



Courts and Legal Services Act 1990

1990 CHAPTER 41

PART VI

MISCELLANEOUS AND SUPPLEMENTAL

PROSPECTIVE

Tying-in

104 Tying-in arrangements in connection with residential property loans.

- (1) In this section and sections 105 and 106 “residential property loan” means any loan which—
 - (a) is secured on land in the United Kingdom; and
 - (b) is made to an individual in respect of the acquisition of land which is for his residential use or the residential use of a dependant of his.
- (2) No person (“the lender”) shall provide a residential property loan together with one or more controlled services to another person (“the borrower”) unless the conditions mentioned in subsection (3) are complied with before a relevant step is taken with respect to any of those services or the loan.
- (3) The conditions are that the lender—
 - (a) informs the borrower by notice that the residential property loan, and each of the controlled services in question, are separate services;
 - (b) informs the borrower by notice whether the terms and conditions of the residential property loan will be capable of being varied by the lender after it is made;
 - (c) provides the borrower with a statement of—
 - (i) the price which will be payable by the borrower for each of the controlled services if they are all provided in accordance with the terms proposed by the lender; and

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- (ii) the extent to which (if at all) the terms and conditions of the residential property loan would differ if it were to be provided by the lender without the controlled services in question being provided by the lender; and
 - (d) informs the borrower by notice that, if the borrower declines to take from the lender any of the controlled services in question, the lender will not on that account refuse to provide the residential property loan.
- (4) A person who—
- (a) in the course of his business provides, or makes arrangements for the provision of, controlled services together with residential property loans; and
 - (b) advertises or in any other manner promotes—
 - (i) the provision of any controlled service or any residential property loan; or
 - (ii) the making by him of any such arrangements,
- shall comply with such requirements as to the information to be given, or which may not be given, in any such advertisement or promotion as the Secretary of State may by regulations impose.

105 Tying-in arrangements: supplemental provisions.

- (1) In section 104, this section and section 106 “controlled services” means any services of a description prescribed by order made by the Secretary of State.
- (2) The order may, in particular, prescribe any description of—
 - (a) banking, insurance, investment, trusteeship, executorship or other financial services;
 - (b) services relating to the acquisition, valuation, surveying or disposal of property;
 - (c) conveyancing services; or
 - (d) removal services.
- (3) For the purposes of section 104(1), the Secretary of State may by order specify—
 - (a) the circumstances in which land is to be treated as being for a person’s residential use; and
 - (b) who are to be treated as a person’s dependants.
- (4) Section 104(2) shall not apply in relation to the provision of a controlled service if the lender proves—
 - (a) that the provision of that service was not connected with the transaction in respect of which the borrower required the residential property loan in question; or
 - (b) where it was so connected, that the lender did not know, and had no reasonable cause to know, that it was.
- (5) For the purposes of section 104, this section and section 106—
 - (a) where the lender is a member of a group of companies, the lender and all the other members of the group shall be treated as one; and
 - (b) where the lender derives any financial benefit from the provision of a controlled service by any other person, the lender shall be treated as providing that service.

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- (6) In subsection (5), “a group of companies” means a holding company and its subsidiaries within the meaning of ^[F1]section 1159 of the Companies Act 2006].
- (7) The Secretary of State may by order provide that, in such cases or for such purposes as may be prescribed by the order, paragraph (a) or (b) of subsection (5) shall not have effect.
- (8) For the purposes of section 104—
- “notice” means a notice in writing given in the form prescribed by regulations made by the Secretary of State;
- “price” shall have the meaning given by order made by the Secretary of State;
- “relevant step”, in relation to any controlled service or residential property loan, means such step as may be prescribed by order made by the Secretary of State in relation to that service or loan (taken by such person as may be so prescribed); and
- “statement” means a statement in writing given in the form prescribed by regulations made by the Secretary of State.
- (9) In relation to land in Scotland—
- (a) “conveyancing services” has the same meaning as in the ^{M1}Law Reform (Miscellaneous Provisions) (Scotland) Act 1990; and
- (b) the reference in section 104(1) to a loan being secured on land shall be read as a reference to its being secured over land by a standard security.
- (10) Before making any order or regulations under section 104 or this section the Secretary of State shall consult the ^[F2]FCA and such other persons as he considers appropriate.

Textual Amendments

- F1** Words in s. 105(6) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), arts. 1(2), 2(1), [Sch. 1 para. 118](#) (with art. 10)
- F2** Word in s. 105(10) 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), [Sch. para. 2\(2\)](#)

Marginal Citations

- M1** 1990 c. 40.

106 Tying-in: offences.

- (1) If any person contravenes section 104(2) or (4) he shall be guilty of an offence.
- (2) Subsection (3) applies where—
- (a) a person (“the lender”) has, in relation to the proposed provision to any person (“the borrower”) of a residential property loan together with one or more controlled services, complied with the conditions mentioned in section 104(3); and
- (b) the borrower has declined to take from the lender one or more of the controlled services.

