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STATUTORY INSTRUMENTS

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**2016 No. 392**

**The Financial Services and Markets Act 2000  
(Regulated Activities) (Amendment) Order 2016**

**PART 2**

**Amendment of the Financial Services and Markets  
Act 2000 (Regulated Activities) Order 2001**

**Amendment of the Financial Services and Markets Act 2000 (Regulated Activities) Order  
2001**

**2.—**(1) The Regulated Activities Order is amended as follows.

(2) In article 3(1) (interpretation)(1)—

- (a) in the definition of “borrower”, in paragraph (b) for “is to be read with article 36H(4)” substitute “has the meaning given by article 36H”; and
- (b) in the definition of “lender”, in paragraph (b) for “is to be read with article 36H(4)” substitute “has the meaning given by article 36H”.

(3) In article 4 (specified activities: general)(2), in paragraph (4B)(b) after “mortgage intermediary” insert “in respect of an agreement entered into, or to be entered into, on or after 21st March 2016”.

(4) In article 25A (arranging regulated mortgage contracts)(3)—

- (a) in paragraph (1)(b)—
  - (i) after “regulated mortgage contract” insert “falling within paragraph (1A)”; and
  - (ii) omit “after the coming into force of article 61”;
- (b) after paragraph (1) insert—

“(1A) A regulated mortgage contract falls within this paragraph if—

  - (a) the contract was entered into on or after 31st October 2004; or
  - (b) the contract—
    - (i) was entered into before 31st October 2004; and
    - (ii) was a regulated credit agreement immediately before 21st March 2016.”.

(5) In article 36H (operating an electronic system in relation to lending)(4)—

- (a) in paragraph (2A) for “interest and capital” in sub-paragraphs (a) and (b) substitute “either interest or capital or both”;
- (b) after paragraph (2C) insert—

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(1) Article 3(1) was amended by [S.I. 2013/1881](#). There are other amendments, but none is relevant here.

(2) In article 4, paragraph (4B) was inserted by [S.I. 2015/910](#). There are other amendments to article 4 but none is relevant here.

(3) Article 25A was inserted by [S.I. 2003/1475](#) and amended by [S.I. 2015/910](#).

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

- “(2D) Where A carries on an activity of the kind specified in paragraph (1), it is a specified kind of activity for A to operate an electronic system where—
- (a) that system enables A to facilitate a person (“B”) assuming the rights of the lender under an article 36H agreement by assignment or operation of law, and
  - (b) the conditions in paragraphs (2), (2A) and (2C) are satisfied where C is the borrower under the agreement in sub-paragraph (a).”;
- (c) in paragraph (3)—
- (i) after “paragraph (1)” insert “or (2D)”;
  - (ii) in sub-paragraph (a)—
    - (aa) for “B and C” substitute “either B or C”; and
    - (bb) after “B becoming the lender under the article 36H agreement” for “and” substitute “or”;
  - (iii) in sub-paragraph (d), for “performing duties, or exercising or enforcing” substitute “taking steps to perform duties, or exercise or enforce”;
  - (iv) at the beginning of sub-paragraphs (e), (f), (g) and (h), insert “taking steps with a view to”;
  - (v) delete “or” at the end of sub-paragraph (g); and
  - (vi) in sub-paragraph (h)(ii) after “person” insert—
    - “, or
    - (i) giving advice in relation to the taking of any of the steps in sub-paragraphs (e) to (h)”;
- (d) for paragraph (4) substitute—
- “(4) An “article 36H agreement” is an agreement by which one person provides another person with credit and in relation to which—
- (a) the condition in paragraph (4A) is satisfied, and
  - (b) the condition in either paragraph (5) or (6) is satisfied, or was satisfied at the time the agreement was entered into.
- (4A) The condition in this paragraph is that A does not provide credit, assume the rights (by assignment or operation of law) of a person who provided credit, or receive credit under the agreement.”;
- (e) for paragraph (9) substitute—
- “(9) In this article—
- “assignment”, in relation to Scotland, means assignation;
  - “borrower” means a person who receives credit under an article 36H agreement or a person to whom the rights and duties of a borrower under such an agreement have passed by assignment or operation of law;
  - “credit” has the meaning given by article 60L;
  - “lender” means—
    - (a) a person providing credit under an article 36H agreement, or
    - (b) a person who by assignment or operation of law has assumed the rights of a person who provided credit under such an agreement;
  - “relevant person” 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.”; and
  - (f) in paragraph (10), for “has” substitute “have”.
- (6) In article 53 (advising on investments)(5)—
- (a) the existing text becomes paragraph (1); and
  - (b) after paragraph (1), insert—
    - “(2) Advising a person is a specified kind of activity if the advice is—
      - (a) given to the person in that person’s capacity as a lender or potential lender under a relevant article 36H agreement, or in that person’s capacity as an agent for a lender or potential lender under such an agreement; and
      - (b) advice on the merits of that person doing any of the following (whether as principal or agent)—
        - (i) entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law,
        - (ii) providing instructions to an operator with a view to entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law, where the instructions involve—
          - (aa) accepting particular parameters for the terms of the agreement presented by an operator,
          - (bb) choosing between options governing the parameters of the terms of the agreement presented by an operator, or
          - (cc) specifying the parameters of the terms of the agreement by other means,
        - (iii) enforcing or exercising the lender’s rights under a relevant article 36H agreement, or
        - (iv) assigning rights under a relevant article 36H agreement.
- (3) Paragraph (2) does not apply in so far as—
  - (a) the advice is given in relation to a relevant article 36H agreement which has been facilitated by the person giving the advice, in the course of carrying on an activity of a kind specified by article 36H and is given by—
    - (i) an authorised person with permission to carry on a regulated activity of the kind specified by article 36H(1) (operating an electronic system in relation to lending),
    - (ii) an appointed representative in relation to that activity,
    - (iii) an exempt person in relation to that activity, or
    - (iv) a person to whom, as a result of Part 20 of the Act, the general prohibition does not apply in relation to that activity;

