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*Status: Point in time view as at 20/04/2015.*

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## STATUTORY INSTRUMENTS

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# 2001 No. 544

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

### PART II

#### SPECIFIED ACTIVITIES

##### [<sup>F1</sup>CHAPTER 14A

##### REGULATED CREDIT AGREEMENTS

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#### Textual Amendments

- F1** Pt. II Ch. 14A, 14B inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), 6

#### *The activities*

#### **Regulated credit agreements**

**60B.**—(1) Entering into a regulated credit agreement as lender is a specified kind of activity.

(2) It is a specified kind of activity for the lender or another person to exercise, or to have the right to exercise, the lender's rights and duties under a regulated credit agreement.

(3) In this article—

[<sup>F2</sup>“credit agreement” means an agreement between an individual or relevant recipient of credit (“A”) and any other person (“B”) under which B provides A with credit of any amount;]

[<sup>F2</sup>“credit agreement”—

(a) in relation to an agreement other than a green deal plan, means an agreement between an individual or relevant recipient of credit (“A”) and any other person (“B”) under which B provides A with credit of any amount;

(b) in relation to a green deal plan, has the meaning given by article 60LB;]

[<sup>F3</sup>“exempt agreement” means a credit agreement which is an exempt agreement under articles 60C to 60H, but where only part of a credit agreement falls within a provision of articles 60C to 60H, only that part is an exempt agreement under those articles;]

“regulated credit agreement” means any credit agreement which is not an exempt agreement.

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### Textual Amendments

- F2** Words in art. 60B(3) substituted (E.W.S.) (15.7.2014) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Green Deal\) \(Amendment\) Order 2014 \(S.I. 2014/1850\)](#), arts. 1(2), **5** (with art. 1(3))
- F3** Words in art. 60B(3) substituted (24.3.2015) by [The Financial Services and Markets Act 2000 \(Miscellaneous Provisions\) Order 2015 \(S.I. 2015/853\)](#), arts. 1(2), **3(4)**

### Exempt agreements: exemptions relating to the nature of the agreement

**60C.**—(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

(2) A credit agreement is an exempt agreement if it is a regulated mortgage contract or <sup>F4</sup>a regulated home purchase plan<sup>F4</sup> if it is of a type described in article 61A(1) or (2) (mortgage contracts which are not regulated mortgage contracts)].

(3) A credit agreement is an exempt agreement if—

- (a) the lender provides the borrower with credit exceeding £25,000, and
- (b) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(4) A credit agreement is an exempt agreement if—

- (a) the lender provides the borrower with credit of £25,000 or less,
- (b) the agreement is entered into by the borrower wholly for the purposes of a business carried on, or intended to be carried on, by the borrower, and

[ the agreement is a green deal plan made in relation to a property that is not a domestic <sup>F5</sup>(c) property (as defined by article 60LB).]

(5) For the purposes of paragraph (3), if an agreement includes a declaration which—

- (a) is made by the borrower,
- (b) provides that the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower, and
- (c) complies with rules made by the FCA for the purpose of this article,

the agreement is to be presumed to have been entered into by the borrower wholly or predominantly for the purposes specified in sub-paragraph (b) unless paragraph (6) applies.

(6) This paragraph applies if, when the agreement is entered into—

- (a) the lender (or, if there is more than one lender, any of the lenders), or
- (b) any person who has acted on behalf of the lender (or, if there is more than one lender, any of the lenders) in connection with the entering into of the agreement,

knows or has reasonable cause to suspect that the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(7) Paragraphs (5) and (6) also apply for the purposes of paragraph (4) but with the omission of the words “or predominantly”.

(8) A credit agreement is an exempt agreement if it is made in connection with trade in goods or services—

- (a) between the United Kingdom and a country outside the United Kingdom,

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(b) within a country [<sup>F6</sup>outside the United Kingdom], or  
(c) between countries outside the United Kingdom, and  
the credit is provided to the borrower in the course of a business carried on by the borrower.

#### Textual Amendments

- F4** Words in art. 60C(2) substituted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(13)** (with Pt. 4)
- F5** Art. 60C(4)(c) substituted (E.W.S.) (15.7.2014) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Green Deal\) \(Amendment\) Order 2014 \(S.I. 2014/1850\)](#), arts. 1(2), **6** (with art. 1(3))
- F6** Words in art. 60C(8)(b) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(24)**

#### Modifications etc. (not altering text)

- C1** Art. 60C(5)(6) applied by S.I. 2005/1529, Sch. 1 para. 4C(7) (as inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **17(6)(a)**)
- C2** Art. 60C(5)(6) applied by 1974 c. 39, s. **55C(5)** (as substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2), **20(23)**)
- C3** Art. 60C(5)(6) applied by 1974 c. 39, s. 60(6) (as substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **20(24)**)
- C4** Art. 60C(5)(6) applied by 1974 c. 39, s. 61A(7) (as substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **20(25)**)
- C5** Art. 60C(5)(6) applied by 1974 c. 39, s. **75A(7)** (as substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2), **20(28)**)
- C6** Art. 60C(5)(6) applied by 1974 c. 39, s. **77B(10)** (as substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2), **20(29)**)
- C7** Art. 60C(5)(6) applied by S.I. 1983/1553, reg. 8(1B) (as substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **23(4)**)
- C8** Art. 60C(5)(6) applied by S.I. 2010/1013, reg. 2(6) (as substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **26(4)**)
- C9** Art. 60C(5)(6) applied by S.I. 2010/1013, reg. 6(3) (as substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **26(6)**)
- C10** Art. 60C(5)(6) applied by S.I. 2010/1014, reg. 2(6) (as substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **27(4)**)

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### **Exempt agreements: exemption relating to the purchase of land for non-residential purposes**

**60D.**—(1) A credit agreement is an exempt agreement for the purposes of this Chapter if, at the time it is entered into, any sums due under it are secured by a legal [<sup>F7</sup>or equitable] mortgage on land and the condition in paragraph (2) is satisfied.

