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STATUTORY INSTRUMENTS

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**2014 No. 366**

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

**PART 4**

Amendments of secondary legislation

**Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983**

6. In paragraph 10A of Schedule 2 to the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983<sup>(1)</sup> (form of default notice etc.), for “Office of Fair Trading” substitute “Financial Conduct Authority”.

**The Consumer Credit (Credit Reference Agency) Regulations 2000**

7. In Schedules 2 and 3 to the Consumer Credit (Credit Reference Agency) Regulations 2000<sup>(2)</sup> (credit reference agency files)—

- (a) for “Director General of Fair Trading”<sup>(3)</sup>, in each place, substitute “Financial Conduct Authority”;
- (b) for “Director General” (other than where it appears in the phrase “Director General of Fair Trading”), in each place, substitute “FCA”;

(c) for—

“Office of Fair Trading  
Fleetbank House  
2/6 Salisbury Square  
London  
EC4Y 8JX  
Telephone no 0171-211 8000  
Fax no 0171-211 8800  
email: [enquiries@oft.gov.uk](mailto:enquiries@oft.gov.uk)”,  
in each place, substitute—  
“25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

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(1) [S.I. 1983/1561](#); paragraph 10A inserted by [S.I. 2007/1167](#).

(2) [S.I. 2000/290](#).

(3) The Enterprise Act 2002 (c.40), section 2, provides that a reference to the Director General of Fair Trading in an enactment made before that Act is to have effect as if it were a reference to the Office of Fair Trading.

Telephone no 020 7066 1000 or 0800 111 6768  
email: [consumer.queries@fca.org.uk](mailto:consumer.queries@fca.org.uk)".

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

**8.**—(1) The Schedule to Financial Services and Markets Act 2000 (Exemption) Order 2001<sup>(4)</sup> is amended as follows.

(2) In Part 2 (persons exempt in respect of accepting deposits), omit paragraph 19.

(3) In Part 3 (persons exempt in respect of any regulated activity mentioned in article 5(1)), omit paragraph 39 (insolvency practitioners).

(4) In Part 4 (persons exempt in respect of particular regulated activities)—

(a) omit paragraph 47 (local authorities);

(b) in the heading to paragraph 52<sup>(5)</sup>, for “Insolvency practitioners” substitute “Official receivers”;

(c) omit paragraph 52(1)(a), (2) and (3).

### **The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001**

**9.**—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001<sup>(6)</sup> are amended as follows.

(2) In regulation 3 (requirements applying to contracts between authorised persons and appointed representatives)<sup>(7)</sup>—

(a) in paragraph (3E), omit “or 89A”;

(b) after paragraph (3I), insert—

“(3J) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative takes steps on behalf of or gives advice to an individual or a relevant recipient of credit in relation to the taking of any steps (in circumstances constituting the carrying on of an activity of the kind specified by article 89A of that Order) on behalf of other counterparties.”.

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

**10.**—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005<sup>(8)</sup> (controlled activities) is amended as follows.

(2) After article 15(1) (introductions), insert—

“(1A) But paragraph (1) does not apply to any communication made with a view to or for the purpose of an introduction to a person who carries on an activity of the kind specified by—

(a) paragraph 4B of Schedule 1;

(b) paragraph 4C of that Schedule;

(c) paragraph 11 of that Schedule, to the extent that it relates to that paragraph 4B or that paragraph 4C.”.

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(4) [S.I. 2001/1201](#).

(5) Inserted by [S.I. 2013/1881](#).

(6) [S.I. 2001/1217](#).

(7) Regulation 3 amended by [S.I. 2003/1475](#), [S.I. 2003/1475](#), [S.I. 2006/2383](#), [S.I. 2006/3414](#), [S.I. 2013/472](#) and [S.I. 2013/1881](#).

(8) [S.I. 2005/1529](#).

