) In article 39 (managing investments: other exclusions)(a), for “and 72C (provision of information about contracts of insurance on an incidental basis)” substitute “, 72C (provision of information about contracts of insurance on an incidental basis) and 72H (insolvency practitioners)”.

(12) In article 39C (assisting in the administration and performance of a contract of insurance: other exclusions)(b), for “and 72D (large risks contracts where risk situated outside the EEA)” substitute “, 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)”.

(13) In article 39H(3) and (4) (activities where a person has a connection to the agreement), for “on behalf of” substitute “by”.

(14) In article 39J (activities carried on in relation to a relevant agreement in relation to land)—

- (a) for “are” substitute “is”;
- (b) for “activities that relate” substitute “any activity that relates”;
- (c) after “regulated home purchase plan” insert “to the extent that the activity constitutes an activity of the kind specified by a provision of Part 2 of this Order other than articles 39D, 39E, 39F and 39G, where entering into that contract as lender constitutes an activity of the kind specified by article 61 or entering into that plan as home purchase provider constitutes an activity of the kind under article 63F”.

(15) For the heading to article 39L (information society services), substitute “Other exclusions”.

(16) In that article 39L—

- (a) for “exclusion” substitute “exclusions”;
- (b) after “article 72A (information society services)” insert “, article 72G (local authorities) and article 72H (insolvency practitioners)”.

(17) In article 44 (safeguarding and administering investments: other exclusions)(c), for “and 72C (provisions of information about contracts of insurance on an incidental basis)” substitute “, 72C (provisions of information about contracts of insurance on an incidental basis) and 72H (insolvency practitioners)”.

(18) In article 50 (sending dematerialised instructions)(d), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)”.

(19) For the heading to article 51A (collective investment: information society services and managers of UCITS and AIFs)(e), substitute “Other exclusions”.

(20) In that article 51A, for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)”.

(a) Amended by S.I. 2002/1776 and S.I. 2003/1476.
(b) Inserted by S.I. 2003/1476; amended by S.I. 2013/1773.
(c) Amended by S.I. 2002/1776, S.I. 2003/1476 and S.I. 2013/1773.
(d) Amended by S.I. 2002/1776 and S.I. 2013/1773.
(e) Inserted by S.I. 2002/1776; amended by S.I. 2013/1773.

(21) For the heading to article 52A (establishing a pension scheme: information society services and managers of UCITS and AIFs)(a), substitute “Other exclusions”.

(22) In that article 52A, for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)”.

(23) In article 55 (advising: other exclusions)(b)—

(a) in paragraph (1), for “and 72D (large risks contracts where risk situated outside the EEA)” substitute “, 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)”;

(b) in paragraph (2), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72G (local authorities)”.

(24) In article 60C(8)(b) (exempt agreements: exemptions relating to the nature of the agreement), after “country” insert “outside the United Kingdom”.

(25) In article 60D(1) (exempt agreements: exemption relating to the purchase of land for non-residential purposes), after “legal” insert “or equitable”.

(26) In article 60E (exempt agreements: exemptions relating to the nature of the lender), in paragraph (5)(a) and in the definition of “relevant credit agreement relating to the purchase of land” in paragraph (7), after “legal”, in each place, insert “or equitable”.

(27) In article 60F (exempt agreements: exemptions relating to number of repayments to be made)—

(a) in paragraph (2), omit “significant”;

(b) in paragraphs (5)(c) and (6)(b), after “legal” insert “or equitable”.

(28) For article 60G(5)(b) (exempt agreements: exemptions relating to the total charge for credit), substitute—

“(b) the agreement—

(i) is not—

(aa) secured on land, or

(bb) offered by a lender to a borrower as an incident of employment with the lender; and

(ii) does not meet the general interest test.”.

(29) After article 60J (administration pursuant to agreement with authorised person), insert—

“Payment institutions

60JA.—(1) There are excluded from article 60B activities carried on by a person who is an EEA authorised payment institution exercising passport rights in the United Kingdom in accordance with Article 16(3) of the payment services directive.

(2) Terms used in this article have the meanings given in Payment Services Regulations 2009(c).

Electronic money institutions

60JB.—(1) There are excluded from article 60B activities carried on by a person who is an EEA authorised electronic money institution exercising passport rights in the United Kingdom in accordance with Article 16(3) of the payment services directive as applied by Article 6 of the electronic money directive.

(a) Inserted by S.I. 2002/1776; amended by S.I. 2013/1773.

(b) Amended by S.I. 2002/1776, S.I. 2003/1475, S.I. 2003/1476, S.I. 2006/2383, S.I. 2009/1342 and S.I. 2013/1773.

(c) S.I. 2009/209. Definition of “passport right” in regulation 2 (interpretation) amended by S.I. 2012/1809. There are other amending instruments but none is relevant.

(2) Terms used in this article have the meanings given in the Electronic Money Regulations 2011(a).”.

(30) For the heading to article 60K (information society services), substitute “Other exclusions”.

(31) In that article 60K, after “article 72A (information society services)” insert “and the exclusion in article 72G (local authorities)”.

(32) In article 60L (interpretation of Chapter 14A etc.)—

(a) in paragraph (1), in the definition of “legal mortgage”—

(i) after “legal” insert “or equitable”;

(ii) after “includes” insert “a legal or equitable”;

(b) in paragraphs (3) and (4), after ““borrower-lender agreement”” insert “and the definition of “borrower-lender-supplier agreement””.

(33) After article 60L, insert—

“Meaning of consumer etc.

60LA.—(1) For the purposes of sections 1G, 404E and 425A(b) of the Act (meaning of “consumer”), in so far as those provisions relate to a person (“A”) carrying on a regulated activity of the kind specified by—

(a) article 60B (regulated credit agreements), or

(b) article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 60B,

a person who is treated by A as a person who is or has been the borrower under a regulated credit agreement is to be treated as a “consumer”.

(2) For the purposes of section 328(8) of the Act (meaning of “clients”) in so far as that provision relates to a person (“A”) carrying on a regulated activity of the kind specified by—

(a) article 60B (regulated credit agreements), or

(b) article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 60B,

a person who is treated by A as a person who is or has been the borrower under a regulated credit agreement is to be treated as a “client”.

(3) In this article, “borrower” includes (in addition to those persons included in the definition in article 60L)—

(a) any person providing a guarantee or indemnity under a regulated credit agreement, and

(b) a person to whom the rights and duties of a person falling within sub-paragraph (a) have passed by assignment or operation of law.”.

(34) In article 60N(3) (regulated consumer hire agreements), in the definition of “owner”, omit “regulated”.

(35) For the heading to article 60R (information society services), substitute “Other exclusions”.

(36) In that article 60R, after “article 72A (information society services)” insert “and the exclusion in article 72G (local authorities)”.

(37) After article 60R (information society services), insert—

(a) S.I. 2011/99. There are amending instruments but none is relevant.

(b) Section 1G substituted by the Financial Services Act 2012 (c.21), section 6. Section 404A substituted by the Financial Services Act 2010 (c.28), section 14 and amended by the Financial Services Act 2012, Schedule 18, Part 1, paragraph 19. Section 425A inserted by the Financial Services Act 2010, Schedule 2, Part 1, paragraph 32 and amended by S.I. 2013/655.