(2) The condition is that less than 40% of the land is used, or is intended to be used, as or in connection with a dwelling—

- (a) by the borrower or a related person of the borrower, or
  - (b) in the case of credit provided to trustees, by an individual who is a beneficiary of the trust or a related person of a beneficiary.
- (3) For the purposes of paragraph (2)—
- (a) the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those stories;
  - (b) “related person” in relation to a person (“B”) who is the borrower or (in the case of credit provided to trustees) a beneficiary of the trust, means—
    - (i) B’s spouse or civil partner,
    - (ii) a person (whether or not of the opposite sex) whose relationship with B has the characteristics of the relationship between husband and wife, or
    - (iii) B’s parent, brother, sister, child, grandparent or grandchild.

[<sup>F8</sup>(4) This article does not apply to an agreement of the type described in Article 3(1)(b) of the mortgages directive.]

#### **Textual Amendments**

- F7** Words in art. 60D(1) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(25)**
- F8** Art. 60D(4) inserted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(14)** (with Pt. 4)

### **Exempt agreements: exemptions relating to the nature of the lender**

**60E.**—(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

(2) [<sup>F9</sup>A relevant credit agreement][<sup>F9</sup>Subject to article 60HA, a relevant credit agreement] relating to the purchase of land is an exempt agreement if the lender is—

- (a) specified, or of a description specified, in rules made by the FCA under paragraph (3), or
  - (b) a local authority.
- (3) The FCA may make rules specifying any of the following for the purpose of paragraph (2)—
- (a) an authorised person with permission to effect or carry out contracts of insurance;
  - (b) a friendly society;
  - (c) an organisation of employers or organisation of workers;
  - (d) a charity;
  - (e) an improvement company (within the meaning given by section 7 of the Improvement of Land Act 1899);

- (f) a body corporate named or specifically referred to in any public general Act;
  - (g) a body corporate named or specifically referred to in, or in an order made under, a relevant housing provision;
  - (h) a building society (within the meaning of the Building Societies Act 1986);
  - (i) an authorised person with permission to accept deposits.
- (4) Rules under paragraph (3) may—
- (a) specify a particular person or class of persons;
  - (b) be limited so as to apply only to agreements or classes of agreement specified in the rules.
- (5) <sup>F10</sup>A credit agreement][<sup>F10</sup>Subject to article 60HA, a relevant credit agreement] is an exempt agreement if it is—
- (a) secured by a legal [<sup>F11</sup>or equitable] mortgage on land,
  - (b) that land is used or is intended to be used as or in connection with a dwelling, and
  - (c) the lender is a housing authority.
- (6) A credit agreement is an exempt agreement if—
- (a) the lender is an investment firm or a credit institution, and
  - (b) the agreement is entered into for the purpose of allowing the borrower to carry out a transaction relating to one or more financial instruments.
- (7) In this article—
- “housing authority” means—
- (a) in England and Wales, the Homes and Communities Agency, the Welsh Ministers<sup>F12</sup>, a company which is a wholly-owned subsidiary of the Welsh Ministers,] or a private registered provider (within the meaning of Part 2 of the Housing and Regeneration Act 2008);
  - (b) in Scotland, the Scottish Ministers or a registered social landlord (within the meaning of the Housing (Scotland) Act 2010);
  - (c) in Northern Ireland, the Northern Ireland Housing Executive;
- “relevant credit agreement relating to the purchase of land” means—
- (a) a borrower-lender-supplier agreement financing—
    - (i) the purchase of land, or
    - (ii) provision of dwellings on land,and secured by a legal [<sup>F13</sup>or equitable] mortgage on that land,
  - (b) a borrower-lender agreement secured by a legal [<sup>F13</sup>or equitable] mortgage on land, or
  - (c) a borrower-lender-supplier agreement financing a transaction which is a linked transaction in relation to—
    - (i) an agreement falling within sub-paragraph (a), or
    - (ii) an agreement falling within sub-paragraph (b) financing—
      - (aa) the purchase of land,
      - (bb) the provision of dwellings on land,and secured by a legal [<sup>F13</sup>or equitable] mortgage on the land referred to in sub-paragraph (a) or the land referred to in paragraph (ii);
- “relevant housing provision” means any of the following—

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- (a) section 156(4) or 447(2)(a) of the Housing Act 1985,
- (b) section 156(4) of that Act as it has effect by virtue of section 17 of the Housing Act 1996 (the right to acquire), or
- (c) article 154(1)(a) of the Housing (Northern Ireland) Order 1981.

[  
<sup>F14</sup>(7A) In paragraph (7), in the definition of “housing authority”, in paragraph (a), “wholly-owned subsidiary” has the same meaning as in section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006.

(7B) For the purpose of paragraph (7A), the Welsh Ministers are to be treated as a body corporate.]

(8) For the purposes of the definition of “relevant credit agreement relating to the purchase of land”, a transaction is, unless paragraph (9) applies, a “linked transaction” in relation to a credit agreement (“the principal agreement”) if—

- (a) it is (or will be) entered into by the borrower under the principal agreement or by a relative of the borrower,
- (b) it does not relate to the provision of security,
- (c) it does not form part of the principal agreement, and
- (d) one of the following conditions is satisfied—
  - (i) the transaction is entered into in compliance with a term of the principal agreement;
  - (ii) the principal agreement is a borrower-lender-supplier agreement and the transaction is financed, or to be financed, by the principal agreement;
  - (iii) the following conditions are met—
    - (aa) the other party is a person to whom paragraph (10) applies,
    - (bb) the other party initiated the transaction by suggesting it to the borrower or the relative of the borrower, and
    - (cc) the borrower or the relative of the borrower enters into the transaction to induce the lender to enter into the principal agreement or for another purpose related to the principal agreement or to a transaction financed or to be financed by the principal agreement.