- (3) After article 16(1) (exempt persons), insert—
- “(1A) The financial promotion restriction also does not apply to any communication which is—
- (a) a non-real time communication or a solicited real time communication;
  - (b) made by a person who is an appointed representative (within the meaning of section 39(2) of the Act) and is carrying on an activity to which sections 20(1) and (1A) and 23(1A) of the Act do not apply by virtue of section 39(1D); and
  - (c) made for the purposes of that person’s business of carrying on a controlled activity which is also a regulated activity to which sections 20(1) and (1A) and 23(1A) of the Act do not apply by virtue of section 39(1D).”
- (4) In article 28B (real time communications: introductions)(9)—
- (a) in paragraph (1)(b)(ii), after “the general prohibition” insert “or in relation to which sections 20(1) and (1A) and 23(1A) of the Act do not apply by virtue of section 39(1D)”;
  - (b) in paragraph (4)—
    - (i) after “paragraph” insert “4B, 4C, 5A, 5B,”;
    - (ii) for “or 10B” substitute “10B, 10BA or 10BB”.
- (5) In article 29(2) (communications required or authorised by enactments)—
- (a) after “paragraph”, in the first place, insert “4B,”;
  - (b) for “or 10B” substitute “, 10B, 10BA or 10BB”.
- (6) In article 55A(2) and (3) (non-real time communication by members of professions), after “investment” in each place, insert “and consumer credit-related”.
- (7) In article 61 (sale of goods and supply of services)—
- (a) in paragraph (1), in the definition of “supplier”, after “3 to 7” insert “, 10BA and 10BB”;
  - (b) in paragraph (3)—
    - (i) at the end of sub-paragraph (a), omit “or”;
    - (ii) after sub-paragraph (b), insert—
      - “(c) a relevant credit agreement (within the meaning of paragraph 28 of Schedule 1)(10); or
      - (d) a consumer hire agreement (within the meaning of paragraph 28 of Schedule 1)(11).”;
  - (c) after paragraph (3), insert—

“(4) The exemption in paragraph (2) also does not apply if the communication is made by a person carrying on, or in relation to, an activity of a kind specified in paragraph 4B of Schedule 1 (credit broking).”
- (8) In Schedule 1(12) (controlled activities)—
- (a) after paragraph 4B(1) (credit broking), insert—

“(1A) But an activity is not a controlled activity falling within sub-paragraph (1) to the extent that it is a controlled activity falling within paragraph 10A (arranging qualifying credit etc.)”;
  - (b) in paragraph 4C (operating an electronic system in relation to lending)—

(9) Amended by S.I. 2006/2383, S.I. 2009/1342 and S.I. 2013/1881.

(10) Definition inserted by S.I. 2013/1881.

(11) Definition inserted by S.I. 2013/1881.

(12) Amended by S.I. 2013/1881. There are other amending instruments but none is relevant.

- (i) in sub-paragraph (1), for “condition in paragraph (2) is” substitute “conditions in sub-paragraphs (2), (2A) and (2C) are”;
- (ii) in sub-paragraph (2), after “The condition” insert “in this sub-paragraph”;
- (iii) after sub-paragraph (2), insert—
  - “(2A) The condition in this sub-paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to—
    - (a) receive payments in respect of interest and capital due under the agreement from C, and
    - (b) make payments in respect of interest and capital due under the agreement to B.
  - (2B) For the purposes of sub-paragraph (2A)—
    - (a) an agreement by A to appoint X to perform the activities in that paragraph is to be treated as an undertaking by A within the meaning of that sub-paragraph;
    - (b) it is immaterial that—
      - (i) payments may be subject to conditions;
      - (ii) A, or X, may be entitled to retain a portion or the entirety of any payment received from C.
  - (2C) The condition in this sub-paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to perform, or A undertakes to appoint or direct another person to perform, either or both of the following—
    - (a) to take steps to procure the payment of a debt under the agreement;
    - (b) to exercise or enforce rights under the agreement on behalf of B.”
- (iv) in sub-paragraph (3), after “specified by”, for “paragraph” substitute “sub-paragraph”;
- (v) in sub-paragraph (4), after “the condition in”, for “paragraph” substitute “sub-paragraph”;
- (vi) in sub-paragraph (5), for “paragraph” substitute “sub-paragraph”;
- (vii) in sub-paragraph (6), for “paragraph” substitute “sub-paragraph”;
- (viii) after sub-paragraph (9), insert—
  - “(10) For the purposes of the application of section 21(9) and (10) of the Act (restrictions on financial promotion) to an activity of a kind specified by this paragraph, paragraph 26D of this Schedule (relevant credit agreements), and article 4 (definition of controlled activities and controlled investments) in so far as it relates to that paragraph, has effect as if the reference to a relevant credit agreement in paragraph 26D includes a reference to a paragraph 4C agreement.”;
- (c) in paragraph 10BA (providing relevant consumer credit), after “relevant credit agreement” insert “, other than an agreement under which qualifying credit within the meaning of paragraph 10 is provided.”;
- (d) in paragraph 10BB (providing consumer hire), after “regulated consumer hire agreement” insert “, or an agreement that would be such an agreement but for article 60O (exempt agreements: exemptions relating to nature of agreement) or 60Q (exempt agreements: exemptions relating to nature of hirer) of the Regulated Activities Order.”;

- (e) in paragraph 11 (agreeing to carry on specified kinds of activity), for “10B” substitute “10BB”;
- (f) in paragraph 28 (interpretation), in the definition of “relevant credit agreement”, after “regulated mortgage contract” insert “or a regulated home purchase plan”.