“Supplemental

Meaning of consumer etc.

60S.—(1) For the purposes of sections 1G, 404E and 425A of the Act (meaning of “consumer”), in so far as those provisions relate to a person (“A”) carrying on a regulated activity of the kind specified by—

- (a) article 60N (regulated consumer hire agreements), or
- (b) article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 60N,

a person who is treated by A as a person who is or has been the hirer under a regulated consumer hire agreement is to be treated as a “consumer”.

(2) For the purposes of section 328(8) of the Act (meaning of “clients”) in so far as that provision relates to a person (“A”) carrying on a regulated activity of the kind specified by—

- (a) article 60N (regulated consumer hire agreements), or
- (b) article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 60N,

a person who is treated by A as a person who is or has been the hirer under a regulated consumer hire agreement is to be treated as a “client”.

(3) In this article, “hirer” includes (in addition to those persons defined as “the hirer” in the definition of “consumer hire agreement” in article 60N(3))—

- (a) any person providing a guarantee or indemnity under a consumer hire agreement, and
- (b) a person to whom the rights and duties of a person falling within sub-paragraph (a) have passed by assignment or operation of law.”.

(38) In article 63A (regulated mortgage contracts: other exclusions)(a), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72G (local authorities)”.

(39) In article 63E (entering into and administering regulated home reversion plans: other exclusions)(b), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72G (local authorities)”.

(40) In article 63I (entering into and administering regulated home purchase plans: other exclusions), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72G (local authorities)”.

(41) In article 63M (entering into and administering regulated sale and rent back agreements: other exclusions)(c), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72G (local authorities)”.

(42) In article 65 (agreeing: other exclusions)(d), for “and 72A (information society services)” substitute “, 72A (information society services), 72G (local authorities) and 72H (insolvency practitioners)”.

(43) After article 72F (interpretation)(e), insert—

(a) Inserted by S.I. 2002/1776 and amended by S.I. 2003/1475 and S.I. 2013/1773.
(b) Articles 63B to 63I inserted by S.I. 2006/2383 and amended by S.I. 2011/2581 and S.I. 2013/1773.
(c) Inserted by S.I. 2009/1342 and amended by S.I. 2013/1773.
(d) Amended by S.I. 2002/1776.
(e) Inserted by S.I. 2005/1518 and amended by S.I. 2006/2383 and S.I. 2010/86.

“Local authorities

72G.—(1) There is excluded from article 5 any activity which is carried on by a local authority.

(2) There is excluded from articles 21, 25(1) and (2), 39A and 53 any activity carried on by a local authority which relates to a contract of insurance which is not a qualifying contract of insurance.

(3) There is excluded from articles 25A, 25B, 25C, 25E, 36A, 39D, 39E, 39F, 39G, 53A, 53B, 53C, 53D, 60N, 61, 63B, 63F, 63J or 89A any activity which is carried on by a local authority.

(4) There is excluded from article 60B any activity which is carried on by a local authority in so far as the credit agreement is of a kind to which Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EC(a) does not apply by virtue of Article 2(2) of that Directive.

(5) There is excluded from article 64 any agreement made by a local authority to carry on an activity of the kind excluded by paragraphs (2) to (4).

Insolvency practitioners

72H.—(1) There is excluded from the provisions listed in paragraph (2) any activity carried on by a person acting as an insolvency practitioner.

(2) The provisions are—

- (a) article 14 (dealing in investments as principal);
- (b) article 21 (dealing in investments as agent);
- (c) article 25 (arranging deals in investments);
- (d) article 25D (operating a multilateral trading facility);
- (e) article 37 (managing investments);
- (f) article 39A (assisting in the administration and performance of a contract of insurance);
- (g) article 39D (debt adjusting);
- (h) article 39E (debt-counselling);
- (i) article 39F (debt-collecting);
- (j) article 39G (debt administration);
- (k) article 40 (safeguarding and administering investments);
- (l) article 45 (sending dematerialised instructions);
- (m) article 51ZA (managing a UCITS);
- (n) article 51ZB (acting as trustee or depositary of a UCITS);
- (o) article 51ZC (managing an AIF);
- (p) article 51ZD (acting as trustee or depositary of an AIF);
- (q) article 51ZE (establishing etc. a collective investment scheme);
- (r) article 52 (establishing etc. a pension scheme);
- (s) article 53 (advising on investments);
- (t) article 89A (providing credit information services).

(a) OJ L 133, 22.5.2008, p.66.

(3) There is excluded from articles 39D, 39E and 89A any activity carried on by a person acting in reasonable contemplation of that person's appointment as an insolvency practitioner.

(4) There is excluded from article 64 any agreement made by a person acting as an insolvency practitioner to carry on an activity of the kind excluded by paragraph (1).

(5) There is excluded from article 64 any agreement made by a person acting in reasonable contemplation of that person's appointment as an insolvency practitioner to carry on an activity of the kind excluded by paragraph (3)."

(44) For the heading to article 89D (information society services), substitute "Other exclusions".

(45) In that article 89D—

(a) renumber the existing provision as paragraph (1);

(b) after that paragraph (1), insert—

"(2) Article 89A is also subject to the exclusions in articles 72G (local authorities) and 72H (insolvency practitioners)."

(46) In article 89E(1)(b) and (2)(b) (meaning of "consumer" etc.), after "89B," insert "or article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 89B,".

PART 3

Amendments of primary legislation

The Consumer Credit Act 1974

3.—(1) The Consumer Credit Act 1974(a) is amended as follows.

(2) In section 86A(5) and (7)(b) (FCA to prepare information sheets on arrears and default), after "it is issued" insert "or on such later date as the FCA may specify in relation to the information sheet".

(3) In section 126 (enforcement of land mortgages)—

(a) renumber the existing provision as subsection (1);

(b) after that subsection, insert—

"(2) Subject to section 140A(5) (unfair relationships between creditors and debtors)(c), for the purposes of subsection (1) and Part 9 (judicial control), a regulated mortgage contract which would, but for article 60C(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(d), be a regulated agreement is to be treated as if it were a regulated agreement."

Applications under the Consumer Credit Act 1974

4.—(1) Section 55U(4), (5), (7) and (8) of the Financial Services and Markets Act 2000 (applications under this Part)(e) apply to an application made under a provision of the Consumer Credit Act 1974 specified in paragraph (2) as if the application were an application made to the FCA under Part 4A of the Financial Services and Markets Act 2000.

(2) The specified provisions are—

(a) section 60(3) (form and content of agreements);

(b) section 64(4) (duty to give notice of cancellation rights);

(a) 1974 c.39; section 126 amended by S.I. 2013/1881.

(b) Inserted by the Consumer Credit Act 2006 (c.14), section 8; amended by S.I. 2013/1882.

(c) Inserted by the Consumer Credit Act 2006, section 19.

(d) S.I. 2001/544. Article 60C inserted by S.I. 2013/1881.

(e) Section 55U substituted by the Financial Services Act 2012, section 11.

- (c) section 101(8) (right to terminate hire agreement);
- (d) section 160 (alternative procedure for business consumers).

