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STATUTORY INSTRUMENTS

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**2013 No. 1881**

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

**PART 2**

Amendments of the Regulated Activities Order

**Credit broking etc.**

4. After article 36 (other exclusions in relation to arranging deals in investments), insert—

**“CHAPTER 6A**

**CREDIT BROKING**

*The activity*

**Credit broking**

- 36A.**—(1) Each of the following is a specified kind of activity—
- (a) effecting an introduction of an individual or relevant recipient of credit who wishes to enter into a credit agreement to a person (“P”) with a view to P entering into by way of business as lender a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions);
  - (b) effecting an introduction of an individual or relevant recipient of credit who wishes to enter into a consumer hire agreement to a person (“P”) with a view to P entering into by way of business as owner a regulated consumer hire agreement or an agreement which would be a regulated consumer hire agreement but for article 60O (exempt agreements: exemptions relating to the nature of the agreement) or 60Q (exempt agreements: exemptions relating to the nature of the hirer);
  - (c) effecting an introduction of an individual or relevant recipient of credit who wishes to enter into a credit agreement or consumer hire agreement (as the case may be) to a person who carries on an activity of the kind specified in subparagraph (a) or (b) by way of business;
  - (d) presenting or offering an agreement which would (if entered into) be a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions);
  - (e) assisting an individual or relevant recipient of credit by undertaking preparatory work with a view to that person entering into a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions);

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- (f) entering into a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions) on behalf of a lender.
- (2) Paragraph (1) does not apply in so far as the activity is an activity of the kind specified by article 36H (operating an electronic system in relation to lending).
- (3) For the purposes of paragraph (1) it is immaterial whether the credit agreement or consumer hire agreement is subject to the law of a country outside the United Kingdom.
- (4) For the purposes of this article, the “relevant provisions” are the following provisions—
  - (a) article 60C (exempt agreements: exemptions relating to the nature of the agreement);
  - (b) article 60D (exempt agreements: exemptions relating to the purchase of land for non-residential purposes);
  - (c) article 60E (exempt agreements: exemptions relating to the nature of the lender);
  - (d) article 60G (exempt agreements: exemptions relating to the total charge for credit);
  - (e) article 60H (exempt agreements: exemptions relating to the nature of the borrower).

#### *Exclusions*

#### **Introducing by individuals in the course of canvassing off trade premises**

- 36B.**—(1) There are excluded from article 36A activities carried on by an individual by canvassing off trade premises—
- (a) a restricted-use credit agreement used to finance a transaction between the lender or a member of the lender's group and the borrower whether forming part of that agreement or not, or
  - (b) a regulated consumer hire agreement.
- (2) But paragraph (1) does not apply if A carries on any other activity of a kind specified by article 36A(1)(a) to (c).
- (3) A canvasses a restricted-use credit agreement or a regulated consumer hire agreement off trade premises for the purposes of this article if—
- (a) A solicits the entry of an individual or relevant recipient of credit (“B”) into such an agreement by making oral representations to B during a visit by A to any place (not excluded by paragraph (4)) where B is, and
  - (b) that visit is made by A for the purpose of making such oral representations.
- (4) A place is excluded from paragraph (3) if it is a place where a business is carried on (whether on a permanent or temporary basis) by—
- (a) the lender or owner,
  - (b) the supplier under the restricted-use credit agreement,
  - (c) A,
  - (d) a person who employs A or has appointed A as an agent, or
  - (e) B.

### **Activities for which no fee is paid**

**36C.**—(1) There are excluded from sub-paragraphs (d), (e) and (f) of article 36A(1) activities carried on by a person for which that person does not receive a fee.

(2) For the purposes of this article, “fee” includes pecuniary consideration or any other form of financial consideration.

### **Transaction to which the broker is a party**

**36D.** There are excluded from article 36A activities in relation to a regulated credit agreement (or an agreement which would be a regulated credit agreement but for the exclusions in articles 60C to 60H) or a regulated consumer hire agreement (or an agreement which would be a regulated consumer hire agreement but for the exclusions in articles 60O to 60Q) into which the person carrying on the activity enters or is to enter as lender or owner.

### **Activities in relation to certain agreements relating to land**

**36E.**—(1) There are excluded from article 36A activities carried on with a view to an individual or relevant recipient of credit entering into a regulated mortgage contract if the person carrying on the activity is an authorised person who has permission to—

- (a) enter into such a contract as lender, or
- (b) make an introduction to an authorised person who has permission to enter into such a contract as lender.

(2) There are excluded from article 36A activities carried on with a view to an individual or relevant recipient of credit entering into a regulated home purchase plan if the person carrying on the activity is an authorised person who has permission to—

- (a) enter into such a plan as home purchase provider, or
- (b) make arrangements for another person (“the client”) to enter into such a plan by introducing the client to an authorised person who has permission to enter into such a plan as home purchase provider.

### **Activities carried on by members of the legal profession etc.**

**36F.**—(1) There are excluded from article 36A activities carried on by—

- (a) a barrister or advocate acting in that capacity;
- (b) a solicitor (within the meaning of the Solicitors Act 1974 <sup>M1</sup>) acting in the course of contentious business (as defined in section 87(1) of that Act <sup>M2</sup>);
- (c) a solicitor within the meaning of the Solicitors (Scotland) Act 1980 <sup>M3</sup> engaging in business done in or for the purposes of proceedings before a court or before an arbitrator;
- (d) a solicitor in Northern Ireland engaging in contentious business as defined in Article 3(2) of the Solicitors (Northern Ireland) Order 1976 <sup>M4</sup>;
- (e) a relevant person (other than a person falling within sub-paragraph (a) to (d)) acting in the course of contentious business.