### **The Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007**

**11.**—(1) Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007(**13**) are amended as follows.

(2) In regulation 26, for “Office of Fair Trading” substitute “Financial Conduct Authority”.

(3) In Part 5 of Schedule 3 (statement to be included in notices of sums in arrears under fixed-sum credit agreements etc. and running-account credit agreements), for “Office of Fair Trading”, in each place, substitute “Financial Conduct Authority”.

(4) In paragraph 6 of Schedule 5 (information and statement to be included in all notices under section 130A of the 1974 Act), for “Office of Fair Trading” substitute “Financial Conduct Authority”.

### **The Payment Services Regulations 2009**

**12.**—(1) The Payment Services Regulations 2009(**14**) are amended as follows.

(2) In regulation 52(a) (disapplication of certain regulations in the case of consumer credit agreements), after “section 51 (prohibition of unsolicited credit tokens)” insert “(which continues to have effect for the purposes of this regulation by virtue of article 13 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014)”.

(3) After regulation 92 (costs of supervision), insert—

#### **“Credit agreements**

**92A.** Schedule 4A, which contains provisions concerning credit agreements, has effect.”.

(4) After Schedule 4, insert—

“SCHEDULE 4A

Regulation 92A

Credit agreements

## **PART 1**

### **Prohibitions and restrictions**

#### **Power to prohibit the entry into credit agreements**

**1.**—(1) If it appears to the Authority that sub-paragraph (4) has been, or is likely to be, contravened as respects an EEA authorised payment institution exercising passport rights in the United Kingdom, it may by notice given to the institution in accordance with Part 2 of this Schedule impose on the institution a credit prohibition.

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(13) [S.I. 2007/1167](#).

(14) [S.I. 2009/209](#).

(2) If it appears to the Authority that a restriction imposed under paragraph 2 on an EEA authorised payment institution exercising passport rights in the United Kingdom has not been complied with, it may by notice given to the institution in accordance with Part 2 of this Schedule impose on the institution a credit prohibition.

(3) “A credit prohibition” means a prohibition on carrying on, or purporting to carry on, in the United Kingdom any business which consists of or includes carrying on an activity—

- (a) of the kind specified by article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(15)</sup>, and
- (b) listed in the Annex to the payment services directive or which the institution is entitled to carry on in accordance with Article 16 of that directive.

(4) This sub-paragraph is contravened as respects an EEA authorised payment institution exercising passport rights in the United Kingdom if—

- (a) the institution or any of its employees, agents or associates (whether past or present), or
- (b) where the institution is a body corporate, any controller of the institution or an associate of any such controller,

does any of the things specified in sub-paragraph (5).

(5) A person does a thing specified in this sub-paragraph if the person—

- (a) commits any offence involving fraud or other dishonesty or violence;
- (b) contravenes any provision made by or under—
  - (i) the Consumer Credit Act 1974;
  - (ii) the 2000 Act, to the extent that that Act relates to any activity of the kind specified by article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
  - (iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;
- (c) contravenes any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);
- (d) practices discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business;
- (e) engages in business practices appearing to the Authority to be deceitful or oppressive or otherwise unfair or improper (including practices that appear to the Authority to involve irresponsible lending).

(6) A credit prohibition may be absolute or may be imposed—

- (a) for such period,
- (b) until the occurrence of such event, or
- (c) until such conditions are complied with,

as may be specified in the notice given under sub-paragraph (1) or (2).

(7) Any period, event or condition so specified may be varied by the Authority on the application of the institution concerned (for which, see paragraph 5).

(8) A credit prohibition may be withdrawn in whole or in part—

- (a) on the initiative of the Authority, by notice served by the Authority on the institution concerned, and any such notice takes effect on such date as is specified in the notice;
- (b) on an application submitted by the institution concerned (for which, see paragraph 5).

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<sup>(15)</sup> Articles 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A and 89B inserted by [S.I. 2013/1881](#).

(9) Where the Authority withdraws a credit prohibition and imposes a restriction under paragraph 2, the Authority may specify that the withdrawal of the credit prohibition only takes effect when the imposition of the restriction is no longer open to review.

(10) For the purposes of sub-paragraph (9), whether the imposition of a restriction is open to review is to be determined in accordance with section 391(8) of the 2000 Act as if the imposition of the restriction were a matter to which a supervisory notice (within the meaning of that section) relates.

(11) An institution contravening a prohibition imposed under this paragraph is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(12) In this paragraph—

“associate” has the same meaning as in article 60L of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“controller” has the meaning given by section 422 of the 2000 Act.

(13) If a credit prohibition is in effect in relation to an institution, article 60JA of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 does not apply in relation to that institution.

