Title: The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2022	De minimis assessment
SI (Statutory Instrument) No: 726	**Date:** 21/06/2022
Other departments or agencies: Click here to enter text.	**Type of regulation:** Domestic
Contact for enquiries: Credit Agreements Entered into by High-Net-Worth Individuals – katie.taylor@hmtreasury.gov.uk / Providing Pensions Guidance – emma.albery@hmtreasury.gov.uk	**Date measure comes into force:** 21/07/2022
Cost of Preferred (or more likely) Option Negligible	**Equivalent Annual Net Direct Cost to Business per year** (EANDCB in 2019 prices)

1. What is the problem under consideration? Why is government intervention necessary?

Two financial services amendments will be made in this SI. Throughout this impact assessment, these will be referred to as:

- Credit Agreements Entered into by High-Net-Worth Individuals
- Providing Pensions Guidance

Both amendments are amending the same piece of legislation: the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("the RAO").

Credit Agreements Entered into by High-Net-Worth Individuals

This amendment will rectify a drafting deficiency within the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("the RAO") that occurred when the EU Mortgage Credit Directive (the MCD) was onshored in 2019 as part of the EU Exit process. This amendment will clarify that financial institutions advancing Lombard loans (loans secured on an asset other than property – in most cases, a private wealth portfolio) to high-net-worth individuals (HNWIs) for the purpose of purchasing property are permitted to do so outside of the usual regulation that governs mortgage lending. This amendment will also restrict this exemption from mortgage regulation to HNWIs 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.

If this amendment is not made, the legislation will remain ambiguous, meaning that firms are at risk of inadvertently breaking the law by offering these types of credit agreements. Both HMT and the FCA have been approached by firms seeking clarity as to whether this exemption exists or not.

Providing Pensions Guidance

We are proposing to amend the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (RAO) to take account of the formation of the Money and Pensions Service (MaPS) in relation to pensions guidance. The RAO currently refers to a "designated guidance provider" being exempt from regulation where it offers pensions guidance. Following the formation of MaPS, they are now the aforementioned "designated guidance provider" and therefore, this reference needs to be updated. This change should have happened when MaPS was formed in 2019.

2. What are the policy objectives and the intended effects?

<u>Credit Agreements Entered into by High-Net-Worth Individuals</u>

The objective of this SI is to rectify a drafting deficiency within the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("the RAO"). The intended effect of this is to clarify that a legislative exemption from mortgage regulation does exist for financial institutions advancing Lombard loans to HNWIs for the purpose of purchasing property. The intended effect of restricting this exemption to Lombard loans advanced to those defined as resident in the UK as per the residency test set out in this piece of legislation is to ensure that those benefitting from this exemption have contributed to the UK economy.

<u>Providing Pensions Guidance</u>

The objective of the SI is to take account of the formation of the Money and Pensions Service, who were formed as Single Financial Guidance Body in 2019 through the Financial Guidance and Claims Act making MaPS the "designated guidance provider" for pensions guidance. This means sections 333B and 333E of FSMA need to be repealed.

3. What policy options have been considered, including any alternatives to regulation? Please justify preferred option

<u>Credit Agreements Entered into by High-Net-Worth Individuals</u>

The other option that was considered was to remove this exemption altogether. However, many of the consumer protections afforded by mortgage regulation are of little relevance where the loan is not secured on the property; for instance, borrowers are not as risk of losing their home in the event of default, as is the case when taking out a conventional mortgage. The decision was taken, therefore, to instead clarify the original policy intent, which was materially settled by the previous, but incorrectly drafted, legislation.

<u>Providing Pensions Guidance</u>

No other policy options were considered, as this amendment is to take account of the government creating a single financial guidance body in 2019 which, as one of its functions, provides pensions guidance. This is the statutory body which Treasury named the Money and Pensions Service.

4. Please justify why the net impacts (i.e., net costs or benefits) to business will be less than £5 million a year.

<u>To do this, please set out the following:</u>

- What will businesses have to do differently?

<u>Credit Agreements Entered into by High-Net-Worth Individuals</u>

This amendment will only impact businesses who opt to offer this type of lending. The only additional step that this amendment will require these businesses to take is to ensure that the borrower is resident in the UK as per the residency test set out in this piece of legislation. For firms seeking to use this exemption, it will be up to the borrower to self-declare their residency status. This will be declared in the same statement that the borrower already has to make in relation to their assets and income, meaning that this additional restriction will have no material impact on firms offering this type of lending.

<u>Providing Pensions Guidance</u>

The Money and Pensions Service is the "designated guidance provider" for pensions guidance therefore this will not affect businesses.

- How many businesses will this impact per year?

Credit Agreements Entered into by High-Net-Worth Individuals

This amendment will only impact businesses who opt to offer this type of lending. As this amendment is market sensitive, it is not possible to test with industry how many firms are likely to offer this type of lending once the exemption has been clarified; however, as it is a niche type of lending, we are confident that it will only be a small number.

Providing Pensions Guidance

Businesses will not be impacted as this amendment does not impact business as the Money and Pensions Services is the "designated guidance provider".

- What is the direct cost/benefit per business per year?

Credit Agreements Entered into by High-Net-Worth Individuals

For firms seeking to use this exemption, it will be up to the borrower to self-declare that they are resident in the UK as per the residency test set out in this piece of legislation. This will be declared in the same statement that the borrower already has to make in relation to their assets and income, meaning that this additional restriction will have no direct cost on firms that offer this type of lending.

Providing Pensions Guidance

As the Money and Pensions Service are the "designated guidance provider" for pensions guidance, this amendment will not have any direct impact on costs/benefits to businesses.

5. Please confirm whether your measure could be subject to call-in by BRE (Better Regulation Executive) under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

a) **Significant distributional impacts (such as significant transfers between different businesses or sectors)**
   No
b) **Disproportionate burdens on small businesses**
   No
c) **Significant gross effects despite small net impacts**
   No
d) **Significant wider social, environmental, financial or economic impacts**
   No
e) **Significant novel or contentious elements**
   No

<u>Sign-off for de minimis assessment: SCS</u>

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

SCS of Banking and Credit

Signed: Alanna Barber Date: 10/06/2022

SCS of Better Regulation Unit

Signed: Linda Timson Date: 14/06/2022

<u>Sign-off for de minimis assessment: Minister</u>

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

(John Glen MP, Economic Secretary to the Treasury)

Signed: John Glen MP Date: 21/06/2022