

2022 No. 726

FINANCIAL SERVICES

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2022

<i>Made</i> - - - -	<i>29th June 2022</i>
<i>Laid before Parliament</i>	<i>30th June 2022</i>
<i>Coming into force</i> - -	<i>21st July 2022</i>

The Treasury, in exercise of the powers conferred by sections 22(1) and (5) and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(a), make the following Order.

Citation, commencement and extent

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2022.

(2) This Order comes into force on 21st July 2022.

(3) This Order extends to England and Wales, Scotland and Northern Ireland.

Amendment of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

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

(2) In article 3(1) (interpretation), omit the definition of “designated guidance provider”(c).

(3) In article 35B (providing pensions guidance under Part 20A of the Act)(d)—

(a) in the heading, omit “under Part 20A of the Act”;

(b) in paragraph (1), omit “under arrangements made with the Treasury pursuant to section 333B of the Act”;

(c) for paragraph (2) substitute—

“(2) For the purposes of paragraph (1), pensions guidance means—

(a) 2000 c. 8; there are amendments to the Financial Services and Markets Act 2000 which are not relevant.

(b) S.I. 2001/544.

(c) This definition was inserted by S.I. 2015/489; there are other amendments to article 3 which are not relevant.

(d) Article 35B was inserted by S.I. 2015/489.

- (a) information or guidance provided by the Money and Pensions Service^(a) in carrying out its pensions guidance function (see section 3 of the Financial Guidance and Claims Act 2018^(b));
 - (b) information or guidance provided by another person with whom arrangements under section 5(1), (2) or (3) of the Financial Guidance and Claims Act 2018 are made to carry out the Money and Pensions Service’s pensions guidance function.”.
- (4) In article 39KA (activities carried on by reason of providing pensions guidance under Part 20A of the Act)^(c)—
- (a) in the heading, omit “under Part 20A of the Act”;
 - (b) in paragraph (1), omit “under arrangements made with the Treasury pursuant to section 333B of the Act”;
 - (c) for paragraph (2) substitute—
 - “(2) For the purposes of paragraph (1), pensions guidance means—
 - (a) information or guidance provided by the Money and Pensions Service in carrying out its pensions guidance function (see section 3 of the Financial Guidance and Claims Act 2018);
 - (b) information or guidance provided by another person with whom arrangements under section 5(1), (2) or (3) of the Financial Guidance and Claims Act 2018 are made to carry out the Money and Pensions Service’s pensions guidance function.”.
- (5) In article 52C (providing pensions guidance under Part 20A of the Act)^(d)—
- (a) in the heading, omit “under Part 20A of the Act”;
 - (b) in paragraph (1), omit “under arrangements made with the Treasury pursuant to section 333B of the Act”;
 - (c) for paragraph (2) substitute—
 - “(2) For the purposes of paragraph (1), pensions guidance means—
 - (a) information or guidance provided by the Money and Pensions Service in carrying out its pensions guidance function (see section 3 of the Financial Guidance and Claims Act 2018);
 - (b) information or guidance provided by another person with whom arrangements under section 5(1), (2) or (3) of the Financial Guidance and Claims Act 2018 are made to carry out the Money and Pensions Service’s pensions guidance function.”.
- (6) In article 54B (advice given by reason of providing pensions guidance under Part 20A of the Act)^(e)—
- (a) in the heading, omit “under Part 20A of the Act”;
 - (b) in paragraph (1), omit “under arrangements made with the Treasury pursuant to section 333B of the Act”;
 - (c) for paragraph (2) substitute—
 - “(2) For the purposes of paragraph (1), pensions guidance means—
 - (a) information or guidance provided by the Money and Pensions Service in carrying out its pensions guidance function (see section 3 of the Financial Guidance and Claims Act 2018);

(a) The Money and Pensions Service was created by section 1 of the Financial Guidance and Claims Act 2018 (c. 10) and named, in accordance with paragraph (3) of that section, by regulation 2 of the Financial Guidance and Claims Act 2018 (Naming and Consequential Amendments) Regulations 2019.

(b) 2018 (c. 10).

(c) Article 39KA was inserted by S.I. 2015/489.

(d) Article 52C was inserted by S.I. 2015/489.

(e) Article 54B was inserted by S.I. 2015/489.