The Financial Services and Markets Act 2000

5.—(1) In Schedule 6 to the Financial Services and Markets Act 2000 (threshold conditions)(**(a)**), Part 1B (Part 4A permission: authorised persons who are not PRA-authorised persons)(**(b)**) is amended as follows.

(2) For paragraph 2C(1A) (effective supervision), substitute—

“(1A) Paragraphs (a), (b) and (e) of sub-paragraph (1) do not apply where the only regulated activities that the person carries on, or seeks to carry on, are—

- (a) relevant credit activities, and
- (b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by the person.”

(3) For paragraph 2D(3A) (appropriate resources), substitute—

“(3A) Where the only regulated activities that A carries on or seeks to carry on are—

- (a) relevant credit activities, and
- (b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by A,

A has adequate financial resources if A is capable of meeting A’s debts as they fall due.”;

(4) For paragraph 2F(3) (business model), substitute—

“(3) This paragraph does not apply where the only regulated activities that the person carries on, or seeks to carry on, are—

- (a) relevant credit activities, and
- (b) if any, activities to which, by virtue of section 39(1D), sections 20(1) and (1A) and 23(1A) do not apply when carried on by the person.”;

(5) In paragraph 2G (interpretation)—

(a) in sub-paragraph (1)—

(i) for paragraph (b)(ii) substitute—

“(ii) by a person in connection with an activity of the kind specified by paragraph (d) or (e) which the person also carries on,”;

(ii) for paragraph (c)(ii) substitute—

“(ii) by a person in connection with an activity of the kind specified by paragraph (d) or (e) which the person also carries on,”;

(iii) after paragraph (d), insert—

“(da) an activity of the kind specified by article 60B of that Order (regulated credit agreements) if carried on by a local authority,”;

(iv) in paragraph (f), for “who also carries on an activity of the kind specified by any of paragraphs (a) to (e)” substitute “in connection with an activity of the kind specified by any of paragraphs (a) to (e) which the person also carries on”;

(b) in sub-paragraph (2)—

(i) for “But” substitute “Except where the activity is carried on by a not-for-profit body,”;

(ii) in the closing words of the sub-paragraph, after “to repay” insert “or the hirer to pay”;

(a) 2000 c. 8. Schedule 6 amended by S.I. 2013/555 and 1881.

(b) Inserted by S.I. 2013/555; amended by S.I. 2013/1881.

- (c) in sub-paragraph (6), after the definition of “hire-purchase agreement”, insert—
- ““local authority” means—
- (a) in England and Wales, a local authority within the meaning of the Local Government Act 1972(a), the Greater London Authority, the Common Council of the City of London or the Council of the Isles of Scilly;
 - (b) in Scotland, a local authority within the meaning of the Local Government (Scotland) Act 1973(b); and
 - (c) in Northern Ireland, a district council within the meaning of the Local Government Act (Northern Ireland) 1972(c);”.

PART 4

Amendments of secondary legislation

Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983

6. In paragraph 10A of Schedule 2 to the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983(d) (form of default notice etc.), for “Office of Fair Trading” substitute “Financial Conduct Authority”.

The Consumer Credit (Credit Reference Agency) Regulations 2000

7. In Schedules 2 and 3 to the Consumer Credit (Credit Reference Agency) Regulations 2000(e) (credit reference agency files)—

- (a) for “Director General of Fair Trading”(f), in each place, substitute “Financial Conduct Authority”;
- (b) for “Director General” (other than where it appears in the phrase “Director General of Fair Trading”), in each place, substitute “FCA”;
- (c) for—

“Office of Fair Trading
Fleetbank House
2/6 Salisbury Square
London
EC4Y 8JX
Telephone no 0171-211 8000
Fax no 0171-211 8800
email: enquiries@oft.gov.uk”,

in each place, substitute—

“25 The North Colonnade

-
- (a) 1972 c.70. Section 270 of that Act, as amended by Local Government Act 1985 (c.51), Schedule 16, paragraph 8, and the Local Government (Wales) Act 1994 (c.19), section 1, defines “local authority” a meaning a county council, a district council, a London borough council or a parish council but, in relation to Wales, means a county council, county borough council or community council.
 - (b) 1973 c.65. Section 235 of that Act, as substituted by the Local Government etc (Scotland) Act 1994 (c.39), Schedule 13, paragraph 92(66), defines “local authority” as meaning a council constituted under section 2 of the Local Government etc (Scotland) Act 1994.
 - (c) 1972 Chapter 9. Section 148 of that Act provides that “district” has the meaning assigned to it by section 1(3) of that Act, and in relation to any council means the district for which that council acts.
 - (d) S.I. 1983/1561; paragraph 10A inserted by S.I. 2007/1167.
 - (e) S.I. 2000/290.
 - (f) The Enterprise Act 2002 (c.40), section 2, provides that a reference to the Director General of Fair Trading in an enactment made before that Act is to have effect as if it were a reference to the Office of Fair Trading.

Canary Wharf
London
E14 5HS
Telephone no 020 7066 1000 or 0800 111 6768
email: consumer.queries@fca.org.uk”.

The Financial Services and Markets Act 2000 (Exemption) Order 2001

8.—(1) The Schedule to Financial Services and Markets Act 2000 (Exemption) Order 2001(a) is amended as follows.

- (2) In Part 2 (persons exempt in respect of accepting deposits), omit paragraph 19.
- (3) In Part 3 (persons exempt in respect of any regulated activity mentioned in article 5(1)), omit paragraph 39 (insolvency practitioners).
- (4) In Part 4 (persons exempt in respect of particular regulated activities)—
 - (a) omit paragraph 47 (local authorities);
 - (b) in the heading to paragraph 52(b), for “Insolvency practitioners” substitute “Official receivers”;
 - (c) omit paragraph 52(1)(a), (2) and (3).

The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001

9.—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(c) are amended as follows.

- (2) In regulation 3 (requirements applying to contracts between authorised persons and appointed representatives)(d)—
 - (a) in paragraph (3E), omit “or 89A”;
 - (b) after paragraph (3I), insert—

“(3J) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative takes steps on behalf of or gives advice to an individual or a relevant recipient of credit in relation to the taking of any steps (in circumstances constituting the carrying on of an activity of the kind specified by article 89A of that Order) on behalf of other counterparties.”.

The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

10.—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(e) (controlled activities) is amended as follows.

- (2) After article 15(1) (introductions), insert—

“(1A) But paragraph (1) does not apply to any communication made with a view to or for the purpose of an introduction to a person who carries on an activity of the kind specified by—

 - (a) paragraph 4B of Schedule 1;
 - (b) paragraph 4C of that Schedule;

(a) S.I. 2001/1201.
(b) Inserted by S.I. 2013/1881.
(c) S.I. 2001/1217.
(d) Regulation 3 amended by S.I. 2003/1475, S.I. 2003/1475, S.I. 2006/2383, S.I. 2006/3414, S.I. 2013/472 and S.I. 2013/1881.
(e) S.I. 2005/1529.

