

## 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

##### [<sup>F1</sup>Supplemental

#### 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

#### 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>F2</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—

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- (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>F3</sup>“credit agreement” has the meaning given by article 60B;]

[<sup>F3</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;
- (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>F4</sup>or equitable] mortgage” includes [<sup>F5</sup>a legal or equitable] charge and, in Scotland, a heritable security;

“lender” means [<sup>F6</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

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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.

[  
F7(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” [F8 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” [F9 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.

(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.

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(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.

[  
F10(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

- F2** 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))
- F3** 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))
- F4** 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)**
- F5** 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)**
- F6** 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))
- F7** 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))
- F8** 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)**

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- F9** 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)**
- F10** 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>F11</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>F12</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

- F11** 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)**
- F12** 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>F13</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
- (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);

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“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

**F13** 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.]



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