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## STATUTORY INSTRUMENTS

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# 2013 No. 1881

## The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013

### PART 2

#### Amendments of the Regulated Activities Order

##### Activities relating to debt

5. After article 39C<sup>MI</sup> (other exclusions relating to claims management on behalf of an insurer etc.) insert—

#### “CHAPTER 7B

#### ACTIVITIES IN RELATION TO DEBT

##### *The activities*

##### Debt adjusting

**39D.**—(1) When carried on in relation to debts due under a credit agreement—

- (a) negotiating with the lender, on behalf of the borrower, terms for the discharge of a debt,
- (b) taking over, in return for payments by the borrower, that person's obligation to discharge a debt, or
- (c) any similar activity concerned with the liquidation of a debt,

is a specified kind of activity.

(2) When carried on in relation to debts due under a consumer hire agreement—

- (a) negotiating with the owner, on behalf of the hirer, terms for the discharge of a debt,
- (b) taking over, in return for payments by the hirer, that person's obligation to discharge a debt, or
- (c) any similar activity concerned with the liquidation of a debt,

is a specified kind of activity.

##### Debt-counselling

**39E.**—(1) Giving advice to a borrower about the liquidation of a debt due under a credit agreement is a specified kind of activity.

(2) Giving advice to a hirer about the liquidation of a debt due under a consumer hire agreement is a specified kind of activity.

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### **Debt-collecting**

**39F.**—(1) Taking steps to procure the payment of a debt due under a credit agreement or a relevant article 36H agreement is a specified kind of activity.

(2) Taking steps to procure the payment of a debt due under a consumer hire agreement is a specified kind of activity.

(3) Paragraph (1) does not apply in so far as the activity is an activity of the kind specified by article 36H (operating an electronic system in relation to lending).

(4) In this article, “relevant article 36H agreement” means an article 36H agreement (within the meaning of article 36H) which has been entered into with the facilitation of an authorised person with permission to carry on a regulated activity of the kind specified by that article.

### **Debt administration**

**39G.**—(1) Subject to paragraph (3), taking steps—

(a) to perform duties under a credit agreement or relevant article 36H agreement on behalf of the lender, or

(b) to exercise or enforce rights under such an agreement on behalf of the lender,  
is a specified kind of activity

(2) Subject to paragraph (3), taking steps—

(a) to perform duties under a consumer hire agreement on behalf of the owner, or

(b) to exercise or enforce rights under such an agreement on behalf of the owner,  
is a specified kind of activity.

(3) Paragraphs (1) and (2) do not apply in so far as the activity is an activity of the kind specified by article 36H (operating an electronic system in relation to lending) or article 39F (debt-collecting).

(4) In this article, “relevant article 36H agreement” means an article 36H agreement (within the meaning of article 36H) which has been entered into with the facilitation of an authorised person with permission to carry on a regulated activity of the kind specified by that article.

### *Exclusions*

### **Activities where person has a connection to the agreement**

**39H.**—(1) There are excluded from articles 39D(1), 39E(1) and 39F(1) activities carried on by a person who is—

(a) the lender under the agreement,

(b) the supplier in relation to that agreement,

(c) a person carrying on an activity of the kind specified by article 36A by way of business and who has acquired the business of the person who was the supplier in relation to the agreement, or

(d) a person who would be carrying on an activity of the kind specified by article 36A by way of business but for the exclusion in article 36B where the agreement was made in consequence of an introduction (by that person or another person) to which article 36B applies.

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(2) There are excluded from articles 39D(2), 39E(2) and 39F(2) activities carried on by a person who is—

- (a) the owner under the consumer hire agreement, or
- (b) a person who would be carrying on an activity of the kind specified by article 36A by way of business but for the exclusion in article 36B where the agreement was made in consequence of an introduction (by that person or another person) to which article 36B applies.

(3) There is excluded from article 39G(1) steps taken under or in relation to an agreement on behalf of a person who is, in relation to that agreement, a person falling within paragraph (1)(a) to (d).

(4) There is excluded from article 39G(2) steps taken under or in relation to a consumer hire agreement on behalf of a person who is, in relation to that agreement, a person falling within paragraph (2)(a) or (b).

(5) In paragraph (1), “supplier”, in relation to an agreement, means—

- (a) a person, other than the lender, whose transaction with the borrower is, or is to be, financed by the agreement, or
- (b) a person to whom the rights and duties of a person falling within sub-paragraph (a) have been passed by assignment or operation of law.

#### **Activities carried on by certain energy suppliers**

**39I.**—(1) There are excluded from articles 39D, 39E, 39F and 39G activities carried on by a relevant energy supplier acting in that capacity in relation to debts due under a green deal plan associated with the supplier.

(2) A green deal plan is associated with a supplier if the payments under the plan are to be made to the supplier.

(3) In this article—

- (a) “green deal plan” has the meaning given by section 1 of the Energy Act 2011 <sup>M2</sup>;
- (b) “relevant energy supplier” has the meaning given in regulations made for the purpose of section 2(9) of that Act.

#### **Activities carried on in relation to a relevant agreement in relation to land**

**39J.** There are excluded from articles 39D, 39E, 39F and 39G activities that relate to a regulated mortgage contract or a regulated home purchase plan.

#### **Activities carried on by members of the legal profession etc.**

**39K.**—(1) There are excluded from articles 39D, 39E, 39F and 39G activities carried on by—

- (a) a barrister or advocate acting in that capacity;
- (b) a solicitor (within the meaning of the Solicitors Act 1974) acting in the course of contentious business (as defined in section 87(1) of that Act);
- (c) a solicitor within the meaning of the Solicitors (Scotland) Act 1980 engaging in business done in or for the purposes of proceedings before a court or before an arbitrator;
- (d) a solicitor in Northern Ireland engaging in contentious business as defined in Article 3(2) of the Solicitors (Northern Ireland) Order 1976;

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- (e) a relevant person (other than a person falling within sub-paragraph (a) to (d)) acting in the course of contentious business.
- (2) In sub-paragraph (e) of paragraph (1)—
- “contentious business” means business done in or for the purposes of proceedings begun before a court or before an arbitrator, not being non-contentious or common form probate business (within the meaning of section 128 of the Senior Courts Act 1981 <sup>M3</sup>);
- “relevant person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).

### Information society services

**39L.** Articles 39D, 39E, 39F and 39G are also subject to the exclusion in article 72A (information society services).

### *Supplemental*

### Meaning of “consumer” etc.

**39M.**—(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 article 39F (debt-collecting) or 39G (debt administration), or article 64 (agreeing to carry on specified kinds of activity) so far as relevant to that activity the following are to be treated as a “consumer”—

- (a) the borrower under the agreement or the hirer under the consumer hire agreement;
- (b) someone who has been the borrower or hirer under that agreement;
- (c) a person who is treated by A as a person falling within sub-paragraph (a) or (b).

(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 article 39F or 39G, the following are to be treated as a “client”—

- (a) the borrower under the agreement or the hirer under the consumer hire agreement;
- (b) someone who has been the borrower or hirer under that agreement;
- (c) a person who is treated by A as a person falling within sub-paragraph (a) or (b).

(3) In this article, “borrower” includes (in addition to those persons included in the definition in article 60L)—

- (a) any person providing a guarantee or indemnity under the 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.”.

### Marginal Citations

- M1** Inserted by [S.I. 2003/1476](#).  
**M2** [2011 c.16](#).  
**M3** [1981 c.54](#).

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