

*Status: Point in time view as at 22/04/2021.*

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## STATUTORY INSTRUMENTS

# 2001 No. 544

## The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

### PART II

#### SPECIFIED ACTIVITIES

#### [<sup>F1</sup>CHAPTER 6B

#### OPERATING AN ELECTRONIC SYSTEM IN RELATION TO LENDING

#### Textual Amendments

**F1** Pt. II Ch. 6A, 6B 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), 4

#### *The activity*

#### **Operating an electronic system in relation to lending**

**36H.**—(1) Where the [<sup>F2</sup>conditions in paragraphs (2), (2A) and (2C) are] satisfied, operating an electronic system which enables the operator (“A”) to facilitate persons (“B” and “C”) becoming the lender and borrower under an article 36H agreement is a specified kind of activity.

(2) The condition [<sup>F3</sup>in this paragraph] is that the system operated by A is capable of determining which agreements should be made available to each of B and C (whether in accordance with general instructions provided to A by B or C or otherwise).

[<sup>F4</sup>(2A) The condition in this paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to—

- (a) receive payments in respect of [<sup>F5</sup>either interest or capital or both] due under the article 36H agreement from C, and
- (b) make payments in respect of [<sup>F6</sup>either interest or capital or both] due under the article 36H agreement to B.

(2B) For the purposes of paragraph (2A)—

- (a) an agreement by A to appoint X to perform the activities in that paragraph is to be treated as an undertaking by A within the meaning of that paragraph;
- (b) it is immaterial that—
  - (i) payments may be subject to conditions;

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(ii) A, or X, may be entitled to retain a portion or the entirety of any payment received from C.

(2C) The condition in this paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to perform, or A undertakes to appoint or direct another person to perform either or both of the following activities—

- (a) taking steps to procure the payment of a debt under the article 36H agreement;
- (b) exercising or enforcing rights under the article 36H agreement on behalf of B.]

[<sup>F7</sup>(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).]

(3) The following are specified kinds of activities if carried on by A in the course of, or in connection with, the carrying on by A of the activity specified by paragraph (1) [<sup>F8</sup>or (2D)]—

- (a) presenting or offering article 36H agreements to [<sup>F9</sup>either B or C] with a view to B becoming the lender under the article 36H agreement [<sup>F10</sup>or] C becoming the borrower under the article 36H agreement,
- (b) furnishing information relevant to the financial standing of a person (“Y”) with a view to assisting in the determination as to whether another person should—
  - (i) enter into, as the lender, an article 36H agreement with Y, or
  - (ii) assume the rights of the lender under an article 36H agreement under which Y is the borrower,
- (c) taking steps to procure the payment of a debt due under an article 36H agreement,
- (d) [<sup>F11</sup>taking steps to perform duties, or exercise or enforce] rights under an article 36H agreement on behalf of the lender,
- (e) [<sup>F12</sup>taking steps with a view to] ascertaining whether a credit information agency (within the meaning given by article 89A(6)) holds information relevant to the financial standing of an individual or relevant person,
- (f) [<sup>F13</sup>taking steps with a view to] ascertaining the contents of such information,
- (g) [<sup>F14</sup>taking steps with a view to] securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information, <sup>F15</sup>...
- (h) [<sup>F16</sup>taking steps with a view to] securing that a credit information agency which holds such information—
  - (i) stops holding the information, or
  - (ii) does not provide it to any other person [<sup>F17</sup>, or
- (i) giving advice in relation to the taking of any of the steps in sub-paragraphs (e) to (h)].

[<sup>F18</sup>(4) [<sup>F19</sup>Subject to article 60C(4C),] 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.]

(5) The condition in this paragraph is that the lender is an individual or relevant person.

(6) The condition in this paragraph is that the borrower is an individual or relevant person and—

(a) the lender provides the borrower with credit less than or equal to £25,000, or

(b) the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(7) Paragraphs (5) and (6) of article 60C (exempt agreements: exemptions relating to the nature of the agreement) apply for the purposes of paragraph (6)(b).

(8) It is immaterial for the purposes of this article whether the lender is carrying on a regulated activity.

[<sup>F20</sup>(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.]

[<sup>F21</sup>(10) For the purposes of the application of section 22(1) of the Act (regulated activities) to an activity of a kind specified by this article, article 88D (credit agreement), and article 73 (investments: general) in so far as it relates to that article, [<sup>F22</sup>have] effect as if the reference to a credit agreement in article 88D includes a reference to an article 36H agreement.]

