

2014 No. 506

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) (No. 2) Order 2014

Made - - - - *5th March 2014*

Laid before Parliament *7th March 2014*

Coming into force in accordance with article 1

The Treasury are a government department designated for the purpose of section 2(2) of the European Communities Act 1972(a) in relation to financial services(b).

The Treasury make the following Order in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 38 and 426(1) of the Financial Services and Markets Act 2000(c):

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) (No. 2) Order 2014.

(2) This article and articles 5 and 6 come into force on 30th March 2014.

(3) Articles 3, 4, and 7 come into force on 1st April 2014.

(4) Article 2 comes into force on 1st April 2014 immediately after article 14(4) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013(d) comes into force in accordance with article 1(6) of that Order, to the extent that it is not already in force.

The Financial Services and Markets Act 2000 (Exemption) Order 2001

2.—(1) Part 4 (persons exempt in respect of particular regulated activities) of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001(e) is amended as follows.

(2) In paragraph 44 (charities)(f), insert before sub-paragraph (1)—

“(A1) A charity is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 36H of the Regulated Activities Order (operating an

(a) 1972 c. 68. Amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27, and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1.

(b) S.I. 2012/1759.

(c) 2000 c.8.

(d) S.I. 2013/1881. Article 1(6) of that Order brings that Order into force on 1st April 2014 to the extent that it is not already in force. Article 14(4) of that Order inserts paragraphs 52 to 54 into the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001.

(e) S.I. 2001/1201.

(f) Amended by S.I.2013/1773.

electronic system in relation to lending)(a) which it carries on in relation to an article 36H agreement (within the meaning given in article 36H(4) of the Regulated Activities Order) under or in connection with which the only amount payable to the lender is the amount of credit provided.”.

(3) After paragraph 54(b), insert—

“Persons exercising, or having the right to exercise, the rights of the person who provided credit under a regulated credit agreement

55.—(1) A person within the description in sub-paragraph (3) (“P”) is exempt from the general prohibition in respect of any activity of the kind specified by article 60B(2) of the Regulated Activities Order (regulated credit agreements)(c) carried on in relation to a qualifying agreement provided that the conditions in sub-paragraphs (4) and (5) are satisfied in respect of the agreement.

(2) Where P is exempt from the general prohibition in respect of any activity of the kind specified by article 60B(2) of the Regulated Activities Order by virtue of sub-paragraph (1), P is also exempt from the general prohibition in respect of any activity of the kind specified by article 39E(1) (debt-counselling) or 39F(1) (debt-collecting) of the Regulated Activities Order carried on in relation to the qualifying agreement in an exempt period.

(3) P is within the description in this sub-paragraph if P—

- (a) is not the original lender;
- (b) does not grant, is not required to grant, and does not promise to grant credit under the qualifying agreement or any other regulated credit agreement; and
- (c) does not undertake any activity of the kind specified in article 39D(1) (debt adjusting), 39E(1) or 39F(1) of the Regulated Activities Order, or which would be so specified but for article 39H(1) of that Order, except in an exempt period.

(4) The condition in this sub-paragraph is that—

- (a) P has entered into a servicing arrangement in relation to the qualifying agreement; or
- (b) an exempt period has not expired.

(5) The condition in this sub-paragraph is that—

- (a) P has arranged for the servicer to comply with the provisions listed in sub-paragraph (6); and
- (b) where P (and not the servicer acting on behalf of P) varies the qualifying agreement, P complies with the provisions listed in sub-paragraph (6).

(6) The provisions are—

- (a) any provision of, or made under, the Act applicable to authorised persons that relates to the exercise of the right of the lender under a regulated credit agreement to vary terms and conditions of the agreement (including, in particular, the right to vary the rate of interest, charges, or other amount due to the lender under the agreement); and
- (b) the requirements of, or made under, section 82 of the Consumer Credit Act 1974 (variation of agreements)(d).

(7) For the purposes of this paragraph, there are excluded from articles 39E(1) and 39F(1) of the Regulated Activities Order activities carried on by P under or for the purposes of a servicing arrangement.

(a) “The Regulated Activities Order” is defined by article 1(2) of S.I. 2001/1201 as meaning the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544). Article 36H inserted by S.I. 2013/1881 and amended by S.I. 2014/366.

(b) Inserted by S.I. 2013/1881.

(c) Articles 39E, 39F, 39G, 39H, 60B and 60N inserted into S.I. 2001/544 by S.I. 2013/1881.

(d) 1974 c.39. Section 82 amended by S.I. 2005/2967, S.I. 2008/733, S.I. 2008/2826, S.I. 2010/1010 and S.I. 2013/1881.

