

Draft Order laid before Parliament under section 429(1) of the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act
2000 (Carrying on Regulated Activities by
Way of Business) (Amendment) Order 2018

Made - - - -

Coming into force in accordance with article 1

A draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament pursuant to section 429(1) of the Financial Services and Markets Act 2000(1).

The Treasury, in exercise of the powers conferred by sections 419 and 428(3) of that Act, make the following Order.

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2018 and comes into force on the day after the day on which it is made.

Amendment of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001

2.—(1) The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001(2) is amended as follows.

(2) In article 2 (deposit taking business) after paragraph (2) insert—

“(3) A person (“B”) who carries on an activity of the kind specified by article 5(1)(b) of the Regulated Activities Order(3) (accepting deposits) is not to be regarded as doing so by way of business if—

(a) the activity is facilitated by a person (“A”);

(1) 2000 c.8. Section 429(1) has been amended but the amendments are not relevant to this Order.

(2) S.I. 2001/1177 has been amended but the amendments are not relevant to this Order.

(3) S.I. 2001/544 has been amended but the amendments are not relevant to this Order.

- (b) in facilitating the activity, A was operating an electronic system in relation to lending;
- (c) B is not a credit institution or an authorised person⁽⁴⁾;
- (d) B is not carrying on the business of accepting deposits;
- (e) B does not hold themselves out as accepting deposits on a day to day basis, other than where the holding-out is facilitated by persons engaged in operating an electronic system in relation to lending.

(4) For the purposes of paragraph (3)(d), if B uses the capital of, or interest on, money received by way of deposit solely to finance other business activity carried on by B, this is to be regarded as evidence indicating that B is not carrying on the business of accepting deposits.

(5) In this article—

“article 36H agreement” has the meaning given in article 36H(4) of the Regulated Activities Order⁽⁵⁾;

“assignment”, in relation to Scotland, means assignation;

“borrower” means—

- (a) a person who receives credit under an agreement that is not an article 36H agreement only because it does not satisfy the conditions in article 36H(5) and (6) of the Regulated Activities Order; or
- (b) a person to whom the rights and duties of a borrower under such an agreement have passed by assignment or operation of law;

“credit institution” means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;

“lender” means—

- (a) a person providing credit under an agreement that is not an article 36H agreement only because it does not satisfy the conditions in article 36H(5) and (6) of the Regulated Activities Order; or
- (b) a person who by assignment or operation of law has assumed the rights and duties of a lender under such an agreement;

“operating an electronic system in relation to lending” means carrying on an activity—

- (a) of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), or
- (b) that would be of the kind specified by article 36H but for the fact that the activity does not concern facilitating an article 36H agreement, but concerns facilitating persons becoming the lender and borrower under an agreement that is not an article 36H agreement only because it does not satisfy the conditions in article 36H(5) and (6) of the Regulated Activities Order;”.

(4) Defined in section 417 of the Financial Services and Markets Act 2000 c.8.

(5) Article 36H was inserted by [S.I. 2013/1881](#) and was amended by [S.I. 2014/366](#) and [S.I. 2016/392](#).

Date

Name
Name
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (S.I. 2001/1177) (the “By Way of Business Order”). The By Way of Business Order defines, in relation to certain specified activities, the circumstances in which a person carrying on one of those activities is, or is not, to be regarded as carrying on that activity by way of business for the purposes of section 22 of the Financial Services and Markets Act 2000 (c. 8).

Article 2 of the By Way of Business Order specifies the circumstances in which a person who accepts deposits is not to be regarded as doing so by way of business. This Order amends article 2 to clarify that certain persons are not accepting deposits by way of business when borrowing money via an electronic system in relation to lending.

A full regulatory impact assessment has not been produced for this instrument as no, or no significant, impact on the costs of business and the voluntary sector is foreseen.