- (b) the advice is given in the course of carrying on an activity of a kind specified by article 39F(6) (debt-collecting) by a person carrying on that activity not in contravention of the general prohibition; or
- (c) the advice is given in the course of carrying on an activity of a kind specified by article 39G(7) (debt administration) by a person carrying on that activity not in contravention of the general prohibition.
- (4) In this article—
- “operator” means a person carrying on an activity of the kind specified by article 36H(1) or (2D), and
- “relevant article 36H agreement” means an article 36H agreement (within the meaning of article 36H (operating an electronic system in relation to lending)) which has been, or may be, entered into with the facilitation of a person carrying on an activity of the kind specified by article 36H(1) or (2D).
- (5) For the purposes of the application of section 22(1) of the Act (regulated activities) to an activity of a kind specified by paragraph (2) of this article, article 88D(8) (credit agreement), and article 73 (investments: general) in so far as it relates to that article, have effect as if the reference to a credit agreement in article 88D includes a reference to a relevant article 36H agreement.”.
- (7) In article 53A (advising on regulated mortgage contracts)(9)—
- (a) in paragraph (1)(b)(ii)—
- (i) after “regulated mortgage contract” insert “falling within paragraph (1A)”;
- (ii) omit “after the coming into force of article 61”;
- (b) after paragraph (1) insert—
- “(1A) A regulated mortgage contract falls within this paragraph if—
- (a) the contract was entered into on or after 31st October 2004; or
- (b) the contract—
- (i) was entered into before 31st October 2004; and
- (ii) was a regulated credit agreement immediately before 21st March 2016.”.
- (8) In article 53DA (advising on regulated credit agreements for the acquisition of land)(10), in paragraph (1)(c) after “regulated credit agreements” insert “entered into, or to be entered into, on or after 21st March 2016”.
- (9) In article 54 (advice given in newspapers etc)(11), in paragraph (1)(b) after paragraph (i) insert—
- “(ia) to enter into a relevant article 36H agreement (within the meaning of that article) as a lender, to assume the rights of a lender under such an agreement by assignment or operation of law, or to assign rights under such an agreement.”.
- (10) In article 60B (regulated credit agreements)(12), in paragraph (3)—
- (a) for the definition of “regulated credit agreement” substitute—
- ““regulated credit agreement” means—

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(6) Article 39F was inserted by [S.I. 2013/1881](#).

(7) Article 39G was inserted by [S.I. 2013/1881](#).