(8) In this paragraph—

“an exempt period” is the period of thirty days beginning on the day after the day on which a servicing arrangement came to an end;

“the original lender” means the person who provided credit under the qualifying agreement;

“a qualifying agreement” means a regulated credit agreement under which P exercises, or has the right to exercise, the rights of the original lender;

“regulated credit agreement” has the meaning given in article 60B of the Regulated Activities Order;

“the servicer” means the person with whom P enters into a servicing arrangement, where that person is an authorised person(a) with permission to carry on an activity of the kind specified in article 39F, 39G (debt administration) or 60B of the Regulated Activities Order;

“a servicing arrangement” means an arrangement between P and the servicer for the servicer to exercise on P’s behalf P’s rights under a qualifying agreement other than the right to transfer, assign or otherwise dispose of those rights.

Persons exercising, or having the right to exercise, the rights of the person who provided credit under a regulated consumer hire agreement

56.—(1) A person within the description in sub-paragraph (3) (“P”) is exempt from the general prohibition in respect of any activity of the kind specified by article 60N(2) of the Regulated Activities Order (regulated consumer hire agreements) carried on in relation to a qualifying agreement provided that the conditions in sub-paragraphs (4) and (5) are satisfied in respect of each such agreement.

(2) Where P is exempt from the general prohibition in respect of any activity of the kind specified by article 60N(2) of the Regulated Activities Order by virtue of sub-paragraph (1), P is also exempt from the general prohibition in respect of any activity of the kind specified by article 39E(2) (debt-counselling) or 39F(2) (debt-collecting) of the Regulated Activities Order carried on in relation to the qualifying agreement in an exempt period.

(3) P is within the description in this sub-paragraph if P—

- (a) is not the original owner; and
- (b) does not undertake any activity of the kind specified in article 39D(2) (debt adjusting), 39E(2) or 39F(2) of the Regulated Activities Order, or which would be so specified but for article 39H(2) of that Order, except in an exempt period.

(4) The condition in this sub-paragraph is that—

- (a) P has entered into a servicing arrangement in relation to the qualifying agreement; or
- (b) an exempt period has not expired.

(5) The condition in this sub-paragraph is that—

- (a) P has arranged for the servicer to comply with the provisions listed in sub-paragraph (6); and
- (b) where P (and not the servicer acting on behalf of P) varies the qualifying agreement, P complies with the provisions listed in sub-paragraph (6).

(6) The provisions are—

- (a) any provision of, or made under, the Act applicable to authorised persons that relates to the exercise of the right of the owner under a regulated consumer hire agreement to vary terms and conditions of the agreement (including, in particular,

(a) Section 31 of the Financial Services and Markets Act 2000 (c.8) defines “authorised person” as a person who is authorised for the purposes of that Act, including a person who has permission under Part 4A of that Act to carry on one or more regulated activities; Part 4A substituted by the Financial Services Act 2012 (c.21), section 11.

the right to vary the hire payments, other charges, or any other amount due to the owner under the agreement); and

- (b) the requirements of, or made under, section 82 of the Consumer Credit Act 1974 (variation of agreements).

(7) For the purposes of this paragraph, there are excluded from articles 39E(2) and 39F(2) of the Regulated Activities Order activities carried on by P under or for the purposes of a servicing arrangement.

(8) In this paragraph—

“an exempt period” is the period of thirty days beginning on the day after the day on which a servicing arrangement came to an end;

“the original owner” means the person who entered into the qualifying agreement as owner;

“a qualifying agreement” means a regulated consumer hire agreement under which P exercises, or has the right to exercise, the rights of the original owner;

“regulated consumer hire agreement” has the meaning given in article 60N of the Regulated Activities Order;

“the servicer” means the person with whom P enters into a servicing arrangement, where that person is an authorised person with permission to carry on an activity of the kind specified in article 39F, 39G (debt administration) or 60N of the Regulated Activities Order;

“a servicing arrangement” means an arrangement between P and the servicer for the servicer to exercise on P’s behalf P’s rights under a qualifying agreement other than the right to transfer, assign or otherwise dispose of those rights.”.

The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

3.—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(a) is amended as follows.

(2) In article 34 (governments, central banks etc), at the end of paragraph (b)(ii), insert “except for a communication which relates to a regulated credit agreement (within the meaning given in article 60B(b) of the Regulated Activities Order (regulated credit agreements)) where entering into the agreement, or exercising or having the right to exercise rights under the agreement, constitutes the carrying on of a regulated activity of the kind specified by article 60B of the Regulated Activities Order and the exclusion in article 72G of that Order (local authorities)(c) does not apply”.