#### **Power to restrict the entry into credit agreements**

2.—(1) In this paragraph, “restriction” means a direction that an EEA authorised payment institution exercising passport rights in the United Kingdom may not carry on in the United Kingdom, otherwise than in accordance with such conditions as may be specified in the direction, any business which consists of or includes carrying on an activity—

- (a) of the kind specified in article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (b) listed in the Annex to the payment services directive or which the institution is entitled to carry on in accordance with Article 16 of that directive; and
- (c) specified in the direction.

(2) If it appears to the Authority that the situation as respects an EEA authorised payment institution exercising passport rights in the United Kingdom is such that the powers conferred by paragraph 1 are exercisable, the Authority may, instead of imposing a credit prohibition—

- (a) impose by notice given in accordance with Part 2 of this Schedule such restriction as appears to it desirable;
- (b) where it has already imposed a restriction, vary the restriction on the Authority’s own initiative by notice given in accordance with Part 2 of this Schedule.

(3) The Authority may also impose a restriction by notice given in accordance with Part 2 of this Schedule if it withdraws a credit prohibition.

(4) A restriction may be—

- (a) withdrawn on the initiative of the Authority, by notice served by the Authority on the institution concerned, and any such notice takes effect on such date as is specified in the notice;
- (b) withdrawn or varied on an application submitted by the institution concerned (for which, see paragraph 5).

(5) An institution contravening a restriction is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

## PART 2

### Procedure and appeals

#### **Interpretation**

**3.** In this Part—

“prohibition” means a credit prohibition imposed under paragraph 1(1) or (2) of Part 1 of this Schedule;

“restriction” means a restriction imposed under paragraph 2(2) or (3) of Part 1 of this Schedule;

“the Tribunal” means the Upper Tribunal.

#### **Notice of prohibition or restriction**

**4.—**(1) A prohibition or restriction takes effect—

- (a) immediately, if the relevant notice states that that is the case,
- (b) on such date as may be specified in the notice, or
- (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(2) An institution which is aggrieved by the imposition of a prohibition or a restriction by a notice given under this paragraph may refer the matter to the Tribunal.

(3) A prohibition or restriction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is imposing the prohibition or restriction, reasonably considers that it is necessary for the prohibition or restriction to take effect immediately (or on that date).

(4) The notice must—

- (a) give details of the prohibition or restriction,
- (b) state the Authority’s reasons for the prohibition or restriction,
- (c) inform the institution that it may make representations to the Authority within such period as is specified in the notice (whether or not the institution has referred the matter to the Tribunal),
- (d) inform the institution of when the prohibition or restriction takes effect, and
- (e) inform the institution of its right to refer the matter to the Tribunal.

(5) The Authority may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by the institution, the Authority decides—

- (a) to impose the proposed prohibition or restriction, or
- (b) if the prohibition or restriction has already taken effect, not to withdraw the prohibition or restriction,

it must give the institution a notice.

(6) If, having considered any representations made by the institution, the Authority decides—

- (a) not to impose the proposed prohibition or restriction,

- (b) to impose a different prohibition or restriction, or
- (c) if the prohibition or restriction has already taken effect, to withdraw the prohibition or restriction,

it must give the institution a notice.

(7) A notice under sub-paragraph (6) must inform the institution of its right to refer the matter to the Tribunal.

(8) A notice under sub-paragraph (7)(b) must comply with sub-paragraph (4).

(9) If a notice under this paragraph informs an institution of its right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(10) For the purposes of sub-paragraph (1)(c)—

- (a) whether a matter is open to review is to be determined in accordance with section 391(8) of the 2000 Act;
- (b) the notice to which the matter relates is to be treated as a supervisory notice for the purposes of that section.

(11) References in this paragraph to the imposition of a restriction include references to the variation of a restriction on the initiative of the Authority.

#### **Application to revoke or vary prohibition or restriction**

5.—(1) An application under Part 1 of this Schedule must—

- (a) be made in such manner as the Authority may direct, and
- (b) contain, or be accompanied by, such other information as the Authority may reasonably require.

(2) At any time after the application is received and before it is determined, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(3) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(4) The Authority may require an applicant to provide information required under this paragraph in such form, or to verify it in such a way, as the Authority may direct.

(5) If the Authority decides to grant an application, it must give the applicant a notice.

(6) If the Authority proposes to refuse an application, or to take an action different from or in addition to the one applied for (including a proposal to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a warning notice.

(7) If the Authority decides to refuse an application, or to take an action different from or in addition to the one applied for (including a decision to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a decision notice.

(8) An applicant who is aggrieved by a decision notice given under this paragraph may refer the matter to the Tribunal.