(2) In sub-paragraph (e) of paragraph (1)—

“contentious business” means business done in or for the purposes of proceedings begun before a court or before an arbitrator, not being non-contentious or common form probate business (within the meaning of section 128 of the Senior Courts Act 1981 <sup>M5</sup>);

“relevant person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).

### Information society services

**36G.** Article 36A is also subject to the exclusion in article 72A (information society services) <sup>M6</sup>.

## CHAPTER 6B

### OPERATING AN ELECTRONIC SYSTEM IN RELATION TO LENDING

#### *The activity*

#### Operating an electronic system in relation to lending

**36H.—**(1) Where the condition in paragraph (2) is satisfied, operating an electronic system which enables the operator (“A”) to facilitate persons (“B” and “C”) becoming the lender and borrower under an article 36H agreement is a specified kind of activity.

(2) The condition is that the system operated by A is capable of determining which agreements should be made available to each of B and C (whether in accordance with general instructions provided to A by B or C or otherwise).

(3) The following are specified kinds of activities if carried on by A in the course of, or in connection with, the carrying on by A of the activity specified by paragraph (1)—

- (a) presenting or offering article 36H agreements to B and C with a view to B becoming the lender under the article 36H agreement and C becoming the borrower under the article 36H agreement,
- (b) furnishing information relevant to the financial standing of a person (“Y”) with a view to assisting in the determination as to whether another person should—
  - (i) enter into, as the lender, an article 36H agreement with Y, or
  - (ii) assume the rights of the lender under an article 36H agreement under which Y is the borrower,
- (c) taking steps to procure the payment of a debt due under an article 36H agreement,
- (d) performing duties, or exercising or enforcing rights under an article 36H agreement on behalf of the lender,
- (e) ascertaining whether a credit information agency (within the meaning given by article 89A(6)) holds information relevant to the financial standing of an individual or relevant person,
- (f) ascertaining the contents of such information,
- (g) securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information, or
- (h) securing that a credit information agency which holds such information—
  - (i) stops holding the information, or
  - (ii) does not provide it to any other person.

(4) An “article 36H agreement” is an agreement between one person (“the borrower”) and another person (“the lender”) by which the lender provides the borrower with credit

(within the meaning given by article 60L) and in relation to which the condition in either paragraph (5) or (6) is satisfied.

(5) The condition in this paragraph is that the lender is an individual or relevant person.

(6) The condition in this paragraph is that the borrower is an individual or relevant person and—

- (a) the lender provides the borrower with credit less than or equal to £25,000, or
- (b) the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(7) Paragraphs (5) and (6) of article 60C (exempt agreements: exemptions relating to the nature of the agreement) apply for the purposes of paragraph (6)(b).

(8) It is immaterial for the purposes of this article whether the lender is carrying on a regulated activity.

(9) In this article, “relevant person” means—

- (a) a partnership consisting of two or three persons not all of whom are bodies corporate, or
- (b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership.

#### *Exclusion*

### **Information society services**

**36I.** Article 36H is subject to the exclusion in article 72A (information society services).

#### *Supplemental*

### **Meaning of “consumer”**

**36J.—**(1) For the purposes of sections 1G, 404E and 425A of the Act (meaning of “consumer”) <sup>M7</sup>, a person (“C”) is only to be regarded as a person who uses, may use, has, may have used or has or may have contemplated using, services provided by authorised persons in carrying on a regulated activity of the kind specified by article 36H or article 64 in so far as relevant to that activity if—

- (a) C is, may be, has been or may have been the lender under a relevant agreement and is an individual or relevant person, or
- (b) C is, may be, has been or may have been the borrower under a relevant agreement, C is an individual or relevant person and one of the conditions in paragraph (2) is satisfied, or
- (c) C meets the following conditions—
  - (i) C is, was or would be the lender under a relevant agreement, and
  - (ii) C is not, was not or would not be, as a result, carrying on a regulated activity.

(2) The conditions in this paragraph are that—

- (a) the lender provides, provided or would provide the borrower with credit (within the meaning given by article 60L) less than or equal to £25,000, or
- (b) the agreement is not, was not or would not be entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

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(3) Paragraphs (5) and (6) of article 60C (exempt agreements: exemptions relating to the nature of the agreement) apply for the purposes of paragraph (2)(b).

(4) In paragraph (1)—

“relevant agreement” means an agreement between one person (“the borrower”) and another person (“the lender”) by which the lender provides the borrower with credit (within the meaning given by article 60L);

“relevant person” has the meaning given in article 36H.”.

#### Marginal Citations

**M1** 1974 c.47.

**M2** Amended by the [Administration of Justice Act 1985 \(c.61\)](#), [Schedule 1](#), paragraph 12, and the [Arbitration Act 1996 \(c.23\)](#), [Schedule 4](#).

**M3** 1980 c.46.

**M4** [S.I. 1976/582 \(N.I. 12\)](#).

**M5** 1981 c.54.

**M6** Inserted by [S.I. 2002/1776](#) and amended by [S.I. 2004/3379](#).

**M7** [Section 1G](#) was inserted by the Financial Services Act 2012, section 6. Section 404E was inserted by the Financial Services Act 2010, section 14, and amended by [S.I. 2011/99](#). Section 425A was inserted by the Financial Services Act 2010, Schedule 2, paragraphs 1 and 32, and amended by [S.I. 2013/655](#).

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

- Order revoked by [2023 c. 29 Sch. 1 Pt. 2](#)