- (c) paragraph 11 of that Schedule, to the extent that it relates to that paragraph 4B or that paragraph 4C.”.
- (3) After article 16(1) (exempt persons), insert—
- “(1A) The financial promotion restriction also does not apply to any communication which is—
- (a) a non-real time communication or a solicited real time communication;
- (b) made by a person who is an appointed representative (within the meaning of section 39(2) of the Act) and is carrying on an activity to which sections 20(1) and (1A) and 23(1A) of the Act do not apply by virtue of section 39(1D); and
- (c) made for the purposes of that person’s business of carrying on a controlled activity which is also a regulated activity to which sections 20(1) and (1A) and 23(1A) of the Act do not apply by virtue of section 39(1D).”.
- (4) In article 28B (real time communications: introductions)(a)—
- (a) in paragraph (1)(b)(ii), after “the general prohibition” insert “or in relation to which sections 20(1) and (1A) and 23(1A) of the Act do not apply by virtue of section 39(1D)”;
- (b) in paragraph (4)—
- (i) after “paragraph” insert “4B, 4C, 5A, 5B,”;
- (ii) for “or 10B” substitute “10B, 10BA or 10BB”.
- (5) In article 29(2) (communications required or authorised by enactments)—
- (a) after “paragraph”, in the first place, insert “4B,”;
- (b) for “or 10B” substitute “, 10B, 10BA or 10BB”.
- (6) In article 55A(2) and (3) (non-real time communication by members of professions), after “investment” in each place, insert “and consumer credit-related”.
- (7) In article 61 (sale of goods and supply of services)—
- (a) in paragraph (1), in the definition of “supplier”, after “3 to 7” insert “, 10BA and 10BB”;
- (b) in paragraph (3)—
- (i) at the end of sub-paragraph (a), omit “or”;
- (ii) after sub-paragraph (b), insert—
- “(c) a relevant credit agreement (within the meaning of paragraph 28 of Schedule 1)(b);
or
(d) a consumer hire agreement (within the meaning of paragraph 28 of Schedule 1)(c).”;
- (c) after paragraph (3), insert—
- “(4) The exemption in paragraph (2) also does not apply if the communication is made by a person carrying on, or in relation to, an activity of a kind specified in paragraph 4B of Schedule 1 (credit broking).”.
- (8) In Schedule 1(d) (controlled activities)—
- (a) after paragraph 4B(1) (credit broking), insert—
- “(1A) But an activity is not a controlled activity falling within sub-paragraph (1) to the extent that it is a controlled activity falling within paragraph 10A (arranging qualifying credit etc.).”;
- (b) in paragraph 4C (operating an electronic system in relation to lending)—

(a) Amended by S.I. 2006/2383, S.I. 2009/1342 and S.I. 2013/1881.

(b) Definition inserted by S.I. 2013/1881.

(c) Definition inserted by S.I. 2013/1881.

(d) Amended by S.I. 2013/1881. There are other amending instruments but none is relevant.

- (i) in sub-paragraph (1), for “condition in paragraph (2) is” substitute “conditions in sub-paragraphs (2), (2A) and (2C) are”;
- (ii) in sub-paragraph (2), after “The condition” insert “in this sub-paragraph”;
- (iii) after sub-paragraph (2), insert—
 - “(2A) The condition in this sub-paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to—
 - (a) receive payments in respect of interest and capital due under the agreement from C, and
 - (b) make payments in respect of interest and capital due under the agreement to B.
 - (2B) For the purposes of sub-paragraph (2A)—
 - (a) an agreement by A to appoint X to perform the activities in that paragraph is to be treated as an undertaking by A within the meaning of that sub-paragraph;
 - (b) it is immaterial that—
 - (i) payments may be subject to conditions;
 - (ii) A, or X, may be entitled to retain a portion or the entirety of any payment received from C.
 - (2C) The condition in this sub-paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to perform, or A undertakes to appoint or direct another person to perform, either or both of the following—
 - (a) to take steps to procure the payment of a debt under the agreement;
 - (b) to exercise or enforce rights under the agreement on behalf of B.”.
- (iv) in sub-paragraph (3), after “specified by”, for “paragraph” substitute “sub-paragraph”;
- (v) in sub-paragraph (4), after “the condition in”, for “paragraph” substitute “sub-paragraph”;
- (vi) in sub-paragraph (5), for “paragraph” substitute “sub-paragraph”;
- (vii) in sub-paragraph (6), for “paragraph” substitute “sub-paragraph”;
- (viii) after sub-paragraph (9), insert—
 - “(10) For the purposes of the application of section 21(9) and (10) of the Act (restrictions on financial promotion) to an activity of a kind specified by this paragraph, paragraph 26D of this Schedule (relevant credit agreements), and article 4 (definition of controlled activities and controlled investments) in so far as it relates to that paragraph, has effect as if the reference to a relevant credit agreement in paragraph 26D includes a reference to a paragraph 4C agreement.”;
- (c) in paragraph 10BA (providing relevant consumer credit), after “relevant credit agreement” insert “, other than an agreement under which qualifying credit within the meaning of paragraph 10 is provided,”;
- (d) in paragraph 10BB (providing consumer hire), after “regulated consumer hire agreement” insert “, or an agreement that would be such an agreement but for article 60O (exempt agreements: exemptions relating to nature of agreement) or 60Q (exempt agreements: exemptions relating to nature of hirer) of the Regulated Activities Order,”;
- (e) in paragraph 11 (agreeing to carry on specified kinds of activity), for “10B” substitute “10BB”;
- (f) in paragraph 28 (interpretation), in the definition of “relevant credit agreement”, after “regulated mortgage contract” insert “or a regulated home purchase plan”.

The Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007

11.—(1) Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007(a) are amended as follows.

(2) In regulation 26, for “Office of Fair Trading” substitute “Financial Conduct Authority”.

(3) In Part 5 of Schedule 3 (statement to be included in notices of sums in arrears under fixed-sum credit agreements etc. and running-account credit agreements), for “Office of Fair Trading”, in each place, substitute “Financial Conduct Authority”.

(4) In paragraph 6 of Schedule 5 (information and statement to be included in all notices under section 130A of the 1974 Act), for “Office of Fair Trading” substitute “Financial Conduct Authority”.

The Payment Services Regulations 2009

12.—(1) The Payment Services Regulations 2009(b) are amended as follows.

(2) In regulation 52(a) (disapplication of certain regulations in the case of consumer credit agreements), after “section 51 (prohibition of unsolicited credit tokens)” insert “(which continues to have effect for the purposes of this regulation by virtue of article 13 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014)”.

(3) After regulation 92 (costs of supervision), insert—

“Credit agreements

92A. Schedule 4A, which contains provisions concerning credit agreements, has effect.”.

(4) After Schedule 4, insert—

“SCHEDULE 4A

Regulation 92A

Credit agreements

PART 1

Prohibitions and restrictions

Power to prohibit the entry into credit agreements

1.—(1) If it appears to the Authority that sub-paragraph (4) has been, or is likely to be, contravened as respects an EEA authorised payment institution exercising passport rights in the United Kingdom, it may by notice given to the institution in accordance with Part 2 of this Schedule impose on the institution a credit prohibition.

(2) If it appears to the Authority that a restriction imposed under paragraph 2 on an EEA authorised payment institution exercising passport rights in the United Kingdom has not been complied with, it may by notice given to the institution in accordance with Part 2 of this Schedule impose on the institution a credit prohibition.