#### **Notice to the home state competent authority**

6. If the Authority sends a notice to an institution under this Schedule which imposes, varies or withdraws a prohibition or restriction, it must send a copy of the notice to the institution's home state competent authority.”.

(5) In Part 1 of Schedule 5 (application and modification of the 2000 Act)—

- (a) in paragraph 3(d)(i)(aa) (information gathering and investigations)(**16**), after paragraph (c) (which is inserted by that paragraph into section 168(1) of the Financial Services And Markets Act 2000), insert—
  - “(d) an EEA authorised payment institution exercising passport rights in the United Kingdom may have contravened, or may be likely to contravene, a restriction or prohibition within the meaning of paragraph 3 (interpretation) of Schedule 4A to the Payment Services Regulations 2009 (credit agreements);
  - (e) paragraph 1(4) of that Schedule 4A (power to prohibit the entry into credit agreements) may have been contravened, or may be likely to be contravened, as respects an EEA authorised payment institution exercising passport rights in the United Kingdom”;
- (b) in paragraph 7 (warning notices and decision notices)(**17**)—
  - (i) in sub-paragraph (c)(ii), after “(including as applied by regulation 14) of” insert “, or paragraph 4 of Schedule 4A to,”;
  - (ii) in sub-paragraph (e), after “(including as applied by regulation 14) of” insert “, or paragraph 4 of Schedule 4A to,”.

#### **Saving of section 51 of the Consumer Credit Act 1974 for the purposes of the Payment Services Regulations 2009**

**13.**—(1) Notwithstanding the repeal by regulation 20(15) and (64) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013(**18**) of the provisions specified in paragraph (2), those provisions continue to have effect for the purposes of regulation 52(a) of the Payment Services Regulations 2009(**19**) (disapplication of certain regulations in the case of consumer credit agreements).

- (2) The provisions are—
  - (a) section 51 of the Consumer Credit Act 1974 (prohibition of unsolicited credit tokens);
  - (b) the entry relating to section 51(1) in Schedule 1 to that Act (prosecution and punishment of offences).

#### **The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009**

**14.** In article 6A of the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (specific exemptions in respect of consumer credit)(**20**)—

- (a) in paragraph (1)(a), after “credit activities” insert “or activities to which, by virtue of section 39(1D) of the Act, sections 20(1) and (1A) and 23(1A) of the Act do not apply when carried on by B”;
- (b) in paragraph (4)—
  - (i) in sub-paragraph (b)(ii) and (c)(ii), for “who” substitute “in connection with an activity of the kind specified by sub-paragraph (d) or (e) and where that person”;
  - (ii) in paragraph (f), for “who” substitute “in connection with an activity of the kind specified by sub-paragraph (a) to (e) and where that person”;
- (c) after paragraph (4), insert—

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(16) Substituted by [S.I. 2013/472](#).

(17) Amended by [S.I. 2013/472](#).

(18) [S.I. 2013/1881](#).

(19) [S.I. 2009/209](#).

(20) [S.I. 2009/774](#). Article 6A was inserted by [S.I. 2013/1881](#).

“(4A) For the purposes of paragraph (4), any activity which the person carries on is to be disregarded if sections 20(1) and (1A) and 23(1A) of the Act do not apply to the carrying on of that activity by virtue of section 39(1D) of the Act.”;

- (d) in paragraph (5)—
  - (i) in the opening words, for “But” substitute “Except where the activity is carried on by a not-for-profit body,”;
  - (ii) in the closing words—
    - (aa) after “borrower to repay” insert “or the hirer to pay”;
    - (bb) after “legal” insert “or equitable”;
- (e) in paragraph (9), for “regulation” substitute “article”.

### **Transitional provision relating to the Consumer Credit (Disclosure of Information) Regulations 2010**

**15.**—(1) Pre-contract credit information (within the meaning given by regulation 1(2) of the Consumer Credit (Disclosure of Information) Regulations 2010<sup>(21)</sup>) disclosed to a debtor in the period specified in paragraph (2) which contains the information specified in paragraph (3) is to be treated as if it contained the information required by—

- (a) the entry in the second column of table 5 in Schedule 1<sup>(22)</sup> to the Consumer Credit (Disclosure of Information) Regulations 2010 opposite the entry “If applicable The supervisory authority”;
  - (b) the entry in the second column of table 5 in Schedule 3 to those Regulations opposite the entry “If applicable The supervisory authority”.
- (2) The period is the period of five months beginning on the day on which this article comes into force.
- (3) The information is a statement specifying—
- (a) in the case of a person who is carrying on an activity which is exempt from the general prohibition in section 19 of the Financial Services and Markets Act 2000 by virtue of by virtue of section 327 of that Act, the Office of Fair Trading as the supervisory authority before 1st April 2014 and the relevant designated professional body as the supervisory authority after 31st March 2014, or
  - (b) in any other case, the Office of Fair Trading as the supervisory authority before 1st April 2014 and the Financial Conduct Authority as the supervisory authority after 31st March 2014.

