

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(a) is amended as follows.

(2) In article 60C (exempt agreements: exemption relating to the nature of the agreement) for paragraph (2) substitute—

“(2) A credit agreement is an exempt agreement if—

- (a) by entering into the agreement as lender, a person is or was carrying on an activity of a kind specified by article 61(1) (entering into regulated mortgage contracts); or
- (b) by entering into the agreement as home purchase provider, a person is or was carrying on an activity of a kind specified by article 63F(1) (entering into regulated home purchase plans).”.

(3) In article 60C(2) (as substituted by paragraph (2) of this article)—

- (a) omit “or” after sub-paragraph (a); and
- (b) after sub-paragraph (b) insert—

“; or

- (c) in the case of an agreement entered into before 31st October 2004, by administering the agreement on 21st March 2016 a person is carrying on an activity of a kind specified by article 61(2) (administering regulated mortgage contracts).”.

(4) In article 61 (regulated mortgage contracts), in paragraph (2) for “, where the contract was entered into by way of business after the coming into force of this article” substitute—

“where—

- (a) the contract was entered into by way of business on or after 31st October 2004; or
- (b) the contract—
 - (i) was entered into by way of business before 31st October 2004, and
 - (ii) was a regulated credit agreement immediately before 21st March 2016.”.

(5) In article 61A (mortgage contracts which are not regulated mortgage contracts)—

(a) in paragraph (1)—

- (i) omit “or” after sub-paragraph (d); and
- (ii) after sub-paragraph (e) insert—

“; or

(f) an exempt equitable mortgage bridging loan;” and

(b) in paragraph (6) after the definition of “exempt consumer buy-to-let mortgage contract” insert—

““exempt equitable mortgage bridging loan” is a contract that—

- (a) is a bridging loan;
- (b) is secured by an equitable mortgage on land; and
- (c) is an exempt agreement within the meaning of article 60B(3) (regulated credit agreements) by virtue of article 60E(2) (exempt agreements: exemptions relating to the nature of the lender).”.

Name

(a) S.I. 2001/544. Article 60C was inserted by S.I. 2013/1881 and amended by S.I. 2014/366 and 1850. Article 61 was amended by S.I. 2001/3544, 2005/2114, 2006/2383, 2010/2960 and 2015/910. Article 61A was inserted by S.I. 2015/910.

Date Name
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the Regulated Activities Order”). The amendments made by this Order supplement amendments to the Regulated Activities Order made by the Mortgage Credit Directive Order 2015 (S.I. 2015/910), which transposed in part Directive 2014/17/EU of the European Parliament and of the Council of 4th February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (“the mortgages directive”) (OJ L 60, 28.2.2014, p.34). The Financial Conduct Authority (“FCA”) has transposed other parts of the mortgages directive in rules. A transposition note setting out how the mortgages directive has been transposed into UK law is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on HM Treasury's website (www.gov.uk/government/organisations/hm-treasury).

Article 2(2) of this Order ensures that agreements which meet the definition of a regulated mortgage contract or a regulated home purchase plan in the Regulated Activities Order are only exempted from regulation by the FCA as regulated credit agreements under that Order if entering into the agreements was an activity regulated by the FCA by virtue of the agreements being regulated mortgage contracts or regulated home purchase plans.

Article 2(3) and (4) ensure that the administration of agreements which meet the definition of a regulated mortgage contract, which were entered into before 31st October 2004 and are regulated by the FCA as regulated credit agreements immediately before 21st March 2016, is regulated by the FCA as administration of regulated mortgage contracts from 21st March 2016, alongside the administration of regulated mortgage contracts which were entered into on or after 31st October 2004.

Article 2(5) ensures that an existing exemption from regulation for certain loans relating to the purchase of land, which would otherwise be regulated as regulated credit agreements, remains available for such loans if they fall within the category of regulated mortgage contracts from 21st March 2016 and they are bridging loans secured by equitable mortgages.

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.

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