(3) “A credit prohibition” means a prohibition on carrying on, or purporting to carry on, in the United Kingdom any business which consists of or includes carrying on an activity—

(a) S.I. 2007/1167.

(b) S.I. 2009/209.

- (a) of the kind specified by article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a), and
- (b) listed in the Annex to the payment services directive or which the institution is entitled to carry on in accordance with Article 16 of that directive.

(4) This sub-paragraph is contravened as respects an EEA authorised payment institution exercising passport rights in the United Kingdom if—

- (a) the institution or any of its employees, agents or associates (whether past or present), or
- (b) where the institution is a body corporate, any controller of the institution or an associate of any such controller,

does any of the things specified in sub-paragraph (5).

(5) A person does a thing specified in this sub-paragraph if the person—

- (a) commits any offence involving fraud or other dishonesty or violence;
- (b) contravenes any provision made by or under—
 - (i) the Consumer Credit Act 1974;
 - (ii) the 2000 Act, to the extent that that Act relates to any activity of the kind specified by article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
 - (iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;
- (c) contravenes any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);
- (d) practices discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business;
- (e) engages in business practices appearing to the Authority to be deceitful or oppressive or otherwise unfair or improper (including practices that appear to the Authority to involve irresponsible lending).

(6) A credit prohibition may be absolute or may be imposed—

- (a) for such period,
- (b) until the occurrence of such event, or
- (c) until such conditions are complied with,

as may be specified in the notice given under sub-paragraph (1) or (2).

(7) Any period, event or condition so specified may be varied by the Authority on the application of the institution concerned (for which, see paragraph 5).

(8) A credit prohibition may be withdrawn in whole or in part—

- (a) on the initiative of the Authority, by notice served by the Authority on the institution concerned, and any such notice takes effect on such date as is specified in the notice;
- (b) on an application submitted by the institution concerned (for which, see paragraph 5).

(9) Where the Authority withdraws a credit prohibition and imposes a restriction under paragraph 2, the Authority may specify that the withdrawal of the credit prohibition only takes effect when the imposition of the restriction is no longer open to review.

(a) Articles 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A and 89B inserted by S.I. 2013/1881.

(10) For the purposes of sub-paragraph (9), whether the imposition of a restriction is open to review is to be determined in accordance with section 391(8) of the 2000 Act as if the imposition of the restriction were a matter to which a supervisory notice (within the meaning of that section) relates.

(11) An institution contravening a prohibition imposed under this paragraph is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(12) In this paragraph—

“associate” has the same meaning as in article 60L of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“controller” has the meaning given by section 422 of the 2000 Act.

(13) If a credit prohibition is in effect in relation to an institution, article 60JA of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 does not apply in relation to that institution.

Power to restrict the entry into credit agreements

2.—(1) In this paragraph, “restriction” means a direction that an EEA authorised payment institution exercising passport rights in the United Kingdom may not carry on in the United Kingdom, otherwise than in accordance with such conditions as may be specified in the direction, any business which consists of or includes carrying on an activity—

- (a) of the kind specified in article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (b) listed in the Annex to the payment services directive or which the institution is entitled to carry on in accordance with Article 16 of that directive; and
- (c) specified in the direction.

(2) If it appears to the Authority that the situation as respects an EEA authorised payment institution exercising passport rights in the United Kingdom is such that the powers conferred by paragraph 1 are exercisable, the Authority may, instead of imposing a credit prohibition—

- (a) impose by notice given in accordance with Part 2 of this Schedule such restriction as appears to it desirable;
- (b) where it has already imposed a restriction, vary the restriction on the Authority’s own initiative by notice given in accordance with Part 2 of this Schedule.

(3) The Authority may also impose a restriction by notice given in accordance with Part 2 of this Schedule if it withdraws a credit prohibition.

(4) A restriction may be—

- (a) withdrawn on the initiative of the Authority, by notice served by the Authority on the institution concerned, and any such notice takes effect on such date as is specified in the notice;
- (b) withdrawn or varied on an application submitted by the institution concerned (for which, see paragraph 5).

(5) An institution contravening a restriction is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

PART 2

Procedure and appeals

Interpretation

3. In this Part—

“prohibition” means a credit prohibition imposed under paragraph 1(1) or (2) of Part 1 of this Schedule;

“restriction” means a restriction imposed under paragraph 2(2) or (3) of Part 1 of this Schedule;

“the Tribunal” means the Upper Tribunal.

Notice of prohibition or restriction

4.—(1) A prohibition or restriction takes effect—

- (a) immediately, if the relevant notice states that that is the case,
- (b) on such date as may be specified in the notice, or
- (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(2) An institution which is aggrieved by the imposition of a prohibition or a restriction by a notice given under this paragraph may refer the matter to the Tribunal.

(3) A prohibition or restriction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is imposing the prohibition or restriction, reasonably considers that it is necessary for the prohibition or restriction to take effect immediately (or on that date).

(4) The notice must—

- (a) give details of the prohibition or restriction,
- (b) state the Authority’s reasons for the prohibition or restriction,
- (c) inform the institution that it may make representations to the Authority within such period as is specified in the notice (whether or not the institution has referred the matter to the Tribunal),
- (d) inform the institution of when the prohibition or restriction takes effect, and
- (e) inform the institution of its right to refer the matter to the Tribunal.

(5) The Authority may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by the institution, the Authority decides—

- (a) to impose the proposed prohibition or restriction, or
- (b) if the prohibition or restriction has already taken effect, not to withdraw the prohibition or restriction,

it must give the institution a notice.

(6) If, having considered any representations made by the institution, the Authority decides—

- (a) not to impose the proposed prohibition or restriction,
- (b) to impose a different prohibition or restriction, or
- (c) if the prohibition or restriction has already taken effect, to withdraw the prohibition or restriction,

it must give the institution a notice.

(7) A notice under sub-paragraph (6) must inform the institution of its right to refer the matter to the Tribunal.

(8) A notice under sub-paragraph (7)(b) must comply with sub-paragraph (4).

(9) If a notice under this paragraph informs an institution of its right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(10) For the purposes of sub-paragraph (1)(c)—

- (a) whether a matter is open to review is to be determined in accordance with section 391(8) of the 2000 Act;
- (b) the notice to which the matter relates is to be treated as a supervisory notice for the purposes of that section.

(11) References in this paragraph to the imposition of a restriction include references to the variation of a restriction on the initiative of the Authority.

Application to revoke or vary prohibition or restriction

5.—(1) An application under Part 1 of this Schedule must—

- (a) be made in such manner as the Authority may direct, and
- (b) contain, or be accompanied by, such other information as the Authority may reasonably require.

(2) At any time after the application is received and before it is determined, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(3) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(4) The Authority may require an applicant to provide information required under this paragraph in such form, or to verify it in such a way, as the Authority may direct.

(5) If the Authority decides to grant an application, it must give the applicant a notice.

(6) If the Authority proposes to refuse an application, or to take an action different from or in addition to the one applied for (including a proposal to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a warning notice.

(7) If the Authority decides to refuse an application, or to take an action different from or in addition to the one applied for (including a decision to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a decision notice.

(8) An applicant who is aggrieved by a decision notice given under this paragraph may refer the matter to the Tribunal.