(9) This paragraph applies if the transaction is—

- (a) a contract of insurance,
- (b) a contract which contains a guarantee of goods, or
- (c) a transaction which comprises, or is effected under—
  - (i) an agreement for the operation of an account (including any savings account) for the deposit of money, or
  - (ii) an agreement for the operation of a current account, under which the customer (“C”) may, by means of cheques or similar orders payable to C or to any other person, obtain or have the use of money held or made available by the person with whom the account is kept.

(10) The persons to whom this paragraph applies are—

- (a) the lender;
- (b) the lender’s associate;
- (c) a person who, in the negotiation of the transaction, is represented by a person who carries on an activity of the kind specified by article 36A (credit broking) by way of business who is or was also a negotiator in negotiations for the principal agreement;

- (d) a person who, at the time the transaction is initiated, knows that the principal agreement has been made or contemplates that it might be made.

#### Textual Amendments

- F9** Words in art. 60E(2) substituted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(15)(a)** (with Pt. 4)
- F10** Words in art. 60E(5) substituted (20.4.2015 for specified purposes) by virtue of [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(15)(b)** (with Pt. 4)
- F11** Words in art. 60E(5)(a) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(26)**
- F12** Words in art. 60E(7) inserted (28.7.2014) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 3\) Order 2014 \(S.I. 2014/1740\)](#), arts. 1(2), **2(a)**
- F13** Words in art. 60E(7) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(26)**
- F14** Art. 60E(7A)(7B) inserted (28.7.2014) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 3\) Order 2014 \(S.I. 2014/1740\)](#), arts. 1(2), **2(b)**

#### Exempt agreements: exemptions relating to number of repayments to be made

**60F.**—(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

- (2) A credit agreement is an exempt agreement if—
- (a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit<sup>F15</sup>, other than a green deal plan],
  - (b) the number of payments to be made by the borrower is not more than [<sup>F16</sup>twelve],
  - (c) those payments are required to be made within a period of 12 months or less (beginning on the date of the agreement),
  - (d) the credit is—
    - (i) secured on land, or
    - (ii) provided without interest or other <sup>F17</sup>... charges, and
  - (e) paragraph (7) does not apply to the agreement.
- (3) A credit agreement is an exempt agreement if—
- (a) the agreement is a borrower-lender-supplier agreement for running-account credit,
  - (b) the borrower is to make payments in relation to specified periods which must be, unless the agreement is secured on land, of 3 months or less,
  - (c) the number of payments to be made by the borrower in repayment of the whole amount of credit provided in each such period is not more than one,
  - (d) the credit is—
    - (i) secured on land, or
    - (ii) provided without interest or other significant charges, and
  - (e) paragraph (7) does not apply to the agreement.
- (4) [<sup>F18</sup>A credit agreement][<sup>F18</sup>Subject to article 60HA, a credit agreement] is an exempt agreement if—

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- (a) the agreement is a borrower-lender-supplier agreement financing the purchase of land,
  - (b) the number of payments to be made by the borrower is not more than four, and
  - (c) the credit is—
    - (i) secured on land, or
    - (ii) provided without interest or other charges.
- (5) A credit agreement is an exempt agreement if—
- (a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit,
  - (b) the credit is to finance a premium under a contract of insurance relating to land or anything on land,
  - (c) the lender is the lender under a credit agreement secured by a legal [<sup>F19</sup>or equitable] mortgage on that land,
  - (d) the credit is to be repaid within the period (which must be 12 months or less) to which the premium relates,
  - (e) in the case of an agreement secured on land, there is no charge forming part of the total charge for credit under the agreement other than interest at a rate not exceeding the rate of interest from time to time payable under the agreement mentioned at sub-paragraph (c),
  - (f) in the case of an agreement which is not secured on land, the credit is provided without interest or other charges, and
  - (g) the number of payments to be made by the borrower is not more than twelve.
- (6) A credit agreement is an exempt agreement if—
- (a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit,
  - (b) the lender is the lender under a credit agreement secured by a legal [<sup>F20</sup>or equitable] mortgage on land,
  - (c) the agreement is to finance a premium under a contract of whole life insurance which provides, in the event of the death of the person on whose life the contract is effected before the credit referred to in sub-paragraph (b) has been repaid, for payment of a sum not exceeding the amount sufficient to meet the amount which, immediately after that credit has been advanced, would be payable to the lender in respect of that credit (including interest from time to time payable under that agreement),
  - (d) in the case of an agreement secured on land, there is no charge forming part of the total charge for credit under the agreement other than interest at a rate not exceeding the rate of interest from time to time payable under the agreement mentioned at sub-paragraph (b),
  - (e) in the case of an agreement which is not secured on land, the credit is provided without interest or other charges, and
  - (f) the number of payments to be made by the borrower is not more than twelve.
- (7) This paragraph applies to—
- (a) agreements financing the purchase of land;
  - (b) agreements which are conditional sale agreements or hire-purchase agreements;
  - (c) agreements secured by a pledge (other than a pledge of documents of title or of bearer bonds).
- [<sup>F21</sup>(8) In this article, “payment” means any payment which comprises or includes—
- (a) the repayment of capital, or
  - (b) the payment of interest or any other charge which forms part of the total charge for credit.]