### **The Consumer Credit (Agreements) Regulations 2010**

**16.** In paragraph 33 of Schedule 1 to the Consumer Credit (Agreements) Regulations 2010<sup>(23)</sup> (information to be included in regulated consumer credit agreements), in the second column, after “the Act” insert “or, in a case where the supplier is carrying on an activity which is exempt from the general prohibition in section 19 of the Financial Services and Markets Act 2000 by virtue of section 327 of that Act, a statement specifying (i) that the activity of the supplier is so exempt and (ii) the relevant designated professional body (within the meaning of section 326 of that Act) as the supervisory authority under that Act, and (iii) the geographical address of the relevant designated professional body”.

<sup>(21)</sup> [S.I. 2010/1013](#).

<sup>(22)</sup> Table 5 of Schedule 1 and table 5 of Schedule 3 amended by [S.I. 2013/1881](#).

<sup>(23)</sup> [S.I. 2010/1014](#); paragraph 33 amended by [S.I. 2013/1881](#).

### **Transitional provision relating to the Consumer Credit (Agreements) Regulations 2010**

17.—(1) An agreement presented, sent, given or delivered to the debtor (whether for signature or otherwise) in the period specified in paragraph (2) which contains the information specified in paragraph (3) is to be treated as if it contained the information required by paragraph 33 of Schedule 1 to the Consumer Credit (Agreements) Regulations 2010.

(2) The period is the period of five months beginning on the day on which this article comes into force.

(3) The information is a statement specifying—

- (a) in the case of a person who is carrying on an activity which is exempt from the general prohibition in section 19 of the Financial Services and Markets Act 2000 by virtue of by virtue of section 327 of that Act, the Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX as the supervisory authority before 1st April 2014 and the relevant designated professional body as the supervisory authority after 31st March 2014, or
- (b) in any other case, the Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX as the supervisory authority before 1st April 2014 and the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS as the supervisory authority after 31st March 2014.

### **The Electronic Money Regulations 2011**

18.—(1) The Electronic Money Regulations 2011(24) are amended as follows.

(2) After regulation 59 (costs of supervision), insert—

**“Credit agreements**

**59A.** Schedule 2A, which contains provisions concerning credit agreements, has effect.”.

(3) After Schedule 2, insert—

“SCHEDULE 2A

Regulation 59A

Credit agreements

## **PART 1**

### **Prohibitions and restrictions**

#### **Power to prohibit the entry into credit agreements**

1.—(1) If it appears to the Authority that sub-paragraph (4) has been, or is likely to be, contravened as respects an EEA authorised electronic money institution exercising passport rights in the United Kingdom, it may by notice given to the institution in accordance with Part 2 of this Schedule impose on the institution a credit prohibition.

(2) If it appears to the Authority that a restriction imposed under paragraph 2 on an EEA authorised electronic money institution exercising passport rights in the United Kingdom has not been complied with, it may by notice given to the institution in accordance with Part 2 of this Schedule impose on the institution a credit prohibition.

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(24) S.I. 2011/99.

(3) “A credit prohibition” means a prohibition on carrying on, or purporting to carry on, in the United Kingdom any business which consists of or includes carrying on an activity—

- (a) of the kind specified by article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(25)</sup>, and
- (b) listed in the Annex to the payment services directive or which the institution is entitled to carry on in accordance with Article 16 of that directive as applied by Article 6 of the electronic money directive.

(4) This sub-paragraph is contravened as respects an EEA authorised electronic money institution exercising passport rights in the United Kingdom if—

- (a) the institution or any of its employees, agents or associates (whether past or present), or
- (b) where the institution is a body corporate, any controller of the institution or an associate of any such controller,

does any of the things specified in sub-paragraph (5).

(5) A person does a thing specified in this sub-paragraph if the person—

- (a) commits any offence involving fraud or other dishonesty or violence;
- (b) contravenes any provision made by or under—
  - (i) the Consumer Credit Act 1974;
  - (ii) the 2000 Act, to the extent that that Act relates to any activity of the kind specified by article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
  - (iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;
- (c) contravenes any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);
- (d) practices discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business;
- (e) engages in business practices appearing to the Authority to be deceitful or oppressive or otherwise unfair or improper (including practices that appear to the Authority to involve irresponsible lending).