Notice to the home state competent authority

6. If the Authority sends a notice to an institution under this Schedule which imposes, varies or withdraws a prohibition or restriction, it must send a copy of the notice to the institution's home state competent authority.”.

(5) In Part 1 of Schedule 5 (application and modification of the 2000 Act)—

- (a) in paragraph 3(d)(i)(aa) (information gathering and investigations)(a), after paragraph (c) (which is inserted by that paragraph into section 168(1) of the Financial Services And Markets Act 2000), insert—

(a) Substituted by S.I. 2013/472.

- “(d) an EEA authorised payment institution exercising passport rights in the United Kingdom may have contravened, or may be likely to contravene, a restriction or prohibition within the meaning of paragraph 3 (interpretation) of Schedule 4A to the Payment Services Regulations 2009 (credit agreements);
- (e) paragraph 1(4) of that Schedule 4A (power to prohibit the entry into credit agreements) may have been contravened, or may be likely to be contravened, as respects an EEA authorised payment institution exercising passport rights in the United Kingdom”;
- (b) in paragraph 7 (warning notices and decision notices)(a)—
 - (i) in sub-paragraph (c)(ii), after “(including as applied by regulation 14) of” insert “, or paragraph 4 of Schedule 4A to,”;
 - (ii) in sub-paragraph (e), after “(including as applied by regulation 14) of” insert “, or paragraph 4 of Schedule 4A to,”.

Saving of section 51 of the Consumer Credit Act 1974 for the purposes of the Payment Services Regulations 2009

13.—(1) Notwithstanding the repeal by regulation 20(15) and (64) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013(b) of the provisions specified in paragraph (2), those provisions continue to have effect for the purposes of regulation 52(a) of the Payment Services Regulations 2009(c) (disapplication of certain regulations in the case of consumer credit agreements).

(2) The provisions are—

- (a) section 51 of the Consumer Credit Act 1974 (prohibition of unsolicited credit tokens);
- (b) the entry relating to section 51(1) in Schedule 1 to that Act (prosecution and punishment of offences).

The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009

14. In article 6A of the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (specific exemptions in respect of consumer credit)(d)—

- (a) in paragraph (1)(a), after “credit activities” insert “or activities to which, by virtue of section 39(1D) of the Act, sections 20(1) and (1A) and 23(1A) of the Act do not apply when carried on by B”;
- (b) in paragraph (4)—
 - (i) in sub-paragraph (b)(ii) and (c)(ii), for “who” substitute “in connection with an activity of the kind specified by sub-paragraph (d) or (e) and where that person”;
 - (ii) in paragraph (f), for “who” substitute “in connection with an activity of the kind specified by sub-paragraph (a) to (e) and where that person”;
- (c) after paragraph (4), insert—

“(4A) For the purposes of paragraph (4), any activity which the person carries on is to be disregarded if sections 20(1) and (1A) and 23(1A) of the Act do not apply to the carrying on of that activity by virtue of section 39(1D) of the Act.”;
- (d) in paragraph (5)—
 - (i) in the opening words, for “But” substitute “Except where the activity is carried on by a not-for-profit body,”;
 - (ii) in the closing words—

(a) Amended by S.I. 2013/472.

(b) S.I. 2013/1881.

(c) S.I. 2009/209.

(d) S.I. 2009/774. Article 6A was inserted by S.I. 2013/1881.

- (aa) after “borrower to repay” insert “or the hirer to pay”;
- (bb) after “legal” insert “or equitable”;
- (e) in paragraph (9), for “regulation” substitute “article”.

Transitional provision relating to the Consumer Credit (Disclosure of Information) Regulations 2010

15.—(1) Pre-contract credit information (within the meaning given by regulation 1(2) of the Consumer Credit (Disclosure of Information) Regulations 2010(a)) disclosed to a debtor in the period specified in paragraph (2) which contains the information specified in paragraph (3) is to be treated as if it contained the information required by—

- (a) the entry in the second column of table 5 in Schedule 1(b) to the Consumer Credit (Disclosure of Information) Regulations 2010 opposite the entry “If applicable The supervisory authority”;
- (b) the entry in the second column of table 5 in Schedule 3 to those Regulations opposite the entry “If applicable The supervisory authority”.

(2) The period is the period of five months beginning on the day on which this article comes into force.

(3) The information is a statement specifying—

- (a) in the case of a person who is carrying on an activity which is exempt from the general prohibition in section 19 of the Financial Services and Markets Act 2000 by virtue of by virtue of section 327 of that Act, the Office of Fair Trading as the supervisory authority before 1st April 2014 and the relevant designated professional body as the supervisory authority after 31st March 2014, or
- (b) in any other case, the Office of Fair Trading as the supervisory authority before 1st April 2014 and the Financial Conduct Authority as the supervisory authority after 31st March 2014.

The Consumer Credit (Agreements) Regulations 2010

16. In paragraph 33 of Schedule 1 to the Consumer Credit (Agreements) Regulations 2010(c) (information to be included in regulated consumer credit agreements), in the second column, after “the Act” insert “or, in a case where the supplier is carrying on an activity which is exempt from the general prohibition in section 19 of the Financial Services and Markets Act 2000 by virtue of section 327 of that Act, a statement specifying (i) that the activity of the supplier is so exempt and (ii) the relevant designated professional body (within the meaning of section 326 of that Act) as the supervisory authority under that Act, and (iii) the geographical address of the relevant designated professional body”.

Transitional provision relating to the Consumer Credit (Agreements) Regulations 2010

17.—(1) An agreement presented, sent, given or delivered to the debtor (whether for signature or otherwise) in the period specified in paragraph (2) which contains the information specified in paragraph (3) is to be treated as if it contained the information required by paragraph 33 of Schedule 1 to the Consumer Credit (Agreements) Regulations 2010.

(2) The period is the period of five months beginning on the day on which this article comes into force.

(3) The information is a statement specifying—

(a) S.I. 2010/1013.
 (b) Table 5 of Schedule 1 and table 5 of Schedule 3 amended by S.I. 2013/1881.
 (c) S.I. 2010/1014; paragraph 33 amended by S.I. 2013/1881.

- (a) in the case of a person who is carrying on an activity which is exempt from the general prohibition in section 19 of the Financial Services and Markets Act 2000 by virtue of by virtue of section 327 of that Act, the Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX as the supervisory authority before 1st April 2014 and the relevant designated professional body as the supervisory authority after 31st March 2014, or
- (b) in any other case, the Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX as the supervisory authority before 1st April 2014 and the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS as the supervisory authority after 31st March 2014.

The Electronic Money Regulations 2011

18.—(1) The Electronic Money Regulations 2011(a) are amended as follows.

(2) After regulation 59 (costs of supervision), insert—

“Credit agreements

59A. Schedule 2A, which contains provisions concerning credit agreements, has effect.”.

(3) After Schedule 2, insert—

“SCHEDULE 2A

Regulation 59A

Credit agreements

PART 1

Prohibitions and restrictions

Power to prohibit the entry into credit agreements

1.—(1) If it appears to the Authority that sub-paragraph (4) has been, or is likely to be, contravened as respects an EEA authorised electronic money institution exercising passport rights in the United Kingdom, it may by notice given to the institution in accordance with Part 2 of this Schedule impose on the institution a credit prohibition.