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### Textual Amendments

- F15** Words in art. 60F(2)(a) inserted (E.W.S.) (15.7.2014) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Green Deal\) \(Amendment\) Order 2014 \(S.I. 2014/1850\)](#), arts. 1(2), **7** (with art. 1(3))
- F16** Word in art. 60F(2)(b) substituted (18.3.2015) by [The Financial Services and Markets Act 2000 \(Miscellaneous Provisions\) \(No. 2\) Order 2015 \(S.I. 2015/352\)](#), arts. 1, **2(a)**
- F17** Word in art. 60F(2) omitted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(27)(a)**
- F18** Words in art. 60F(4) substituted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(16)** (with Pt. 4)
- F19** Words in art. 60F(5)(c) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(27)(b)**
- F20** Words in art. 60F(6)(b) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(27)(b)**
- F21** Art. 60F(8) substituted (24.3.2015) by [The Financial Services and Markets Act 2000 \(Miscellaneous Provisions\) Order 2015 \(S.I. 2015/853\)](#), arts. 1(2), **3(5)**

### Exempt agreements: exemptions relating to the total charge for credit

**60G.**—(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

(2) A credit agreement is an exempt agreement if—

- (a) it is a borrower-lender agreement, [<sup>F22</sup>and]
- (b) the lender is a credit union and the rate of the total charge for credit does not exceed 42.6 per cent [<sup>F23</sup>, and
- (c) paragraph (2A) applies to the agreement.]

[<sup>F24</sup>(2A) This paragraph applies to the agreement if—

- (a) the agreement is not of a type described in Article 3(1) of the mortgages directive; or
- (b) the agreement is of such a type and—
  - (i) the agreement is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive,
  - (ii) the agreement is a bridging loan within the meaning of Article 4(23) of the mortgages directive, or
  - (iii) in relation to the agreement—
    - (aa) the borrower receives timely information on the main features, risks and costs of the agreement at the pre-contractual stage, and
    - (bb) any advertising of the agreement is fair, clear and not misleading.]

(3) [<sup>F25</sup>A credit agreement][<sup>F25</sup>Subject to paragraph (8), a credit agreement] is an exempt agreement if—

- (a) it is a borrower-lender agreement,

*Status: Point in time view as at 20/04/2015.*

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- (b) it is an agreement of a kind offered to a particular class of individual or relevant recipient of credit and not offered to the public generally,
  - (c) it provides that the only charge included in the total charge for credit is interest,
  - (d) interest under the agreement may not at any time be more than the sum of one per cent and the highest of the base rates published by the banks specified in paragraph (7) on the date 28 days before the date on which the interest is charged, and
  - (e) paragraph (5) does not apply to the agreement.
- (4) [<sup>F26</sup>A credit agreement][<sup>F26</sup>Subject to paragraph (8), a credit agreement] is an exempt agreement if—
- (a) it is a borrower-lender agreement,
  - (b) it is an agreement of a kind offered to a particular class of individual or relevant recipient of credit and not offered to the public generally,
  - (c) it does not provide for or permit an increase in the rate or amount of any item which is included in the total charge for credit,
  - (d) the total charge for credit under the agreement is not more than the sum of one per cent and the highest of the base rates published by the banks specified in paragraph (7) on the date 28 days before the date on which the charge is imposed, and
  - (e) paragraph (5) does not apply to the agreement.
- (5) This paragraph applies to an agreement if—
- (a) the total amount to be repaid by the borrower to discharge the borrower's indebtedness may vary according to a formula which is specified in the agreement and which has effect by reference to movements in the level of any index or other factor, or
- [ the agreement—
- <sup>F27</sup>(b) (i) is not—
- (aa) secured on land, or
  - [<sup>F28</sup>(bb) offered by a lender to a borrower as an incident of the borrower's employment with the lender or with an undertaking in the same group as the lender;]
- (ii) does not meet the general interest test.]
- (6) For the purposes of [<sup>F29</sup>paragraph (5)][<sup>F29</sup>paragraphs (5) and (8)], an agreement meets the general interest test if—
- (a) the agreement is offered under an enactment with a general interest purpose, and
  - (b) the terms on which the credit is provided are more favourable to the borrower than those prevailing on the market, either because the rate of interest is lower than that prevailing on the market, or because the rate of interest is no higher than that prevailing on the market but the other terms on which credit is provided are more favourable to the borrower.
- (7) The banks specified in this paragraph are—
- (a) the Bank of England;
  - (b) Bank of Scotland;
  - (c) Barclays Bank plc;
  - (d) Clydesdale Bank plc;
  - (e) Co-operative Bank Public Limited Company;
  - (f) Coutts & Co;
  - (g) National Westminster Bank Public Limited Company;

(h) the Royal Bank of Scotland plc.

[  
<sup>F30</sup>(8) A credit agreement of a type described in Article 3(1) of the mortgages directive is an exempt agreement pursuant to paragraph (3) or (4) only if—

- (a) the agreement meets the general interest test;
- (b) the borrower receives timely information on the main features, risks and costs of the agreement at the pre-contractual stage; and
- (c) any advertising of the agreement is fair, clear and not misleading.]

