
DRAFT STATUTORY INSTRUMENTS

2016 No.

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

PART 3

Amendment of other legislation

**Amendment of the Financial Services and Markets Act 2000 (Appointed Representatives)
Regulations 2001**

5.—(1) Regulation 3 of the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001⁽¹⁾ (requirements applying to contracts between authorised persons and appointed representatives) is amended as follows.

(2) In paragraph (2)(c) for “53” substitute “53(1)”.

(3) In paragraph (3CA)—

(a) in sub-paragraph (a) delete “(within the meaning of article 36H(4) of the Regulated Activities Order)”;

(b) after sub-paragraph (a) insert—

“(aa) facilitates a person assuming the rights of the lender under an article 36H agreement by assignment or operation of law on behalf of other counterparties;”;

(c) in sub-paragraph (b), for “sub-paragraph (a)” substitute “sub-paragraph (a) or (aa)”;

(d) after sub-paragraph (b) insert—

“(c) gives advice (in circumstances constituting the carrying on of activity of the kind specified by article 53(2) of that Order) on the merits of—

(i) a person 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) a person 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,

⁽¹⁾ [S.I. 2001/1217](#). Paragraph (3CA) was inserted by [S.I. 2014/206](#). There are other amendments, but none is relevant here.

(iii) a person enforcing or exercising the lender’s rights under a relevant article 36H agreement, or

(iv) a person assigning rights under a relevant article 36H agreement, on behalf of other counterparties.”.

(4) After paragraph (3CA) insert—

“(3CB) In paragraph (3CA)—

“article 36H agreement” has the meaning given by article 36H of the Regulated Activities Order,

“lender” has the meaning given by article 36H of the Regulated Activities Order,

“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 which has been, or is to be, entered into with the facilitation of a person carrying on a regulated activity of the kind specified by article 36H(1) or (2D) not in contravention of the general prohibition.”.