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STATUTORY INSTRUMENTS

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**2014 No. 366**

**The Financial Services and Markets Act 2000  
(Regulated Activities) (Amendment) Order 2014**

**PART 4**

Amendments of secondary legislation

**The Payment Services Regulations 2009**

**12.**—(1) The Payment Services Regulations 2009<sup>(1)</sup> are amended as follows.

(2) In regulation 52(a) (disapplication of certain regulations in the case of consumer credit agreements), after “section 51 (prohibition of unsolicited credit tokens)” insert “(which continues to have effect for the purposes of this regulation by virtue of article 13 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014)”.

(3) After regulation 92 (costs of supervision), insert—

**“Credit agreements**

**92A.** Schedule 4A, which contains provisions concerning credit agreements, has effect.”.

(4) After Schedule 4, insert—

“SCHEDULE 4A

Regulation 92A

Credit agreements

**PART 1**

Prohibitions and restrictions

**Power to prohibit the entry into credit agreements**

**1.**—(1) If it appears to the Authority that sub-paragraph (4) has been, or is likely to be, contravened as respects an EEA authorised payment institution exercising passport rights in the United Kingdom, it may by notice given to the institution in accordance with Part 2 of this Schedule impose on the institution a credit prohibition.

(2) If it appears to the Authority that a restriction imposed under paragraph 2 on an EEA authorised payment institution exercising passport rights in the United Kingdom has not been complied with, it may by notice given to the institution in accordance with Part 2 of this Schedule impose on the institution a credit prohibition.

(3) “A credit prohibition” means a prohibition on carrying on, or purporting to carry on, in the United Kingdom any business which consists of or includes carrying on an activity—

- (a) of the kind specified by article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(2)</sup>, and
- (b) listed in the Annex to the payment services directive or which the institution is entitled to carry on in accordance with Article 16 of that directive.

(4) This sub-paragraph is contravened as respects an EEA authorised payment institution exercising passport rights in the United Kingdom if—

- (a) the institution or any of its employees, agents or associates (whether past or present), or
- (b) where the institution is a body corporate, any controller of the institution or an associate of any such controller,

does any of the things specified in sub-paragraph (5).

(5) A person does a thing specified in this sub-paragraph if the person—

- (a) commits any offence involving fraud or other dishonesty or violence;
- (b) contravenes any provision made by or under—
  - (i) the Consumer Credit Act 1974;
  - (ii) the 2000 Act, to the extent that that Act relates to any activity of the kind specified by article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
  - (iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;
- (c) contravenes any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);
- (d) practices discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business;
- (e) engages in business practices appearing to the Authority to be deceitful or oppressive or otherwise unfair or improper (including practices that appear to the Authority to involve irresponsible lending).

(6) A credit prohibition may be absolute or may be imposed—

- (a) for such period,
- (b) until the occurrence of such event, or
- (c) until such conditions are complied with,

as may be specified in the notice given under sub-paragraph (1) or (2).

(7) Any period, event or condition so specified may be varied by the Authority on the application of the institution concerned (for which, see paragraph 5).

(8) A credit prohibition may be withdrawn in whole or in part—

- (a) on the initiative of the Authority, by notice served by the Authority on the institution concerned, and any such notice takes effect on such date as is specified in the notice;
- (b) on an application submitted by the institution concerned (for which, see paragraph 5).

(9) Where the Authority withdraws a credit prohibition and imposes a restriction under paragraph 2, the Authority may specify that the withdrawal of the credit prohibition only takes effect when the imposition of the restriction is no longer open to review.

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(2) Articles 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A and 89B inserted by [S.I. 2013/1881](#).

(10) For the purposes of sub-paragraph (9), whether the imposition of a restriction is open to review is to be determined in accordance with section 391(8) of the 2000 Act as if the imposition of the restriction were a matter to which a supervisory notice (within the meaning of that section) relates.

(11) An institution contravening a prohibition imposed under this paragraph is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(12) In this paragraph—

“associate” has the same meaning as in article 60L of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“controller” has the meaning given by section 422 of the 2000 Act.

(13) If a credit prohibition is in effect in relation to an institution, article 60JA of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 does not apply in relation to that institution.

#### **Power to restrict the entry into credit agreements**

2.—(1) In this paragraph, “restriction” means a direction that an EEA authorised payment institution exercising passport rights in the United Kingdom may not carry on in the United Kingdom, otherwise than in accordance with such conditions as may be specified in the direction, any business which consists of or includes carrying on an activity—

- (a) of the kind specified in article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (b) listed in the Annex to the payment services directive or which the institution is entitled to carry on in accordance with Article 16 of that directive; and
- (c) specified in the direction.

(2) If it appears to the Authority that the situation as respects an EEA authorised payment institution exercising passport rights in the United Kingdom is such that the powers conferred by paragraph 1 are exercisable, the Authority may, instead of imposing a credit prohibition—

- (a) impose by notice given in accordance with Part 2 of this Schedule such restriction as appears to it desirable;
- (b) where it has already imposed a restriction, vary the restriction on the Authority’s own initiative by notice given in accordance with Part 2 of this Schedule.