#### Textual Amendments

- F22** Word in art. 60G(2) omitted (20.4.2015 for specified purposes) by virtue of [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(17)(a)(i)** (with Pt. 4)
- F23** Art. 60G(2)(c) and word inserted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(17)(a)(ii)** (with Pt. 4)
- F24** Art. 60G(2A) inserted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(17)(b)** (with Pt. 4)
- F25** Words in art. 60G(3) substituted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(17)(c)** (with Pt. 4)
- F26** Words in art. 60G(4) substituted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(17)(d)** (with Pt. 4)
- F27** Art. 60G(5)(b) substituted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(28)**
- F28** Art. 60G(5)(b)(i)(bb) substituted (18.3.2015) by [The Financial Services and Markets Act 2000 \(Miscellaneous Provisions\) \(No. 2\) Order 2015 \(S.I. 2015/352\)](#), arts. 1, **2(b)**
- F29** Words in art. 60G(6) substituted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(17)(e)** (with Pt. 4)
- F30** Art. 60G(8) inserted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(17)(f)** (with Pt. 4)

#### Exempt agreements: exemptions relating to the nature of the borrower

**60H.**—[  
<sup>F31</sup>( 1 )] [<sup>F32</sup>A credit agreement][<sup>F32</sup>Subject to article 60HA, a credit agreement] is an exempt agreement for the purposes of this Chapter if—

- (a) the borrower is an individual,
- (b) the agreement is either—
  - (i) secured on land, or
  - [ for credit which exceeds £60,260 and is for a purpose other than—
  - <sup>F33</sup>(ii) (aa) the renovation of residential property, or
  - (bb) to acquire or retain property rights in land or in an existing or projected building,]
- (c) the agreement includes a declaration made by the borrower which provides that the borrower agrees to forgo the protection and remedies that would be available to the borrower if the agreement were a regulated credit agreement and which complies with rules made by the FCA for the purposes of this paragraph,

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- (d) a statement has been made in relation to the income or assets of the borrower which complies with rules made by the FCA for the purposes of this paragraph,
- (e) the connection between the statement and the agreement complies with any rules made by the FCA for the purposes of this paragraph (including as to the period of time between the making of the statement and the agreement being entered into), and
- (f) a copy of the statement was provided to the lender before the agreement was entered into.

[<sup>F34</sup>(2) Where a credit agreement would be an exempt agreement pursuant to this article but for paragraph (1)(b)(ii)(bb) or article 60HA, the FCA may treat the agreement as an exempt agreement except for the purpose of the application of the requirements of the mortgages directive.]

#### Textual Amendments

- F31** Art. 60H(1): art. 60H renumbered as art. 60H(1) (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(18)(a)** (with Pt. 4)
- F32** Words in art. 60H(1) substituted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(18)(b)(i)** (with Pt. 4)
- F33** Art. 60H(1)(b)(ii) substituted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(18)(b)(ii)** (with Pt. 4)
- F34** Art. 60H(2) inserted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(18)(c)** (with Pt. 4)

#### [<sup>F35</sup>Exempt agreements: exemptions not permitted under the mortgages directive

**60HA.**—(1) A credit agreement is not an exempt agreement pursuant to article 60E(2) or (5), 60F(4) or 60H(1) if—

- (a) the agreement is of a type described in Article 3(1) of the mortgages directive, and
  - (b) paragraph (2) does not apply.
- (2) This paragraph applies if—
- (a) the agreement is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;
  - (b) the agreement is a bridging loan within the meaning of Article 4(23) of that directive; or
  - (c) the agreement is a restricted public loan in respect of which—
    - (i) the borrower receives timely information on the main features, risks and costs at the pre-contractual stage; and
    - (ii) any advertising is fair, clear and not misleading.
- (3) In paragraph (2)(c) “restricted public loan” means a credit agreement that is—
- (a) offered to a particular class of borrower and not offered to the public generally;
  - (b) offered under an enactment with a general interest purpose; and
  - (c) provided on terms which are more favourable to the borrower than those prevailing on the market, because it meets one of the following conditions—
    - (i) it is interest free;
    - (ii) the rate of interest is lower than that prevailing on the market; or
    - (iii) the rate of interest is no higher than that prevailing on the market but the other terms on which credit is provided are more favourable to the borrower.]

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#### Textual Amendments

**F35** Art. 60HA inserted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015](#) (S.I. 2015/910), art. 1(5), **Sch. 1 para. 4(19)** (with Pt. 4)

#### Exclusions

#### Arranging administration by authorised person

**60I.** A person (“A”) who is not an authorised person does not carry on an activity of the kind specified by article 60B(2) in relation to a regulated credit agreement where A—

- (a) arranges for another person, who is an authorised person with permission to carry on an activity of that kind, to exercise or to have the right to exercise the lender’s rights and duties under the agreement, or
- (b) exercises or has the right to exercise the lender’s rights and duties under the agreement during a period of not more than one month beginning with the day on which any such arrangement comes to an end.

#### Administration pursuant to agreement with authorised person

**60J.** A person who is not an authorised person does not carry on an activity of the kind specified by article 60B(2) in relation to regulated credit agreement if that person exercises or has the right to exercise the lender’s rights and duties under the agreement pursuant to an agreement with an authorised person who has permission to carry on an activity of the kind specified by article 60B(2).

#### <sup>F36</sup>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.

#### Textual Amendments

**F36** Arts. 60JA, 60JB inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014](#) (S.I. 2014/366), art. 1(3)(4), **2(29)**

#### Modifications etc. (not altering text)

**C11** Art. 60JA excluded by S.I. 2009/209, Sch. 4A para. 1(13) (as inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014](#) (S.I. 2014/366), art. 1(3)(4), **12(4)**)

#### 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.

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

#### Textual Amendments

**F36** Arts. 60JA, 60JB inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(29)**

#### Modifications etc. (not altering text)

**C12** Art. 60JB excluded by S.I. 2011/99, Sch. 2A para. 1(13) (as inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **18(3)**)

#### [<sup>F37</sup>Other exclusions]

**60K.** Article 60B is also subject to [<sup>F38</sup>the exclusion in article 72A (information society services) [<sup>F39</sup>and the exclusion in article 72G (local authorities)]] [<sup>F38</sup>the exclusions in articles 72A (information society services), 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms)].