(6) A credit prohibition may be absolute or may be imposed—

- (a) for such period,
- (b) until the occurrence of such event, or
- (c) until such conditions are complied with,

as may be specified in the notice given under sub-paragraph (1) or (2).

(7) Any period, event or condition so specified may be varied by the Authority on the application of the institution concerned (for which, see paragraph 5).

(8) A credit prohibition may be withdrawn in whole or in part—

- (a) on the initiative of the Authority, by notice served by the Authority on the institution concerned, and any such notice takes effect on such date as is specified in the notice;
- (b) on an application submitted by the institution concerned (for which, see paragraph 5).

(9) Where the Authority withdraws a credit prohibition and imposes a restriction under paragraph (2), the Authority may specify that the withdrawal of the credit prohibition only takes

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(25) Articles 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A and 89B inserted by [S.I. 2013/1881](#).

effect when the imposition of the restriction is no longer subject to review (within the meaning of section 391(8) of the 2000 Act).

(10) For the purposes of sub-paragraph (9), whether the imposition of a restriction is open to review is to be determined in accordance with section 391(8) of the 2000 Act as if the imposition of the restriction were a matter to which a supervisory notice (within the meaning of that section) relates.

(11) An institution contravening a prohibition imposed under this paragraph is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(12) In this paragraph—

“associate” has the same meaning as in article 60L of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“controller” has the meaning given by section 422 of the 2000 Act.

(13) If a credit prohibition is in effect in relation to an institution, article 60JB of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 does not apply in relation to that institution.

#### **Power to restrict the entry into credit agreements**

2.—(1) In this paragraph, “restriction” means a direction that an EEA authorised electronic money institution exercising passport rights in the United Kingdom may not carry on in the United Kingdom, otherwise than in accordance with such conditions as may be specified in the direction, any business which consists of or includes carrying on an activity—

- (a) of the kind specified in article 36A, 36H, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (b) listed in the Annex to the payment services directive or which the institution is entitled to carry on in accordance with Article 16 of that directive as applied by Article 6 of the electronic money directive; and
- (c) specified in the direction.

(2) If it appears to the Authority that the situation as respects an EEA authorised electronic money institution exercising passport rights in the United Kingdom is such that the powers conferred by paragraph 1 are exercisable, the Authority may, instead of imposing a credit prohibition impose—

- (a) by notice given in accordance with Part 2 of this Schedule such restriction as appears to it desirable;
- (b) where it has already imposed a restriction, vary the restriction on the Authority’s own initiative by notice given in accordance with Part 2 of this Schedule.

(3) The Authority may also impose a restriction by notice given in accordance with Part 2 of this Schedule if it withdraws a credit prohibition.

(4) A restriction may be—

- (a) withdrawn on the initiative of the Authority, by notice served by the Authority on the institution concerned, and any such notice takes effect on such date as is specified in the notice;
- (b) withdrawn or varied on an application submitted by the institution concerned (for which, see paragraph 5).

(5) An institution contravening a restriction is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

## PART 2

### Procedure and appeals

#### **Interpretation**

#### **3.** In this Part—

“prohibition” means a credit prohibition imposed under paragraph 1(1) or (2) of Part 1 of this Schedule;

“restriction” means a restriction imposed under paragraph 2(2) or (3) of Part 1 of this Schedule;

“the Tribunal” means the Upper Tribunal.

#### **Notice of prohibition or restriction**

#### **4.—**(1) A prohibition or restriction takes effect—

- (a) immediately, if the relevant notice states that that is the case,
- (b) on such date as may be specified in the notice, or
- (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(2) An institution which is aggrieved by the imposition of a prohibition or a restriction by a notice given under this paragraph may refer the matter to the Tribunal.

(3) A prohibition or restriction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is imposing the prohibition or restriction, reasonably considers that it is necessary for the prohibition or restriction to take effect immediately (or on that date).

#### (4) The notice must—

- (a) give details of the prohibition or restriction,
- (b) state the Authority’s reasons for the prohibition or restriction,
- (c) inform the institution that it may make representations to the Authority within such period as is specified in the notice (whether or not the institution has referred the matter to the Tribunal),
- (d) inform the institution of when the prohibition or restriction takes effect, and
- (e) inform the institution of its right to refer the matter to the Tribunal.

(5) The Authority may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by the institution, the Authority decides—

- (a) to impose the proposed prohibition or restriction, or
- (b) if the prohibition or restriction has taken effect, not to withdraw the prohibition or restriction,

it must give the institution a notice.

(7) If, having considered any representations made by the institution, the Authority decides—

- (a) not to impose the proposed prohibition or restriction,

- (b) to impose a different prohibition or restriction, or
- (c) if the prohibition or restriction has already taken effect, to withdraw the prohibition or restriction,

it must give the institution a notice.