- (b) information or guidance provided by another person with whom arrangements under section 5(1), (2) or (3) of the Financial Guidance and Claims Act 2018 are made to carry out the Money and Pensions Service’s pensions guidance function.”.
- (7) In article 60H (exempt agreements: exemptions relating to the nature of the borrower)(a)—
- (a) in paragraph (1), for “Subject to article 60HA, a”, substitute “A”;
 - (b) after paragraph (1), insert—
 - “(1A) Article 4(4B) does not apply to an agreement which is exempt under paragraph (1), the purpose of which is to acquire or retain property rights in land or in an existing or projected building, and—
 - (a) a declaration has been made by the borrower which either—
 - (i) provides that the borrower is UK resident, or
 - (ii) provides that the borrower is treated as present in the United Kingdom,
 - (b) a copy of that declaration was provided to the lender before the agreement was entered into, and
 - (c) the agreement is entered into on or after 21st July 2022.
- (1B) For the purposes of paragraph (1A), a borrower is “UK resident” if—
- (a) the borrower is present in the United Kingdom on at least 183 days during the continuous period of 365 days ending with the date the agreement is entered into, or
 - (b) the spouse or civil partner of the borrower—
 - (i) is living with the borrower on the date the agreement was entered into, and
 - (ii) is present in the United Kingdom on at least 183 days during the continuous period of 365 days ending with the date the agreement is entered into.
- (1C) For the purposes of paragraph (1A), a borrower is treated as present in the United Kingdom if, on the date the agreement was entered into, the borrower—
- (a) is in Crown employment, and
 - (b) is present in a country or territory outside the United Kingdom for the purpose of performing activities in the course of that employment, or
 - (c) is the spouse or civil partner of an individual who—
 - (i) is in Crown employment,
 - (ii) is present in a country or territory outside the United Kingdom for the purpose of performing activities in the course of that employment, and
 - (d) is living with their spouse or civil partner.
- (1D) References in this article to a borrower being present in the United Kingdom on a day are to the borrower being present in the United Kingdom at the end of that day.
- (1E) Individuals who are married to, or are civil partners of, each other are treated, for the purposes of this article, as living together unless—
- (a) they are separated under an order of a court of competent jurisdiction,
 - (b) they are separated by deed of separation, or
 - (c) they are in fact separated in circumstances in which the separation is likely to be permanent.
- (1F) For the purposes of this article, “Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision. ”

(a) Article 60H was inserted by S.I. 2013/1881 and amended by S.I. 2015/910; there are other amendments to article 60H which are not relevant.

(8) In the heading of article 60HA (exempt agreements: provision qualifying articles 60E, 60F and 60H)(a), for “60E, 60F and 60H” substitute “60E and 60F”.

*Michael Tomlinson
Rebecca Harris*

29th June 2022

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the Order”).

The Financial Guidance and Claims Act 2018 (c. 10) established a single financial guidance body with a number of functions including a pensions guidance function. This body is named by the Financial Guidance and Claims Act 2018 (Naming and Consequential Amendments) Regulations 2019 (S.I. 2019/383) as the Money and Pensions Service. Paragraphs (2) to (6) of article 2 of this instrument make amendments to allow the Money and Pensions Service to be exempt from carrying on certain regulated activities when providing pensions guidance in specified circumstances. These paragraphs also make amendments to take account of the repealing of provisions in the Financial Services and Markets Act 2000 (c. 8) as a result of the establishment of the Money and Pensions Service.

Article 60H of the Order creates an exemption from regulation for credit agreements where the borrower meets certain requirements. Paragraph (7) of article 2 of this instrument amends article 60H of the Order so that, where an agreement is exempt under article 60H(1) and the borrower is UK resident or treated as present in the UK, the credit agreement is exempt from regulation where the credit agreement is to acquire or retain property rights in land or in an existing or projected building. Paragraph (8) of article 2 of this instrument amends the heading of article 60HA of the Order to clarify that it does not qualify article 60H of the Order.

A de minimis impact assessment of the effect this Order will have on business and the voluntary sector is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ or on www.gov.uk and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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(a) Article 60HA was inserted by S.I. 2015/910 and amended by S.I. 2019/632; there are other amendments to article 60HA which are not relevant.

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