#### Textual Amendments

**F37** Art. 60K heading substituted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(30)**

**F38** Words in art. 60K substituted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(20)** (with Pt. 4)

**F39** Words in art. 60K inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(31)**

### Supplemental

#### Interpretation of Chapter 14A etc.

**60L.**—(1) In this Chapter—

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

“associate” means, in relation to a person (“P”)—

- (a) where P is an individual, any person who is or who has been—
  - (i) P’s spouse or P’s civil partner;
  - (ii) a relative of P, of P’s spouse or of P’s civil partner;
  - (iii) the spouse or civil partner of a relative of P or P’s spouse or civil partner;
  - (iv) if P is a member of a partnership, any of P’s partners and the spouse or civil partner of any such person;
- (b) where P is a body corporate—
  - (i) any person who is a controller (“C”) of P, and
  - (ii) any other person for whom C is a controller;

“borrower” means [<sup>F40</sup>(except in relation to green deal plans: see instead article 60LB)] a person who receives credit under a credit agreement or a person to whom the rights and duties of a borrower under a credit agreement have passed by assignment or operation of law;

“borrower-lender agreement” means—

- (a) a credit agreement—
  - (i) to finance a transaction between the borrower and a person (“the supplier”) other than the lender, and
  - (ii) which is not made by the lender under pre-existing arrangements, or in contemplation of future arrangements, between the lender and the supplier,
- (b) a credit agreement to refinance any existing indebtedness of the borrower, whether to the lender or another person, or
- (c) a credit agreement which is—
  - (i) an unrestricted-use credit agreement, and
  - (ii) not made by the lender—
    - (aa) under pre-existing arrangements between the lender and a person other than the borrower (“the supplier”), and
    - (bb) in the knowledge that the credit is to be used to finance a transaction between the borrower and the supplier;

“borrower-lender-supplier agreement” means—

- (a) a credit agreement to finance a transaction between the borrower and the lender, whether forming part of that agreement or not;
- (b) a credit agreement—
  - (i) to finance a transaction between the borrower and a person (“the supplier”) other than the lender, and
  - (ii) which is made by the lender under pre-existing arrangements, or in contemplation of future arrangements, between the lender and the supplier, or
- (c) a credit agreement which is—
  - (i) an unrestricted-use credit agreement, and
  - (ii) made by the lender under pre-existing arrangements between the lender and a person (“the supplier”) other than the borrower in the knowledge that the credit is to be used to finance a transaction between the borrower and the supplier;

“conditional sale agreement” means an agreement for the sale of goods or land under which the purchase price or part of it is payable by instalments, and the property in the goods or land is to remain with the seller (notwithstanding that the buyer is to be in possession of the goods or land) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

“credit” includes a cash loan and any other form of financial accommodation;

[<sup>F41</sup>“credit agreement” has the meaning given by article 60B;]

[<sup>F41</sup>“credit agreement”—

- (a) in relation to an agreement other than a green deal plan, has the meaning given by article 60B;
- (b) in relation to a green deal plan, has the meaning given by article 60LB;]

“credit union” means a credit union within the meaning of—

- (a) the Credit Unions Act 1979;

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(b) the Credit Unions (Northern Ireland) Order 1985;

“deposit” (except where specified otherwise) means any sum payable by a borrower by way of deposit or down-payment, or credited or to be credited to the borrower on account of any deposit or down-payment, whether the sum is to be or has been paid to the lender or any other person, or is to be or has been discharged by a payment of money or a transfer or delivery of goods or other means;

“exempt agreement” has the meaning given by article 60B;

“finance” includes financing in whole or in part, and “refinance” is to be read accordingly;

“fixed-sum credit” means a facility under a credit agreement whereby the borrower is enabled to receive credit (whether in one amount or by instalments) but which is not running-account credit;

“hire-purchase agreement” means an agreement—

- (a) which is not a conditional sale agreement,
- (b) under which goods are bailed or (in Scotland) hired to a person (“P”) in return for periodical payments by P, and
- (c) the property in the goods will pass to P if the terms of the agreement are complied with and one or more of the following occurs—
  - (i) the exercise by P of an option to purchase the goods;
  - (ii) the doing by any party to the agreement of any other act specified in the agreement;
  - (iii) the happening of any event specified in the agreement;

“legal [<sup>F42</sup>or equitable] mortgage” includes [<sup>F43</sup>a legal or equitable] charge and, in Scotland, a heritable security;

“lender” means [<sup>F44</sup>(except in relation to green deal plans: see instead article 60LB)]—

- (a) the person providing credit under a credit agreement, or
- (b) a person who exercises or has the right to exercise the rights and duties of a person who provided credit under such an agreement;

“payment” (except in article 60F) means a payment comprising or including an amount in respect of credit;

“regulated credit agreement” has the meaning given by article 60B;

“relative” means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendent;

“relevant recipient of credit” means—

- (a) a partnership consisting of two or three persons not all of whom are bodies corporate, or
- (b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership;

“restricted-use credit agreement” means a credit agreement—

- (a) to finance a transaction between the borrower and the lender, whether forming part of that agreement or not,
- (b) to finance a transaction between the borrower and a person (“the supplier”) other than the lender, or
- (c) to refinance any existing indebtedness of the borrower’s, whether to the lender or another person;

“running-account credit” means a facility under a credit agreement under which the borrower or another person is enabled to receive from time to time from the lender or a third party cash,



goods or services to an amount or value such that, taking into account payments made by or to the credit of the borrower, the credit limit (if any) is not at any time exceeded;

“security” in relation to a credit agreement, means a mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right provided by the borrower or at the implied or express request of the borrower to secure the carrying out of the obligations of the borrower under the agreement;

“total charge for credit” has the meaning given in rules made by the FCA under article 60M;

“total price” means the total sum payable by the debtor under a hire-purchase agreement, including any sum payable on the exercise of an option to purchase but excluding any sum payable as a penalty or as compensation or damages for a breach of the agreement;

“unrestricted-use credit agreement” means a credit agreement which is not a restricted-use credit agreement.