(3) After article 55A (non-real time communication by members of profession), insert—

“Insolvency practitioners

55B. The financial promotion restriction does not apply to any non-real time communication or solicited real time communication by a person acting as an insolvency practitioner (within the meaning of the Regulated Activities Order) who carries on an activity which would be a regulated activity but for article 72H(d) of the Regulated Activities Order (insolvency practitioners).”.

(a) S.I. 2005/1529.

(b) “The Regulated Activities Order” is defined by article 2(1) of S.I. 2005/1529 as meaning the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544). Article 60B of S.I. 2001/544 inserted by S.I. 2013/1881.

(c) Article 72G of S.I. 2001/544 inserted by S.I. 2014/366

(d) Article 72H of S.I. 2001/544 inserted by S.I. 2014/366.

The Money Laundering Regulations 2007

4. In regulation 4 of the Money Laundering Regulations 2007(a) (exclusions), after paragraph (1)(c) insert—

“(ca) a local authority within the meaning given in article 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b), when carrying on an activity which would be a regulated activity for the purposes of the Financial Services and Markets Act 2000 but for article 72G of that Order;”.

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

5.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013(c) is amended as follows.

(2) In the heading to article 12 (obligations of certain credit brokers who are not authorised persons), for “credit brokers who are not authorised persons” substitute “persons who carry on credit broking”.

(3) For article 12(1), substitute—

“(1) This article applies to a person (“P”) who is within the description in paragraph (1A) or the description in paragraph (1B).

(1A) A person is within the description in this paragraph if the person—

- (a) is not an authorised person,
- (b) carries on an activity of the kind specified by article 36A(1)(d) to (f) of the Regulated Activities Order (credit broking)(d), and
- (c) is not exempt from the general prohibition in relation to the carrying on of that activity by virtue of section 327(1) of the Act (exemption from the general prohibition for members of a designated professional body).

(1B) A person is within the description in this paragraph if the person would be carrying on an activity of the kind specified by article 36A(1)(d) to (f) (credit broking) of the Regulated Activities Order but for article 36B(1)(a) (introducing by individuals in the course of canvassing off trade premises), 36F (activities carried on by members of the legal profession etc) or 72G (local authorities) of that Order.”.

(4) In article 20 (amendments of the 1974 Act), for paragraph (38) substitute—

“For section 126 (enforcement of land mortgages) substitute—

“(1) A land mortgage securing an agreement of one the following types is enforceable (so far as is provided in relation to the agreement) on an order of the court only—

- (a) a regulated agreement;
- (b) a regulated mortgage contract;
- (c) a consumer credit agreement which would, but for article 60D of the Regulated Activities Order (exempt agreements: exemption relating to the purchase of land for non-residential purposes)(e), be a regulated agreement.

(2) Subject to section 140A(5) (unfair relationships between creditors and debtors)(f), a regulated mortgage contract which would, but for article 60C(2) of the

(a) S.I. 2007/2157.

(b) S.I. 2001/544; article 72G inserted by S.I. 2014/366.

(c) S.I. 2013/1881.

(d) “the Regulated Activities Order” is defined by article 1(7) of S.I. 2013/1881 as meaning the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544). Articles 36B and 36F of S.I. 2001/544 inserted by S.I. 2013/1881; article 72G inserted by S.I. 2014/366.

(e) Articles 60C and 60D inserted into S.I. 2001/544 by S.I. 2013/1881.

(f) Inserted by the Consumer Credit Act 2006 (c.14), section 19; amended by S.I. 2013/1881.

Regulated Activities Order (exempt agreements: exemption relating to the nature of the agreement), be a regulated agreement is to be treated for the purposes of Part 9 (judicial control) as if it were a regulated agreement.

(3) In this section, “regulated mortgage contract” has the meaning given by article 61(3) of the Regulated Activities Order (regulated mortgage contracts).”.”.

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

6.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014(a) is amended as follows.

(2) In article 1 (citation and commencement)—

(a) in paragraph (2), for “, 17 and 29(4)” substitute “and 17”;

(b) after paragraph (3), insert—

“(3A) Article 19(4) comes into force on 31st March 2014, to the extent it is not already in force.”.

(3) In article 3 (the Consumer Credit Act 1974), omit paragraph (3).

(4) In article 19 (the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013), in paragraph (3)—

(a) for “paragraph (4)” substitute “paragraph (5)”(b);

(b) renumber new paragraphs (5) and (6) as paragraphs (6) and (7) respectively;

(c) for “paragraph (6)”, in each place, substitute “paragraph (7)”.