(8) Article 88D was inserted by [S.I. 2013/1881](#).

(9) Article 53A was inserted by [S.I. 2003/1475](#).

(10) Article 53DA was inserted by [S.I. 2015/910](#).

(11) Article 54 was amended by [S.I. 2003/1475](#). There are other amendments, but none is relevant here.

(12) Article 60B was inserted by [S.I. 2013/1881](#) and amended by [S.I. 2014/1850](#) and [S.I. 2015/853](#).

- (a) in the case of an agreement entered into on or after 1st April 2014, any credit agreement which is not an exempt agreement; or
- (b) in the case of an agreement entered into before 1st April 2014, a credit agreement which—
  - (i) was a regulated agreement within the meaning of section 189(1) of the Consumer Credit Act 1974(13) when the agreement was entered into; or
  - (ii) became such a regulated agreement after being varied or supplemented by another agreement before 1st April 2014.”;
- (b) in the definition of “regulated credit agreement” (as substituted by sub-paragraph (a)), in sub-paragraph (b) for “1st April 2014” at the end of paragraph (ii) substitute—

“1st April 2014,  
and would not be an exempt agreement pursuant to article 60C(2) on 21st March 2016 if the agreement were entered into on that date.”.
- (11) In article 60C(2) (exempt agreements: exemption relating to the nature of the agreement)(14), in sub-paragraph (c) omit “in the case of an agreement entered into before 31st October 2004,”.
- (12) In article 60D(4) (exempt agreements: exemptions relating to the purchase of land for non-residential purposes)(15) after “of the type described in Article 3(1)(b) of the mortgages directive(16)” insert “that is entered into on or after 21st March 2016 and does not meet the conditions in paragraphs (i) to (iii) of article 61(3)(a) (regulated mortgage contracts)”.
- (13) In article 60E(7) (exempt agreements: exemptions relating to the nature of the lender)(17), in the definition of “housing authority”—
  - (a) in paragraph (a) after “wholly owned subsidiary of the Welsh Ministers,” insert “a registered social landlord within the meaning of Part 1 of the Housing Act 1996(18),”; and
  - (b) in paragraph (c) after “Northern Ireland Housing Executive” insert “or a housing association within the meaning of Part 2 of the Housing (Northern Ireland) Order 1992(19)”.
- (14) In article 60G (exempt agreements: exemptions relating to the total charge for credit)(20)—
  - (a) in paragraph (2A)—
    - (i) omit “or” after sub-paragraph (a); and
    - (ii) , after sub-paragraph (b) insert—

“; or
    - (c) the agreement was entered into before 21st March 2016.”; and
  - (b) in paragraph (8) after “mortgages directive” insert “which is entered into on or after 21st March 2016”.

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(13) 1974 c. 39. The definition of “regulated agreement” was substituted by S.I. 2013/1881.

(14) Article 60C was inserted by S.I. 2013/1881; paragraph (2) was amended by S.I. 2015/910 and S.I. 2015/1863.

(15) Article 60D was inserted by S.I. 2013/1881; paragraph (4) was inserted by S.I. 2015/910.

(16) “The mortgages directive” is defined in paragraph 4E of Schedule 3 to the Financial Services and Markets Act 2000 as Directive 2014/17/EU of the European Parliament and of the Council of 4th February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p.34).

(17) Article 60E was inserted by S.I. 2013/1881; the definition of “housing authority” in paragraph (7) was amended by S.I. 2014/1740.

(18) 1996 c. 52.

(19) S.I. 1992/1725 (N.I. 15).

(20) Article 60G was inserted by S.I. 2013/1881; paragraphs (2A) and (8) were inserted by S.I. 2015/910.

(15) In article 60H (exempt agreements: exemptions relating to the nature of the borrower)(**21**), in paragraph (1)(b)(ii) after “exceeds £60,260 and” insert “, if entered into on or after 21st March 2016.”.

(16) In article 60HA (exempt agreements: exemptions not permitted under the mortgages directive)(**22**), in paragraph (1) after “credit agreement” insert “entered into on or after 21st March 2016”.