(2) If it appears to the Authority that a restriction imposed under paragraph 2 on an EEA authorised electronic money institution exercising passport rights in the United Kingdom has not been complied with, it may by notice given to the institution in accordance with Part 2 of this Schedule impose on the institution a credit prohibition.

(3) “A credit prohibition” means a prohibition on carrying on, or purporting to carry on, in the United Kingdom any business which consists of or includes carrying on an activity—

- (a) of the kind specified by article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b), and
- (b) listed in the Annex to the payment services directive or which the institution is entitled to carry on in accordance with Article 16 of that directive as applied by Article 6 of the electronic money directive.

(4) This sub-paragraph is contravened as respects an EEA authorised electronic money institution exercising passport rights in the United Kingdom if—

(a) S.I. 2011/99.

(b) Articles 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A and 89B inserted by S.I. 2013/1881.

- (a) the institution or any of its employees, agents or associates (whether past or present), or
- (b) where the institution is a body corporate, any controller of the institution or an associate of any such controller,

does any of the things specified in sub-paragraph (5).

(5) A person does a thing specified in this sub-paragraph if the person—

- (a) commits any offence involving fraud or other dishonesty or violence;
- (b) contravenes any provision made by or under—
 - (i) the Consumer Credit Act 1974;
 - (ii) the 2000 Act, to the extent that that Act relates to any activity of the kind specified by article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
 - (iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;
- (c) contravenes any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);
- (d) practices discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business;
- (e) engages in business practices appearing to the Authority to be deceitful or oppressive or otherwise unfair or improper (including practices that appear to the Authority to involve irresponsible lending).

(6) A credit prohibition may be absolute or may be imposed—

- (a) for such period,
- (b) until the occurrence of such event, or
- (c) until such conditions are complied with,

as may be specified in the notice given under sub-paragraph (1) or (2).

(7) Any period, event or condition so specified may be varied by the Authority on the application of the institution concerned (for which, see paragraph 5).

(8) A credit prohibition may be withdrawn in whole or in part—

- (a) on the initiative of the Authority, by notice served by the Authority on the institution concerned, and any such notice takes effect on such date as is specified in the notice;
- (b) on an application submitted by the institution concerned (for which, see paragraph 5).

(9) Where the Authority withdraws a credit prohibition and imposes a restriction under paragraph (2), the Authority may specify that the withdrawal of the credit prohibition only takes effect when the imposition of the restriction is no longer subject to review (within the meaning of section 391(8) of the 2000 Act).

(10) For the purposes of sub-paragraph (9), whether the imposition of a restriction is open to review is to be determined in accordance with section 391(8) of the 2000 Act as if the imposition of the restriction were a matter to which a supervisory notice (within the meaning of that section) relates.

(11) An institution contravening a prohibition imposed under this paragraph is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(12) In this paragraph—

“associate” has the same meaning as in article 60L of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“controller” has the meaning given by section 422 of the 2000 Act.

(13) If a credit prohibition is in effect in relation to an institution, article 60JB of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 does not apply in relation to that institution.

Power to restrict the entry into credit agreements

2.—(1) In this paragraph, “restriction” means a direction that an EEA authorised electronic money institution exercising passport rights in the United Kingdom may not carry on in the United Kingdom, otherwise than in accordance with such conditions as may be specified in the direction, any business which consists of or includes carrying on an activity—

- (a) of the kind specified in article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (b) listed in the Annex to the payment services directive or which the institution is entitled to carry on in accordance with Article 16 of that directive as applied by Article 6 of the electronic money directive; and
- (c) specified in the direction.

(2) If it appears to the Authority that the situation as respects an EEA authorised electronic money institution exercising passport rights in the United Kingdom is such that the powers conferred by paragraph 1 are exercisable, the Authority may, instead of imposing a credit prohibition impose—

- (a) by notice given in accordance with Part 2 of this Schedule such restriction as appears to it desirable;
- (b) where it has already imposed a restriction, vary the restriction on the Authority’s own initiative by notice given in accordance with Part 2 of this Schedule.

(3) The Authority may also impose a restriction by notice given in accordance with Part 2 of this Schedule if it withdraws a credit prohibition.

(4) A restriction may be—

- (a) withdrawn on the initiative of the Authority, by notice served by the Authority on the institution concerned, and any such notice takes effect on such date as is specified in the notice;
- (b) withdrawn or varied on an application submitted by the institution concerned (for which, see paragraph 5).

(5) An institution contravening a restriction is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

PART 2

Procedure and appeals

Interpretation

3. In this Part—

“prohibition” means a credit prohibition imposed under paragraph 1(1) or (2) of Part 1 of this Schedule;

“restriction” means a restriction imposed under paragraph 2(2) or (3) of Part 1 of this Schedule;

“the Tribunal” means the Upper Tribunal.

Notice of prohibition or restriction

4.—(1) A prohibition or restriction takes effect—

- (a) immediately, if the relevant notice states that that is the case,
- (b) on such date as may be specified in the notice, or
- (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(2) An institution which is aggrieved by the imposition of a prohibition or a restriction by a notice given under this paragraph may refer the matter to the Tribunal.

(3) A prohibition or restriction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is imposing the prohibition or restriction, reasonably considers that it is necessary for the prohibition or restriction to take effect immediately (or on that date).

(4) The notice must—

- (a) give details of the prohibition or restriction,
- (b) state the Authority’s reasons for the prohibition or restriction,
- (c) inform the institution that it may make representations to the Authority within such period as is specified in the notice (whether or not the institution has referred the matter to the Tribunal),
- (d) inform the institution of when the prohibition or restriction takes effect, and
- (e) inform the institution of its right to refer the matter to the Tribunal.

(5) The Authority may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by the institution, the Authority decides—

- (a) to impose the proposed prohibition or restriction, or
- (b) if the prohibition or restriction has taken effect, not to withdraw the prohibition or restriction,

it must give the institution a notice.

(7) If, having considered any representations made by the institution, the Authority decides—

- (a) not to impose the proposed prohibition or restriction,
- (b) to impose a different prohibition or restriction, or
- (c) if the prohibition or restriction has already taken effect, to withdraw the prohibition or restriction,

it must give the institution a notice.

(7) A notice under sub-paragraph (6) must inform the institution of its right to refer the matter to the Tribunal.

(8) A notice under sub-paragraph (7)(b) must comply with sub-paragraph (4).

(9) If a notice under this paragraph informs an institution of its right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(10) For the purposes of sub-paragraph (1)(c)—

- (a) whether a matter is open to review is to be determined in accordance with section 391(8) of the 2000 Act;

- (b) the notice to which the matter relates is to be treated as a supervisory notice for the purposes of that section.

(11) References in this paragraph to the imposition of a restriction include references to the variation of a restriction on the initiative of the Authority.

Application to revoke or vary prohibition or restriction

5.—(1) An application under Part 1 of this Schedule must—

- (a) be made in such manner as the Authority may direct, and
- (b) contain, or be accompanied by, such other information as the Authority may reasonably require.

(2) At any time after the application is received and before it is determined, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(3) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(4) The Authority may require an applicant to provide information required under this paragraph in such form, or to verify it in such a way, as the Authority may direct.