Complaints against the Office of Fair Trading

7.—(1) Paragraph (3) applies to—

(a) a complaint arising in connection with the exercise of, or the failure to exercise, any of the functions of the Office of Fair Trading under the Consumer Credit Act 1974(c), other than its functions under any of the following provisions of that Act—

(i) section 4 (dissemination of information and advice)(d);

(ii) section 25A (guidance on fitness test)(e);

(iii) section 33E (guidance on requirements)(f)

(iv) section 39C (statement of policy)(g);

(v) section 86A (OFT to prepare information sheets on arrears and default)(h);

(b) an appeal against the response of the Office of Fair Trading to such a complaint.

(2) But this article does not apply if the complaint or appeal was made to the Parliamentary Commissioner for Administration on or before 31st March 2014.

(3) The complaint or appeal is to be treated for the purposes of Part 6 of the Financial Services Act 2012 (investigation of complaints against regulators)(i) as if it were complaint about a relevant function of the FCA if the condition in paragraph (4) is satisfied.

(a) S.I. 2014/366.

(b) Paragraph (5) inserted into article 58 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, S.I. 2013/1881, by S.I. 2014/208.

(c) 1974 c.39.

(d) Amended by the Enterprise Act 2002 (c.40), Schedule 25, paragraph 6 and the Consumer Credit Act 2006 (c.14), section 61; repealed by S.I. 2013/1881.

(e) Inserted by the Consumer Credit Act 2006, section 30; repealed by S.I. 2013/1881.

(f) Inserted by the Consumer Credit Act 2006, section 42; repealed by S.I. 2013/1881.

(g) Inserted by the Consumer Credit Act 2006, section 54; repealed by S.I. 2013/1881.

(h) Inserted by the Consumer Credit Act 2006, section 8 and amended by S.I. 2013/1882.

(i) 2012 c.21. Part 6 amended by the Financial Services (Banking Reform) Act 2013 (c.33), Schedule 3, paragraph 19 and Schedule 10, paragraph 10.

(4) The condition in this paragraph is that—

(a) in case of a complaint—

- (i) the complaint was not made to the Office of Fair Trading on or before 31st March 2014; or
- (ii) if the complaint was made to the Office of Fair Trading on or before 31st March 2014, the Office of Fair Trading had not responded to the complaint on or before that date (other than sending a written acknowledgement of the complaint);

(b) in case of an appeal—

- (i) the appeal was not made to the Office of Fair Trading on or before 31st March 2014; or
- (ii) if the appeal was made to the Office of Fair Trading on or before 31st March 2014, the Office of Fair Trading had not responded to the appeal on or before that date (other than sending a written acknowledgement of the appeal).

Sam Gyimah

Anne Milton

5th March 2014

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes various supplemental, consequential and transitional provisions in consequence of provisions made by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881) (“the RAO Amendment No. 2 Order”) and the Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882) which bring the regulation of consumer credit under the Financial Services and Markets Act 2000 (“the Act”), and the Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014 (S.I. 2014/208).

Article 2 amends the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201) to provide exemptions from the need to be authorised under the Act for charities that operate an electronic system for lending which facilitates loans under which the only amount paid to the lender is the amount lent, and for and persons who have rights under a regulated credit agreement or regulated consumer hire agreement (for example, special purpose vehicles who acquire such rights using the proceeds of a bond issue) provided that the agreement is administered by an authorised person.

Article 3 amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) to align the application of the restriction under the Act on financial promotions with the requirement for authorisation under the Act to carry on a regulated activity.

Article 4 amends the Money Laundering Regulations 2007 (S.I. 2007/2157) in consequence of amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) made by the Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014 (S.I. 2014/208).

Article 5 amends article 12 of the RAO Amendment No. 2 Order in implementation of article 21 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EC (OJ No L133, 22.5.2008, p66) (“the Directive”), to impose the requirements of Article 21 the Directive on certain persons who undertake credit broking. A transposition note on the implementation of the Directive was previously prepared as Annex B to the Explanatory Memorandum to the Consumer Credit (EU Directive) Regulations 2010 (S.I. 2010/1010) which is available at www.legislation.gov.uk. Article 5 also amends the Consumer Credit Act 1974 to preserve the application of section 126 of that Act (enforcement of land mortgages) to residential and buy-to-let mortgages.

Article 6 amends the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (S.I. 2014/366) (“the 2014 Order”) in consequence of article 5 and of provision made in the Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014 (S.I. 2014/208); it also amends the commencement provisions of the 2014 Order.

Article 7 makes transitional provision in respect of complaints relating to functions of the Office of Fair Trading under the Consumer Credit Act 1974.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.gov.uk and is published alongside the Order on www.legislation.gov.uk.

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