(17) In article 60N (regulated consumer hire agreements)(**23**), in paragraph (3) for the definition of “regulated consumer hire agreement” substitute—

““regulated consumer hire agreement” means—

- (a) in the case of an agreement entered into on or after 1st April 2014, any consumer hire agreement which is not an exempt agreement; or
- (b) in the case of an agreement entered into before 1st April 2014, a consumer hire agreement which—
  - (i) was a regulated agreement within the meaning of section 189(1) of the Consumer Credit Act 1974 when the agreement was entered into; or
  - (ii) became such a regulated agreement after being varied or supplemented by another agreement before 1st April 2014.”.

(18) In article 61 (regulated mortgage contracts)(**24**),—

(a) in paragraph (3)(a), before “a contract is a “regulated mortgage contract”” insert “subject to paragraph (5),”; and

(b) after paragraph (4) insert—

“(5) In this Chapter, a contract entered into before 21st March 2016 is a “regulated mortgage contract” only if—

- (a) at the time it was entered into, entering into the contract was an activity of the kind specified by paragraph (1), or
- (b) the contract is a consumer credit back book mortgage contract within the meaning of article 2 of the Mortgage Credit Directive Order 2015(**25**).”.

(19) In article 61A (mortgage contracts which are not regulated mortgage contracts)(**26**)—

(a) in paragraph (1)—

- (i) omit “or” after sub-paragraph (e); and
- (ii) after sub-paragraph (f) insert—

“; or

(g) an exempt housing authority loan.”;

(b) in paragraph (6), after the definition of “exempt equitable mortgage bridging loan” insert—

““exempt housing authority loan” is a contract that—

- (a) provides for credit to be granted by a housing authority within the meaning of article 60E (exempt agreements: exemptions relating to the nature of the lender); and
- (b) if it is entered into on or after 21st March 2016—

(21) Article 60H was inserted by [S.I. 2013/1881](#) and amended by [S.I. 2015/910](#).

(22) Article 60HA was inserted by [S.I. 2015/910](#).

(23) Article 60N was inserted by [S.I. 2013/1881](#) and amended by [S.I. 2014/366](#).

(24) In article 61(3), sub-paragraph (a) was substituted by [S.I. 2001/3544](#) and amended by [S.I. 2006/2383](#) and [2015/910](#).

(25) [S.I. 2015/910](#). The definition of “consumer credit back book mortgage contract” was amended by [S.I. 2015/1557](#) and is amended by article 8 of this Order.

(26) Article 61A was inserted by [S.I. 2015/910](#) and amended by [S.I. 2015/1863](#).

- (i) is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive,
  - (ii) is a bridging loan, or
  - (iii) is a restricted public loan within the meaning of article 60HA (exempt agreements: exemptions not permitted under the mortgages directive), in respect of which the borrower receives timely information on the main features, risks and costs at the pre-contractual stage, and any advertising is fair, clear and not misleading.”.
- (20) In article 72G (local authorities)**(27)**—
  - (a) in paragraph (3B)—
    - (i) after “contract” omit “is”; and
    - (ii) for sub-paragraphs (a) to (c) substitute—
      - “(a) was entered into before 21st March 2016; or
      - (b) is entered into on or after 21st March 2016 and—
        - (i) is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;
        - (ii) is a bridging loan; or
        - (iii) is a restricted public loan in relation to which the requirements of paragraph (6) are met.”;
  - (b) in paragraph (4)—
    - (i) for sub-paragraph (a) substitute—
      - “(a) any activity which is carried on by a local authority—
        - (i) in relation to a credit agreement which was entered into before 21st March 2016, or which is entered into on or after that date for a purpose other than acquiring or retaining property rights in land or in an existing or projected building; and
        - (ii) in so far as the activity is carried on in relation to a credit agreement of a kind to which the consumer credit directive does not apply by virtue of Article 2(2) of that directive;”;
      - (ii) in sub-paragraph (b) after “local authority” insert “in relation to a credit agreement entered into on or after 21st March 2016”.
- (21) In article 72I (registered consumer buy-to-let mortgage firms)**(28)**, in paragraph (1) after “consumer buy-to-let mortgage business” insert “which relates to an agreement entered into on or after 21st March 2016 and is”.

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**(27)** Article 72G was inserted by [S.I. 2014/366](#) and amended by [S.I. 2015/910](#).

**(28)** Article 72I was inserted by [S.I. 2015/910](#).