

2015 No. 352

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Miscellaneous Provisions) (No. 2) Order 2015

<i>Made</i>	- - - -	<i>23rd February 2015</i>
<i>Laid before Parliament</i>		<i>25th February 2015</i>
<i>Coming into force</i>	- -	<i>18th March 2015</i>

The Treasury make the following Order in exercise of the powers conferred by sections 21(5) and (6), 22(1) and (5) and 38 of, and paragraph 25(1)(a) of Schedule 2 to, the Financial Services and Markets Act 2000(a).

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Miscellaneous Provisions) (No. 2) Order 2015, and comes into force on 18th March 2015.

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

2. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b) is amended as follows—

- (a) in article 60F (exempt agreements: exemptions relating to number of repayments to be made), in paragraph (2)(b) for “four” substitute “twelve”; and
- (b) in article 60G (exempt agreements: exemptions relating to the total charge for credit), in paragraph (5)(b)(i) for sub-paragraph (bb) substitute—
 - “(bb) offered by a lender to a borrower as an incident of the borrower’s employment with the lender or with an undertaking in the same group as the lender;”.

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

3.—(1) The Financial Services and Markets Act 2000 (Exemption) Order 2001(c) is amended as follows.

- (2) In Part 4 of the Schedule (persons exempt in respect of particular regulated activities)—
 - (a) in paragraph 54(2) (tracing agents) for “article” substitute “paragraph”; and
 - (b) after paragraph 54 insert—

(a) 2000 c. 8.
(b) S.I. 2001/544, as amended by S.I. 2013/1881, 2014/366 and 2014/1850. There are other amendments, but they are not relevant.
(c) S.I. 2001/1201, as amended by S.I. 2013/1881. There are other amendments, but they are not relevant.

“Persons who carry on activities for the service of certain documents

54A.—(1) A person who serves, or takes steps to serve, a relevant document on a borrower or hirer is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 39F of the Regulated Activities Order (debt-collecting) so long as that person—

- (a) is not the lender or owner under the relevant agreement; and
- (b) takes no other steps to procure the payment of the debt or any other debt due from the borrower or hirer under the relevant agreement.

(2) A person who serves, or takes steps to serve, a relevant document on a borrower or hirer is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 39G of the Regulated Activities Order (debt administration) so long as that person is not the lender or owner under the relevant agreement and does not take—

- (a) any other steps to exercise or enforce rights under that agreement; or
- (b) any steps in the performance of any duties under that agreement.

(3) In sub-paragraph (1) “relevant document” means any document which is for service for the purposes of any legal proceedings brought, or to be brought, for the payment of a debt due under the relevant agreement.

(4) In sub-paragraph (2) “relevant document” means any document which is for service for the purposes of any legal proceedings brought, or to be brought, for the exercise or enforcement of rights under the relevant agreement.

(5) In this paragraph—

“borrower”, “hirer”, “lender” and “owner” have the meaning given in article 3 of the Regulated Activities Order;

“legal proceedings” includes arbitration and insolvency proceedings; and

“relevant agreement”, in relation to a person who is a borrower or hirer, means—

- (a) the credit agreement (within the meaning given by article 60B of the Regulated Activities Order) or article 36H agreement (within the meaning given by article 36H of that Order) under which that person is the borrower; or
- (b) the consumer hire agreement (within the meaning given by article 60N of the Regulated Activities Order) under which that person is the hirer.”.

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

4. In the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(a), in article 59 (annual accounts and directors’ report), in paragraph (1)(b)—

(a) before paragraph (i) insert—

“(ai) sections 414A and 414D of the 2006 Act(b);”;

(b) in paragraph (iii) for “paragraph (i)” substitute “paragraphs (ai) and (i)”.

Gavin Barwell

Alun Cairns

23rd February 2015

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) S.I. 2005/1529, as amended by S.I. 2011/1265. There are other amendments, but they are not relevant.

(b) Sections 414A and 414D were inserted in the Companies Act 2006 (c. 46) by S.I. 2013/1970.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under Part 2 (regulated and prohibited activities) of the Financial Services and Markets Act 2000 (c. 8) (“the Act”).

Article 2 amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the Regulated Activities Order”), which specifies kinds of activities and investments for the purposes of regulation under the Act. An activity of a specified kind which is carried on by way of business in relation to an investment of a specified kind is a “regulated activity”.

Entering into a credit agreement as lender and exercising, or having the right to exercise, the lender’s rights and duties under a credit agreement are specified kinds of activity unless the agreement is an exempt agreement under articles 60C to 60H of the Regulated Activities Order. Article 2(a) amends article 60F(2) of that Order to increase from four to twelve the maximum number of repayments which may be due from a borrower under a credit agreement which is to be an exempt agreement under that article.

Article 2(b) amends article 60G(5) to vary one of the conditions that must be met by a credit agreement which is to be an exempt agreement under article 60G(4). An agreement may be exempt under article 60G(4) if (among other things) the borrower is an employee of the lender. The effect of the amendment is that an agreement may be exempt if the borrower is employed by an undertaking in the same group as the lender.

Article 3(2)(a) corrects a minor error in the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201).

Article 3(2)(b) amends that Order, which specifies persons for exemption from the prohibition in section 19 of the Act on carrying on a regulated activity without authorisation. The amendment provides an exemption in relation to the activities of debt collecting and debt administration for persons who serve documents in connection with legal proceedings under credit and consumer hire agreements or agreements of the kind defined in article 36H(4) of the Regulated Activities Order.

Article 4 amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529), which sets out exemptions from the restriction on financial promotion in section 21(1) of the Act. The amendment extends the exemption for a communication accompanied by a directors’ report to a communication accompanied by a report prepared and approved under sections 414A and 414D of the Companies Act 2006 (c. 46) (strategic reports).

An impact assessment of the effect of the transfer of consumer credit regulation from the Office of Fair Trading to the Financial Conduct Authority on the costs of business and the voluntary sector has been prepared and is available on HM Treasury’s website (www.gov.uk/treasury) or from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum for this Order.

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