#### Textual Amendments

**F2** Words in art. 36H(1) substituted (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(9)(a)**

**F3** Words in art. 36H(2) 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(9)(b)**

**F4** Arts. 36H(2A)-(2C) 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(9)(c)**

**F5** Words in art. 36H(2A)(a) substituted (17.3.2016) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2016 \(S.I. 2016/392\)](#), art. 1(2)(3)(a), **2(5)(a)** (with Pt. 5)

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- F6** Words in art. 36H(2A)(b) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(a)** (with Pt. 5)
- F7** Art. 36H(2D) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(b)** (with Pt. 5)
- F8** Words in art. 36H(3) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(i)** (with Pt. 5)
- F9** Words in art. 36H(3)(a) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(ii)(aa)** (with Pt. 5)
- F10** Word in art. 36H(3)(a) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(ii)(bb)** (with Pt. 5)
- F11** Words in art. 36H(3)(d) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(iii)** (with Pt. 5)
- F12** Words in art. 36H(3)(e) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(iv)** (with Pt. 5)
- F13** Words in art. 36H(3)(f) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(iv)** (with Pt. 5)
- F14** Words in art. 36H(3)(g) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(iv)** (with Pt. 5)
- F15** Word in art. 36H(3)(g) revoked (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(v)** (with Pt. 5)
- F16** Words in art. 36H(3)(h) inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(iv)** (with Pt. 5)
- F17** Art. 36H(3)(i) and word inserted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(c)(vi)** (with Pt. 5)
- F18** Art. 36H(4)(4A) substituted for art. 36H(4) (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(a), **2(5)(d)** (with Pt. 5)
- F19** Words in art. 36H(4) inserted (4.5.2020) by The Financial Services and Markets Act 2000 (Regulated Activities) (Coronavirus) (Amendment) Order 2020 (S.I. 2020/480), arts. 1(2), **2(2)** (with art. 3)
- F20** Art. 36H(9) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(d), **2(5)(e)** (with Pt. 5)
- F21** Art. 36H(10) 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(9)(d)**
- F22** Word in art. 36H(10) substituted (17.3.2016) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(d), **2(5)(f)** (with Pt. 5)

*Exclusion*

**Information society services**

<sup>F23</sup>**36I.** . . . . .

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#### Textual Amendments

**F23** Art. 36I omitted (31.12.2020) by virtue of [The Electronic Commerce and Solvency 2 \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1361\)](#), regs. 1(2), **5(3)(d)** (as amended by [S.I. 2019/1390](#), regs. 1(2), 6); 2020 c. 1, Sch. 5 para. 1(1)

#### [<sup>F24</sup>Activities in relation to debentures and bonds

**36IA.** There is excluded from article 36H (operating an electronic system in relation to lending) any activity of a kind specified by article 14 (dealing in investments as principal), 25 (arranging deals in investments), 37 (managing investments) or 53 (advising on investments).]

#### Textual Amendments

**F24** Art. 36IA 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(10)**

### Supplemental

#### Meaning of “consumer”

**36J.**—(1) For the purposes of sections 1G, 404E and 425A of the Act (meaning of “consumer”), a person (“C”) is only to be regarded as a person who uses, may use, has, may have used or has or may have contemplated using, services provided by authorised persons in carrying on a regulated activity of the kind specified by article 36H or article 64 in so far as relevant to that activity if—

- (a) C is, may be, has been or may have been the lender under a relevant agreement and is an individual or relevant person, or
- (b) C is, may be, has been or may have been the borrower under a relevant agreement, C is an individual or relevant person and one of the conditions in paragraph (2) is satisfied, or
- (c) C meets the following conditions—
  - (i) C is, was or would be the lender under a relevant agreement, and
  - (ii) C is not, was not or would not be, as a result, carrying on a regulated activity.

(2) The conditions in this paragraph are that—

- (a) the lender provides, provided or would provide the borrower with credit (within the meaning given by article 60L) less than or equal to £25,000, or
- (b) the agreement is not, was not or would not be entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(3) Paragraphs (5) and (6) of article 60C (exempt agreements: exemptions relating to the nature of the agreement) apply for the purposes of paragraph (2)(b).

(4) In paragraph (1)—

“relevant agreement” means an agreement between one person (“the borrower”) and another person (“the lender”) by which the lender provides the borrower with credit (within the meaning given by article 60L);

“relevant person” has the meaning given in article 36H.]

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