

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (REGULATED
ACTIVITIES) (AMENDMENT) (NO. 2) ORDER 2022

2022 No. 726

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (“the RAO”).

2.2 This instrument makes amendments to clarify the regulatory position of certain credit agreements, detailed in articles 60H and 60HA of the RAO, entered into by high-net-worth individuals who have spent at least 183 days in the UK during the continuous period of 365 days ending with the date that the agreement is entered into.

2.3 The RAO currently provides for a “designated guidance provider” to be exempt from carrying on specified regulated activities where the provider provides pensions guidance under arrangements made with HM Treasury. These providers have been replaced by the Money and Pensions Service (“MaPS”) and its pensions guidance function. This instrument makes amendments to provide for MaPS, and its delivery partners, to be exempt from regulation in specified circumstances when fulfilling MaPS’ pensions guidance function.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

Credit Agreements entered into by high-net-worth individuals

6.1 The Mortgage Credit Directive (2014/17/EU) (“the MCD”) is a body of European legislation concerned with setting the minimum regulatory requirements that member states are required to meet in order to protect consumers taking out credit agreements relating to residential property. The UK transposed the MCD in a way which built on

the existing UK regulatory regime. The MCD was transposed, in part, through the RAO.

- 6.2 The MCD regulated, for the first time, credit agreements which had the purpose of acquiring or retaining property rights in land or in an existing or projected building. This included such agreements entered into by high-net-worth individuals, which would often be secured on a variety of high-value assets.
- 6.3 Article 60B of the RAO states that entering into a credit agreement is a regulated activity; however, this is subject to a number of exemptions contained within the RAO. One such exemption is for high-net-worth individuals who enter into credit agreements (article 60H). After the MCD was transposed, article 60H specifically excluded credit agreements which had the purpose of acquiring or retaining property rights in land or in an existing or projected building from being able to benefit from the exemption from regulation for credit agreements entered into by high-net-worth individuals. Following the UK's withdrawal from the EU, a decision was taken to restore the position prior to the MCD being transposed meaning that such agreements entered into by high-net-worth individuals would once again be exempt from regulation. The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 made amendments with the intention of having this effect.
- 6.4 This instrument follows on from these Regulations to ensure that the objective of high-net-worth individuals entering into credit agreements for the purpose of acquiring or retaining property rights in land or in an existing or projected building being exempt from regulation is achieved. This instrument limits the application of the exemption to high-net-worth individuals who are resident in the UK, defined as individuals who have spent at least 183 days in the UK during the continuous period of 365 days ending with the date that the agreement is entered into.

Providing pensions guidance

- 6.5 The RAO currently provides for, in specified circumstances, a “designated guidance provider” to be exempt from carrying on specified regulated activities where they provide pensions guidance under arrangements made with HM Treasury. “Designated guidance provider” is defined in the Financial Services and Markets Act 2000 (“FSMA”). The Financial Guidance and Claims Act 2018 repealed the designated guidance provider provisions in the FSMA because, instead, the Government created a single financial guidance body which, as one of its functions, provides pensions guidance. This statutory body was subsequently named MaPS.
- 6.6 MaPS was established in 2019 and merges the three former organisations providing free-to-use financial guidance (the Money Advice Service, The Pensions Advisory Service and Pension Wise). This was to simplify the existing public financial guidance landscape and offer holistic support to consumers.
- 6.7 This instrument ensures that, when providing pensions guidance in the context of the same activities as the designated guidance provider provided previously, the pensions guidance function carried on by MaPS, or its delivery partners, is exempt from regulation.

7. Policy background

What is being done and why?

Credit Agreements entered into by high-net-worth individuals

- 7.1 During the transition period, a decision was taken to make credit agreements secured on a variety of high-value assets taken out to purchase property rights sit outside of regulation. This amendment clarifies that the high-net-worth individual exemption found in article 60H, RAO applies to credit agreements, including agreements described in article 3(1) of the MCD. This exemption will be limited to those who are defined as UK residents. This is to ensure that those benefitting from this legislative exemption have contributed to the UK economy.

Providing pensions guidance

- 7.2 When MaPS was created it assumed the functions previously carried on by a designated guidance provider under arrangements with HM Treasury. One of these functions was providing pensions guidance in the context of specified regulated activities. When the designated guidance provider carried on this function, it was exempt from regulation in respect of specified activities under the RAO.
- 7.3 This instrument provides for MaPS to be excluded from regulation under the RAO when it provides pensions guidance in the context of the same activities the “designated guidance provider” provided under arrangements made with HM Treasury.
- 7.4 MaPS has the power to delegate the delivery of its pensions guidance function and this instrument allows for delivery partners to be exempt from regulation when carrying out specified activities when delivering MaPS’ pensions guidance function. In order to achieve this, this instrument amends the RAO so that references to the designated guidance provider are removed and instead replaced with the pension’s guidance function carried on by MaPS and its delivery partners.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 HM Treasury does not propose to consolidate any legislation in consequence of this instrument.

10. Consultation outcome

- 10.1 No consultation took place in relation to this instrument.

11. Guidance

- 11.1 No guidance is required for any of these amendments.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because, in line with Better Regulation guidance, HM Treasury considers that the net impact of this instrument on businesses will be less than net £5 million Equivalent Annual Net Direct Costs to Business. Due to this limited impact, a de minimis impact assessment has been carried out, a copy of which is published alongside this Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The amendments to article 60H and 60HA, RAO apply to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to not require any business offering credit agreements secured on high-value assets to high-net-worth individuals for the purpose of acquiring or retaining property rights to carry out any additional activities when advancing these types of credit agreements as a result of this amendment.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Economic Secretary to the Treasury (John Glen MP) has made the following statement:

“It is not proportionate to include a review clause in this instrument because the estimated annual net direct cost to business is less than £5 million and there are no factors present which make it particularly desirable to include a review clause.”

15. Contact

15.1 Katie Taylor at HM Treasury, email: katie.taylor@hmtreasury.gov.uk, can be contacted with any queries regarding the amendments to the high-net-worth individual exemption for credit agreements made in the instrument.

15.2 Emma Albery at HM Treasury, email: emma.albery@hmtreasury.gov.uk, can be contacted with any queries regarding the amendments to the provision of pensions guidance made in the instrument.

15.3 Alanna Barber, Deputy Director for Banking and Credit, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.4 The Economic Secretary to the Treasury, John Glen MP can confirm that this Explanatory Memorandum meets the required standard.