(3) The Authority may also impose a restriction by notice given in accordance with Part 2 of this Schedule if it withdraws a credit prohibition.

(4) A restriction may be—

- (a) withdrawn on the initiative of the Authority, by notice served by the Authority on the institution concerned, and any such notice takes effect on such date as is specified in the notice;
- (b) withdrawn or varied on an application submitted by the institution concerned (for which, see paragraph 5).

(5) An institution contravening a restriction is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

## PART 2

### Procedure and appeals

#### Interpretation

3. In this Part—

“prohibition” means a credit prohibition imposed under paragraph 1(1) or (2) of Part 1 of this Schedule;

“restriction” means a restriction imposed under paragraph 2(2) or (3) of Part 1 of this Schedule;

“the Tribunal” means the Upper Tribunal.

#### Notice of prohibition or restriction

4.—(1) A prohibition or restriction takes effect—

(a) immediately, if the relevant notice states that that is the case,

(b) on such date as may be specified in the notice, or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(2) An institution which is aggrieved by the imposition of a prohibition or a restriction by a notice given under this paragraph may refer the matter to the Tribunal.

(3) A prohibition or restriction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is imposing the prohibition or restriction, reasonably considers that it is necessary for the prohibition or restriction to take effect immediately (or on that date).

(4) The notice must—

(a) give details of the prohibition or restriction,

(b) state the Authority’s reasons for the prohibition or restriction,

(c) inform the institution that it may make representations to the Authority within such period as is specified in the notice (whether or not the institution has referred the matter to the Tribunal),

(d) inform the institution of when the prohibition or restriction takes effect, and

(e) inform the institution of its right to refer the matter to the Tribunal.

(5) The Authority may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by the institution, the Authority decides—

(a) to impose the proposed prohibition or restriction, or

(b) if the prohibition or restriction has already taken effect, not to withdraw the prohibition or restriction,

it must give the institution a notice.

(6) If, having considered any representations made by the institution, the Authority decides—

(a) not to impose the proposed prohibition or restriction,

(b) to impose a different prohibition or restriction, or

(c) if the prohibition or restriction has already taken effect, to withdraw the prohibition or restriction,

it must give the institution a notice.

(7) A notice under sub-paragraph (6) must inform the institution of its right to refer the matter to the Tribunal.

(8) A notice under sub-paragraph (7)(b) must comply with sub-paragraph (4).

(9) If a notice under this paragraph informs an institution of its right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(10) For the purposes of sub-paragraph (1)(c)—

(a) whether a matter is open to review is to be determined in accordance with section 391(8) of the 2000 Act;

(b) the notice to which the matter relates is to be treated as a supervisory notice for the purposes of that section.

(11) References in this paragraph to the imposition of a restriction include references to the variation of a restriction on the initiative of the Authority.

### **Application to revoke or vary prohibition or restriction**

5.—(1) An application under Part 1 of this Schedule must—

(a) be made in such manner as the Authority may direct, and

(b) contain, or be accompanied by, such other information as the Authority may reasonably require.

(2) At any time after the application is received and before it is determined, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(3) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(4) The Authority may require an applicant to provide information required under this paragraph in such form, or to verify it in such a way, as the Authority may direct.

(5) If the Authority decides to grant an application, it must give the applicant a notice.

(6) If the Authority proposes to refuse an application, or to take an action different from or in addition to the one applied for (including a proposal to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a warning notice.

(7) If the Authority decides to refuse an application, or to take an action different from or in addition to the one applied for (including a decision to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a decision notice.

(8) An applicant who is aggrieved by a decision notice given under this paragraph may refer the matter to the Tribunal.

### **Notice to the home state competent authority**

6. If the Authority sends a notice to an institution under this Schedule which imposes, varies or withdraws a prohibition or restriction, it must send a copy of the notice to the institution's home state competent authority.”.

(5) In Part 1 of Schedule 5 (application and modification of the 2000 Act)—

(a) in paragraph 3(d)(i)(aa) (information gathering and investigations)(3), after paragraph (c) (which is inserted by that paragraph into section 168(1) of the Financial Services And Markets Act 2000), insert—

- “(d) an EEA authorised payment institution exercising passport rights in the United Kingdom may have contravened, or may be likely to contravene, a restriction or prohibition within the meaning of paragraph 3 (interpretation) of Schedule 4A to the Payment Services Regulations 2009 (credit agreements);
  - (e) paragraph 1(4) of that Schedule 4A (power to prohibit the entry into credit agreements) may have been contravened, or may be likely to be contravened, as respects an EEA authorised payment institution exercising passport rights in the United Kingdom”;
- (b) in paragraph 7 (warning notices and decision notices)(4)—
- (i) in sub-paragraph (c)(ii), after “(including as applied by regulation 14) of” insert “, or paragraph 4 of Schedule 4A to,”;
  - (ii) in sub-paragraph (e), after “(including as applied by regulation 14) of” insert “, or paragraph 4 of Schedule 4A to,”.