<sup>F45</sup>(1A) For the purposes of this Chapter, a credit agreement that is a green deal plan is to be treated as—

- (a) a borrower-lender-supplier agreement falling within paragraph (a) of the definition of “borrower-lender-supplier agreement”;
- (b) a restricted-use credit agreement falling within paragraph (a) of the definition of “restricted-use credit agreement”.]

(2) For the purposes of the definition of “restricted-use credit agreement”—

- (a) a credit agreement does not fall within the definition if the credit is in fact provided in such a way as to leave the borrower free to use it as the borrower chooses, even though certain uses would contravene that or any other agreement; and
- (b) an agreement may fall within paragraph (b) of the definition even though the identity of the supplier is unknown at the time the agreement is made.

(3) For the purposes of the definition of “borrower-lender agreement” [<sup>F46</sup>and the definition of “borrower-lender-supplier agreement”], a credit agreement is, subject to paragraph (6), entered into under pre-existing arrangements between a lender and a supplier if it is entered into in accordance with, or in connection with, arrangements previously made between the lender (or the lender’s associate) and the supplier (or the supplier’s associate) unless the arrangements fall within paragraph (5).

(4) For the purposes of the definition of “borrower-lender agreement” [<sup>F47</sup>and the definition of “borrower-lender-supplier agreement”], a credit agreement is entered into in contemplation of future arrangements between a lender and a supplier if it is entered into in the expectation that arrangements will subsequently be made between the lender (or the lender’s associate) and the supplier (or the supplier’s associate) for the supply of cash, goods or services to be financed by the credit agreement unless the arrangements fall within paragraph (5).

(5) Arrangements fall within this paragraph if they are—

- (a) for the making, in circumstances specified in the credit agreement, of payments to the supplier by the lender (“L”) and L indicates that L is willing to make, in such circumstances, payments of the kind to suppliers generally, or
- (b) for the electronic transfer of funds from a current account held with an authorised person with permission to accept deposits (within the meaning given by article 3).

(6) If a lender is an associate of the supplier’s, the credit agreement is to be treated as entered into under pre-existing arrangements between the lender and the supplier unless the lender can show that this is not the case.

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(7) For the purposes of the definition of “running-account credit”, “credit limit” means, as respects any period, the maximum debit balance which, under a credit agreement, is allowed to stand on the account during that period, disregarding any term of the agreement allowing that maximum to be exceeded on a temporary basis.

(8) For the purposes of this Chapter, a person by whom goods are bailed or (in Scotland) hired to an individual or relevant recipient of credit under a hire-purchase agreement is to be taken to be providing that individual or person with fixed-sum credit to finance the transaction of an amount equal to the total price of the goods less the aggregate of the deposit (if any) and the total charge for credit.

(9) For the purposes of this Chapter, where credit is provided otherwise than in sterling, it is to be treated as provided in sterling of an equivalent amount.

[<sup>F48</sup>(10) For the purposes of this Chapter, where a provision specifies an amount of credit, running-account credit shall be taken not to exceed the amount specified in that provision (“the specified amount”) if—

- (a) the credit limit does not exceed the specified amount; or
- (b) the credit limit exceeds the specified amount, or there is no credit limit, and—
  - (i) the borrower is not enabled to draw at any one time an amount which, so far as it represents credit, exceeds the specified amount; or
  - (ii) the agreement provides that, if the debit balance rises above a given amount (not exceeding the specified amount), the rate of the total charge for credit increases or any other condition favouring the lender or the lender’s associate comes into operation; or
  - (iii) at the time the agreement is made it is probable, having regard to the terms of the agreement and any other relevant considerations, that the debit balance will not at any time rise above the specified amount.

(11) For the purposes of this Chapter, an item entering into the total charge for credit is not to be treated as credit even though time is allowed for its payment.]

#### Textual Amendments

- F40** Words in art. 60L(1) inserted (E.W.S.) (15.7.2014) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Green Deal\) \(Amendment\) Order 2014 \(S.I. 2014/1850\)](#), arts. 1(2), **8(2)(a)** (with art. 1(3))
- F41** Words in art. 60L(1) substituted (E.W.S.) (15.7.2014) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Green Deal\) \(Amendment\) Order 2014 \(S.I. 2014/1850\)](#), arts. 1(2), **8(2)(b)** (with art. 1(3))
- F42** Words in art. 60L(1) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(32)(a)(i)**
- F43** Words in art. 60L(1) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(32)(a)(ii)**
- F44** Words in art. 60L(1) inserted (E.W.S.) (15.7.2014) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Green Deal\) \(Amendment\) Order 2014 \(S.I. 2014/1850\)](#), arts. 1(2), **8(2)(c)** (with art. 1(3))
- F45** Art. 60L(1A) inserted (E.W.S.) (15.7.2014) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Green Deal\) \(Amendment\) Order 2014 \(S.I. 2014/1850\)](#), arts. 1(2), **8(3)** (with art. 1(3))

**Changes to legislation:** The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, Chapter 14A is up to date with all changes known to be in force on or before 16 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F46** Words in art. 60L(3) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(32)(b)**
- F47** Words in art. 60L(4) inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(32)(b)**
- F48** Art. 60L(10)(11) added (24.3.2015) by [The Financial Services and Markets Act 2000 \(Miscellaneous Provisions\) Order 2015 \(S.I. 2015/853\)](#), arts. 1(2), **3(6)**

#### [<sup>F49</sup>Meaning of consumer etc.

**60LA.**—(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 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 [<sup>F50</sup>or, where the credit agreement is a green deal plan, article 60LB])—

- (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.]