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- (3) The lender shall be guilty of an offence if he refuses to provide the borrower with the residential property loan or refuses to provide it to him—
 - (a) on the terms applicable if it were provided together with the controlled services; or
 - (b) where they differ, on terms which are compatible with the statement required by section 104(3)(c)(ii),
 unless he proves that his reason for so refusing was unconnected with the borrower's having declined as mentioned in subsection (2)(b).
- (4) Any person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum; and
 - (b) on conviction on indictment, to a fine.
- (5) Subsection (6) applies where an offence under this section is committed by a body corporate.
- (6) If the offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—
 - (a) any director, secretary or other similar officer of the body corporate; or
 - (b) any person who was purporting to act in any such capacity,
 he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (7) The fact that a person has committed an offence under this section in connection with any agreement shall not make the agreement void, or unenforceable (whether as a whole or in part) or otherwise affect its validity or give rise to any cause of action for breach of statutory duty.

107 Tying-in: enforcement.

- (1) Every local weights and measures authority ("an authority") and the [F³FCA] shall have the duty of enforcing sections 104 to 106 and any regulations made under them.
- (2) Nothing in subsection (1) is to be taken as authorising a local weights and measures authority in Scotland to institute proceedings for an offence.
- (3) Where an authority propose to institute proceedings for an offence under section 106 they shall give the [F³FCA] notice of the intended proceedings together with a summary of the facts on which the charges are to be founded.
- (4) Where an authority are under a duty to give such a notice and summary they shall not institute the proceedings until—
 - (a) the end of the period of 28 days beginning with the date on which they gave the required notice and summary; or
 - (b) if earlier, the date on which the [F³FCA] notifies them of receipt of the notice and summary.
- (5) Every authority shall, whenever the [F³FCA] requires, report to [F⁴;it] in such form and with such particulars as [F⁴;it] requires on the exercise of their functions under this section.

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- (6) A duly authorised officer of the [F³FCA] or of an authority (“an authorised officer”) who has reasonable cause to suspect that an offence may have been committed under section 106 may, at any reasonable time—
- (a) enter any premises which are not used solely as a dwelling;
 - (b) require any officer, agent or other competent person on the premises who is, or may be, in possession of information relevant to an investigation in connection with the provision made by section 104 or 105 to provide such information;
 - (c) require the production of any document which may be relevant to such an investigation;
 - (d) take copies, or extracts, of any such documents;
 - (e) seize and retain any document which he has reason to believe may be required as evidence in proceedings for an offence under section 106.
- (7) Any authorised officer exercising any power given by subsection (6) shall, if asked to do so, produce evidence that he is such an officer.
- (8) A justice of the peace may issue a warrant under this section if satisfied, on information on oath given by an authorised officer, that there is reasonable cause to believe that an offence may have been committed under section 106 and that—
- (a) entry to the premises concerned, or production of any documents which may be relevant to an investigation in connection with the provision made by section 104 or 105, has been or is likely to be refused to the authorised officer; or
 - (b) there is reasonable cause to believe that, if production of any such document were to be required by the authorised officer without a warrant having been issued under this section, the document would not be produced but would be removed from the premises or hidden, tampered with or destroyed.
- (9) In the application of this section to Scotland, “justice of the peace” includes a sheriff and “information on oath” shall be read as “evidence on oath”.
- (10) A warrant issued under this section shall authorise the authorised officer (accompanied, where he considers it appropriate, by a constable or any other person) —
- (a) to enter the premises specified in the information, using such force as is reasonably necessary; and
 - (b) to exercise any of the powers given to the authorised officer by subsection (6).
- (11) If a person—
- (a) intentionally obstructs an authorised officer in the exercise of any power under this section;
 - (b) intentionally fails to comply with any requirement properly imposed on him by an authorised officer in the exercise of any such power;
 - (c) fails, without reasonable excuse, to give to an authorised officer any assistance or information which he may reasonably require of him for the purpose of exercising any such power; or
 - (d) in giving to an authorised officer any information which he has been required to give to an authorised officer exercising any such power, makes any statement which he knows to be false or misleading in a material particular,
- he shall be guilty of an offence.

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- (12) A person guilty of an offence under subsection (11)(a), (b) or (c) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (13) A person guilty of an offence under subsection (11)(d) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (14) Nothing in this section shall be taken to require any person to answer any question put to him by an authorised officer, or to give any information to an authorised officer, if to do so might incriminate him.
- (15) In this section “document” includes information recorded in any form.
- (16) In relation to information recorded otherwise than in legible form, references in this section to its production include references to producing a copy of the information in legible form.
- [^{F5}(17) The functions of the FCA under this section are to be treated for the purposes of the Financial Services and Markets Act 2000 as functions conferred on the FCA by or under that Act.]

Textual Amendments

- F3** Word in s. 107 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), **Sch. para. 2(3)(a)**
- F4** Words in s. 107(5) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(8)(b); S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F5** S. 107(17) 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), **Sch. para. 2(3)(b)**

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