
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes legislative amendments relating to the regulation of activities connected with lending, and in particular amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ([S.I. 2001/544](#)) (“the Regulated Activities Order”). Some amendments relate to the regulated activity of operating an electronic system in relation to lending. Other amendments relate to the regulated activities connected with regulated credit agreements and regulated mortgage contracts.

Some provisions of this Order supplement the Mortgage Credit Directive Order 2015 ([S.I. 2015/910](#)) (“the Mortgages Order”) and other legislation amended by that Order, which transposed in part [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 (“the mortgages directive”) (OJ L 60, 28.2.2014, p.34). A transposition note setting out how the mortgages directive has been transposed into UK law was appended to the Explanatory Memorandum for the 2015 Order and is available on the [legislation.gov.uk](#) website.

Part 2 of the Order amends the Regulated Activities Order as follows:

— Article 2(4) and (7) extend the scope of the regulated activities of arranging and advising on regulated mortgage contracts so that mortgages entered into before 31st October 2004 and which are regulated as consumer credit agreements before 21st March 2016 are included within the activities from that date. In Part 3 of the Order, article 8(6) provides for first charge mortgages of that type to continue to be regulated as consumer credit agreements during a transitional period.

— Article 2(5) amends the regulated activity of operating an electronic system in relation to lending so that, first, such activity is carried on regardless of whether the person operating the system (or a person acting on instructions) collects only the interest or capital due under the agreement or both and, second, where a person is carrying on that activity, facilitating another person transferring their rights under an agreement to a third person is also a regulated activity. Article 2(5) also aligns related regulated activities with the regulated activities relating to the provision of credit information services, and article 2(2) and (5) make amendments to definitions.

— Article 2(6) amends the regulated activity of advising on investments such that the activity includes: (a) giving advice to a lender or potential lender on the merits of entering into, or assuming rights under, a relevant agreement through an electronic system; (b) providing instructions to the operator of such a system; (c) enforcing or exercising such a lender’s rights; and (d) assigning rights under such an agreement.

— Article 2(10) and (17) clarify the regulatory position of a consumer credit or consumer hire agreement entered into before 1st April 2014 such that it is clear that the regulatory position is determined primarily by reference to the position when the agreement was entered into.

— Article 2(13) extends the exemption from regulation as a consumer credit agreement for mortgage lending by housing authorities such that lending by housing associations in Wales and Northern Ireland from 1st April 2014 is included within the exemption.

— Article 2(18) supplements the definition of “regulated mortgage contract” such that agreements entered into before 21st March 2016 will only be regulated mortgage contracts if they were regulated as such when entered into, or if they were regulated credit agreements which are becoming regulated

mortgage contracts pursuant to the Mortgages Order. This replicates part of the effect of article 28 of the Mortgages Order, which is amended by article 8(4) in Part 3 of this Order.

— Article 2(19) exempts mortgage lending by housing authorities from being regulated as a regulated mortgage contract after 21st March 2016, to the extent that such exemption is compatible with the mortgages directive.

— The other provisions of Part 2 are consequential on the amendments in articles 2(18) and 8(4).

Part 3 of the Order contains the provisions at articles 8(4) and (6) mentioned above, other amendments to legislation in consequence of the amendments to the Regulated Activities Order made by Part 2, and other minor amendments to the Mortgages Order at article 8(2)(a) and (5).

Part 4 of the Order amends the Small and Medium Sized Business (Finance Platforms) Regulations 2015 (S.I. 2015/1946) so that the obligation of a designated bank to refer an unsuccessful finance application by a small or medium sized business to a designated finance platform does not apply where the application was made on behalf of the business by a broker.

Part 5 of the Order makes transitional provision relating to the amendments in article 2(5) and (6).

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.