#### Textual Amendments

- F49** Art. 60LA inserted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(33)**
- F50** Words in art. 60LA(3) inserted (E.W.S.) (15.7.2014) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Green Deal\) \(Amendment\) Order 2014 \(S.I. 2014/1850\)](#), arts. 1(2), **9** (with art. 1(3))

#### [<sup>F51</sup>Green deal plans

**60LB.**—(1) A green deal plan is to be treated as a credit agreement for the purposes of this Order if (and only if)—

- (a) the property in relation to the plan is a domestic property at the time when the plan is commenced, or

*Status: Point in time view as at 20/04/2015.*

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- (b) if sub-paragraph (a) does not apply, the occupier or owner of the property who makes the arrangement for the plan is an individual or relevant recipient of credit.
- (2) In the application of this Order to a green deal credit agreement—
- (a) the lender is to be treated as being—
- (i) the green deal provider (within the meaning of Chapter 1 of Part 1 of the Energy Act 2011) for the plan, or
  - (ii) a person who exercises or has the right to exercise the rights and duties of the green deal provider under the plan,
- (b) credit is to be treated as advanced under the agreement of an amount equal to the amount of the improvement costs, and
- (c) the advance of credit is to be treated as made on the completion of the installation of the energy efficiency improvements to the property (but this sub-paragraph is subject to any term of the green deal plan providing that part of the advance is to be treated as made on completion of any part of the installation).
- (3) A reference in a provision of this Order listed in the first column of the table in Schedule 4A to the borrower is, in the application of the provision in relation to a green deal credit agreement, to be read as a reference to—
- (a) a person who at the relevant time falls (or fell) within the description or descriptions specified in the corresponding entry in the second column of the table, or
  - (b) if more than one description is specified and at the relevant time different persons fall (or fell) within the descriptions, each of those persons,
- and except as provided by this paragraph, a person is not and is not to be treated as the borrower in relation to the agreement.
- (4) References in Schedule 4A to the “improver”, “first bill payer”, “current bill payer” and “previous bill payer” are to be read as follows—
- (a) a person is the “improver” if the person—
    - (i) is the owner or occupier of the property, and
    - (ii) is the person who makes (or has made or proposes to make) the arrangement for the green deal plan;
  - (b) a person is the “first bill payer” if the person is liable to pay the energy bills for the property at the time when the green deal plan is commenced;
  - (c) a person is the “current bill payer” if the person is liable by virtue of section 1(6)(a) of the Energy Act 2011 to pay instalments under the plan as a result of being for the time being liable to pay the energy bills for the property;
  - (d) a person is a “previous bill payer” if, as a result of previously falling within sub-paragraph (c) for an earlier period, the person has an outstanding payment liability under the plan in respect of that period.
- (5) In this article—
- “domestic property” means a building or part of a building that is occupied as a dwelling or (if not occupied) is intended to be occupied as a dwelling;
- “energy bill” has the same meaning as in section 1 of the Energy Act 2011;
- “energy efficiency improvements” has the meaning given by section 2(4) of the Energy Act 2011;
- “green deal credit agreement” means a green deal plan that is to be treated as a credit agreement for the purposes of this Order by virtue of paragraph (1);

“improvement costs”, in relation to a green deal plan, are the costs of the energy efficiency improvements to the property which are to be paid by instalments under the plan after the time when credit is to be treated as being advanced by virtue of paragraph (2) (but ignoring any interest or other charges for credit in determining those costs);

“occupier” and “owner” have the same meanings as in Chapter 1 of Part 1 of the Energy Act 2011;

“property”, in relation to a green deal plan, means the property to which the energy efficiency improvements under the plan are or are intended to be made.

(6) For the purposes of this article—

(a) a green deal plan is commenced when—

(i) the occupier or owner of the property signs in the prescribed manner a document in relation to the plan in accordance with section 61(1) of the Consumer Credit Act 1974 (requirements as to form and content of regulated agreements), or

(ii) if the occupier or owner of the property does not sign such a document, the green deal plan is made;

(b) a person is liable to pay the energy bills for a property at any time if the person would be treated as the bill payer for the property at that time for the purposes of Chapter 1 of Part 1 of the Energy Act 2011 (see section 2(3) and (10)).]

#### **Textual Amendments**

**F51** [Art. 60LB](#) inserted (E.W.S.) (15.7.2014) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Green Deal\) \(Amendment\) Order 2014 \(S.I. 2014/1850\)](#), arts. 1(2), **10** (with art. 1(3))

#### **Total charge for credit**

**60M.**—(1) The FCA may make rules specifying how the total charge for credit to the borrower under a credit agreement is to be determined for the purposes of this Chapter.

(2) Rules made under paragraph (1) may in particular—

(a) specify how the total charge for credit to a person who is, or is to become, the borrower under a credit agreement is to be determined;

(b) specify what items are to be included in determining the total charge for credit and how the value of those items is to be determined;

(c) specify the method of calculating the rate of the total charge for credit;

(d) provide for the whole or part of the amount payable by the borrower or a relative of the borrower under a linked transaction (within the meaning given by article 60E(8)) to be included in the total charge for credit, whether or not the lender is a party to the transaction or derives a benefit from it.]

**Status:**

Point in time view as at 20/04/2015.

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