(7) A notice under sub-paragraph (6) must inform the institution of its right to refer the matter to the Tribunal.

(8) A notice under sub-paragraph (7)(b) must comply with sub-paragraph (4).

(9) If a notice under this paragraph informs an institution of its right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(10) For the purposes of sub-paragraph (1)(c)—

- (a) whether a matter is open to review is to be determined in accordance with section 391(8) of the 2000 Act;
- (b) the notice to which the matter relates is to be treated as a supervisory notice for the purposes of that section.

(11) References in this paragraph to the imposition of a restriction include references to the variation of a restriction on the initiative of the Authority.

#### **Application to revoke or vary prohibition or restriction**

5.—(1) An application under Part 1 of this Schedule must—

- (a) be made in such manner as the Authority may direct, and
- (b) contain, or be accompanied by, such other information as the Authority may reasonably require.

(2) At any time after the application is received and before it is determined, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(3) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(4) The Authority may require an applicant to provide information required under this paragraph in such form, or to verify it in such a way, as the Authority may direct.

(5) If the Authority decides to grant an application, it must give the applicant a notice.

(6) If the Authority proposes to refuse an application, or to take an action different from or in addition to the one applied for (including a proposal to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a warning notice.

(7) If the Authority decides to refuse an application, or to take an action different from or in addition to the one applied for (including a decision to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a decision notice.

(8) An applicant who is aggrieved by a decision notice given under this paragraph may refer the matter to the Tribunal.

#### **Notice to the home state competent authority**

6. If the Authority sends a notice to an institution under this Schedule which imposes, varies or withdraws a prohibition or restriction, it must send a copy of the notice to the institution's home state competent authority".

(4) In Part 1 of Schedule 3 (application and modification of the 2000 Act)—

- (a) omit paragraph 2(b)(ii) (the Tribunal);
- (b) in paragraph 3(d)(i)(aa) (information gathering and investigations)(**26**), after paragraph (ab) (which is inserted by that paragraph into section 168(1) of the Financial Services And Markets Act 2000), insert—
  - “(ac) an EEA authorised electronic money institution exercising passport rights in the United Kingdom may have contravened, or may be likely to contravene, a restriction or prohibition within the meaning of paragraph 3 (interpretation) of Schedule 2A to the Electronic Money Regulations 2011 (credit agreements);
  - (ad) paragraph 1(4) of that Schedule 2A (power to prohibit the entry into credit agreements) may have been contravened, or may be likely to be contravened, as respects an EEA authorised electronic institution exercising passport rights in the United Kingdom”;
- (c) in paragraph 8(e) (warning notices and decision notices)(**27**)—
  - (i) in sub-paragraph (c)(i), after “(including as applied by regulation 15) of” insert “, or paragraph 4 of Schedule 4A to,”;
  - (ii) in sub-paragraph (e), after “(including as applied by regulation 15) of” insert “, or paragraph 4 of Schedule 2A to,”.

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

**19.**—(1) The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013(**28**) is amended as follows.

- (2) In article 56 (interim permission)—
  - (a) in paragraph (3), after “regulated activities” insert “of the kind specified by article 60B (regulated credit agreements)”;
  - (b) after paragraph (3), insert—

“(3A) For the purposes of paragraph (3), there is to be disregarded any activity carried on by P in the period of one year ending on 1st April 2014 in so far as it relates to an agreement secured on land.”;
  - (c) in paragraph (9)—
    - (i) in the opening words of that paragraph, for “61” substitute “59”;
    - (ii) in sub-paragraph (a), for “commencement” substitute “1st April 2014”.
- (3) In article 58 (duration of interim permission), after paragraph (4), insert—

“(5) Where P’s interim permission ceases to have effect in accordance with paragraph (1)

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  - (a) paragraph (6) applies in respect of an act or omission by P which occurred at a time when P had an interim permission;
  - (b) any requirement—
    - (i) imposed on P under section 55L, 55M or 404F(7) of the Act at a time when P had an interim permission, and
    - (ii) which is in effect immediately before that interim permission ceases to have effect,

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(26) Substituted by [S.I. 2013/472](#).

(27) Amended by [S.I. 2013/472](#).

(28) [S.I. 2013/1881](#).

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continues to have effect and paragraph (6) applies in respect of any contravention of that requirement.

(6) If P is no longer an authorised person, P is to be treated as an authorised person for the purposes of the following provisions of the Act—

(a) Part 11 (information gathering and investigations) and Part 14 (disciplinary measures);

(b) section 384 of the Act (power of FCA or PRA to require restitution).”.

(4) In paragraph 40 in Part 2 of the Schedule (the Payment Services Regulations 2009), omit paragraph (b).