(5) If the Authority decides to grant an application, it must give the applicant a notice.

(6) If the Authority proposes to refuse an application, or to take an action different from or in addition to the one applied for (including a proposal to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a warning notice.

(7) If the Authority decides to refuse an application, or to take an action different from or in addition to the one applied for (including a decision to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a decision notice.

(8) An applicant who is aggrieved by a decision notice given under this paragraph may refer the matter to the Tribunal.

Notice to the home state competent authority

6. If the Authority sends a notice to an institution under this Schedule which imposes, varies or withdraws a prohibition or restriction, it must send a copy of the notice to the institution's home state competent authority".

(4) In Part 1 of Schedule 3 (application and modification of the 2000 Act)—

- (a) omit paragraph 2(b)(ii) (the Tribunal);
- (b) in paragraph 3(d)(i)(aa) (information gathering and investigations)(a), after paragraph (ab) (which is inserted by that paragraph into section 168(1) of the Financial Services And Markets Act 2000), insert—
 - “(ac) an EEA authorised electronic money institution exercising passport rights in the United Kingdom may have contravened, or may be likely to contravene, a restriction or prohibition within the meaning of paragraph 3 (interpretation) of Schedule 2A to the Electronic Money Regulations 2011 (credit agreements);
 - (ad) paragraph 1(4) of that Schedule 2A (power to prohibit the entry into credit agreements) may have been contravened, or may be likely to be contravened, as respects an EEA authorised electronic institution exercising passport rights in the United Kingdom”;

(a) Substituted by S.I. 2013/472.

- (c) in paragraph 8(e) (warning notices and decision notices)(a)—
 - (i) in sub-paragraph (c)(i), after “(including as applied by regulation 15) of” insert “, or paragraph 4 of Schedule 4A to,”;
 - (ii) in sub-paragraph (e), after “(including as applied by regulation 15) of” insert “, or paragraph 4 of Schedule 2A to,”.

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013

19.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013(b) is amended as follows.

(2) In article 56 (interim permission)—

- (a) in paragraph (3), after “regulated activities” insert “of the kind specified by article 60B (regulated credit agreements)”;
- (b) after paragraph (3), insert—

“(3A) For the purposes of paragraph (3), there is to be disregarded any activity carried on by P in the period of one year ending on 1st April 2014 in so far as it relates to an agreement secured on land.”;

(c) in paragraph (9)—

- (i) in the opening words of that paragraph, for “61” substitute “59”;
- (ii) in sub-paragraph (a), for “commencement” substitute “1st April 2014”.

(3) In article 58 (duration of interim permission), after paragraph (4), insert—

“(5) Where P’s interim permission ceases to have effect in accordance with paragraph (1)—

- (a) paragraph (6) applies in respect of an act or omission by P which occurred at a time when P had an interim permission;
- (b) any requirement—
 - (i) imposed on P under section 55L, 55M or 404F(7) of the Act at a time when P had an interim permission, and
 - (ii) which is in effect immediately before that interim permission ceases to have effect,
 continues to have effect and paragraph (6) applies in respect of any contravention of that requirement.

(6) If P is no longer an authorised person, P is to be treated as an authorised person for the purposes of the following provisions of the Act—

- (a) Part 11 (information gathering and investigations) and Part 14 (disciplinary measures);
- (b) section 384 of the Act (power of FCA or PRA to require restitution).”.

(4) In paragraph 40 in Part 2 of the Schedule (the Payment Services Regulations 2009), omit paragraph (b).

(a) Amended by S.I. 2013/472.
 (b) S.I. 2013/1881.

PART 5

Review of retained provisions of the Consumer Credit Act 1974

Review of retained provisions of the Consumer Credit Act 1974

20.—(1) The FCA must arrange for—

- (a) a review of the matter specified in paragraph (2);
- (b) the review to result in a report.

(2) The matter is whether the repeal (in whole or in part) of provisions of the Consumer Credit Act 1974 would adversely affect the appropriate degree of protection for consumers.

(3) The FCA may extend the review to other matters which are relevant to or connected with the matter specified in paragraph (2).

(4) The FCA may appoint one or more persons to conduct the review or, where the FCA is conducting the review, to provide advice to the FCA in connection with the review.

(5) The review must in particular consider—

- (a) which provisions of the Consumer Credit Act 1974 could be replaced by rules or guidance made by the FCA under the Financial Services and Markets Act 2000;
- (b) the principle that a burden or restriction which is imposed on a person in relation to the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.

(6) The report may include recommendations to the Treasury, including in particular recommendations relating to the exercise of their power to make an order under section 107 of the Financial Services Act 2012.

(7) The FCA must—

- (a) submit the report to the Treasury before 1st April 2019;
- (b) publish the report in the way appearing to the FCA most likely to bring it to the attention of the public.

(8) The Treasury must lay a copy of the report submitted under this article before Parliament.

Conduct of review

21.—(1) The person conducting the review (“R”) must prepare an interim report of the initial views of R on the matter specified in paragraph (2) of article 20 and (where appropriate) setting out proposed recommendations to the Treasury.

(2) R may prepare additional interim reports.

(3) The FCA must—

- (a) provide a copy of any interim report to the Treasury;
- (b) publish an interim report in the way appearing to the FCA most likely to bring it to the attention of the public.

(4) An interim report must, when published, be accompanied by notice that representations about the interim report and any proposed recommendations may be made to R within a specified time.

(5) Before making the report under article 20, R must have regard to any representations made to it in accordance with paragraph (4).

(6) The Treasury may make a recommendation to the FCA in relation to—

- (a) the scope of the review;
- (b) the period during which the review is to be carried out (subject to article 20(7)(a));
- (c) the conduct of the review;

- (d) the making of reports.
- (7) Recommendations under paragraph (6) may in particular recommend—
 - (a) confining the review to particular matters (subject to article 20(2));
 - (b) extending the review to matters additional to the matter in article 20(2);
 - (c) making additional interim reports.
- (8) The FCA must have regard to any recommendation made to it under paragraph (6).

*Sam Gyimah
David Evennett*

13th February 2014

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in relation to the regulation of consumer credit under the Financial Services and Markets Act 2000 (“the Act”).

Part 2 of the Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, S.I. 2001/544, to specify additional activities which are to be treated as “regulated activities” for the purposes of the Act, and to provide for exclusions from various regulated activities. A person who carries on a regulated activity in the United Kingdom must be authorised under the Act to carry out the activity or an exempt person (see section 19 of the Act).

The Order also makes various consequential, transitional and supplemental provisions in consequence of those provisions and of provisions made by the Financial Services Act 2012, which amended the Act, the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, S.I. 2013/1881, and the Financial Services Act 2012 (Consumer Credit) Order 2013, S.I. 2013/1882.

Part 3 of the Order amends primary legislation, and applies procedural provisions of the Act to various applications made under the Consumer Credit Act 1974.

Part 4 of the Order amends secondary legislation and makes certain saving and transitional provisions.

Part 5 of the Order provides for the Financial Conduct Authority to undertake a review of the Consumer Credit Act 1974, in so far as it has not been repealed by the legislation referred to above.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.gov.uk and is published alongside the Order on www.legislation.gov.uk.

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