

**2013 No. 3128**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000 (Consumer  
Credit) (Transitional Provisions) Order 2013**

<i>Made</i>	- - - -	<i>9th December 2013</i>
<i>Laid before Parliament</i>		<i>10th December 2013</i>
<i>Coming into force</i>	- -	<i>31st December 2013</i>

The Treasury make the following Order in exercise of the powers conferred by section 426(1) of the Financial Services and Markets Act 2000(a):

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Consumer Credit) (Transitional Provisions) Order 2013 and comes into force on 31st December 2013.

(2) In this Order—

“the 1974 Act” means the Consumer Credit Act 1974(b);

“the 2000 Act” means the Financial Services and Markets Act 2000;

“the OFT” means the Office of Fair Trading.

**Payments to eligible licensees**

**2.**—(1) The FCA(c) may make a payment to any eligible licensee who—

(a) has paid to the OFT a charge under section 6A (charge on applicants for licences etc.) or 28A (charges to be paid by licensees etc. before end of payment periods) of the 1974 Act(d)—

(i) after 31st March 2009, or

(ii) before 1st April 2009 in respect of a licence issued or renewed on or after that date;  
and

(b) is not a person—

(i) to whom the OFT sent a letter substantially in the form set out (without annexes) in the Schedule to this Order; and

(ii) who, pursuant to such a letter, received a visit from an officer of the OFT or a person acting on behalf of the OFT.

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(a) 2000 c.8 (“the Act”).

(b) 1974 c.39.

(c) Section 417 of the Act, as amended by the Financial Services Act 2012 (c.21), section 48, defines the “FCA” as meaning the Financial Conduct Authority.

(d) Section 6A inserted by the Consumer Credit Act 2006 (c.14), section 27. Section 28A inserted by the Consumer Credit Act 2006, section 35.

- (2) In paragraph (1), an “eligible licensee” means a person who—
- (a) holds a standard licence under the 1974 Act at the relevant time;
  - (b) was the applicant for a group licence under the 1974 Act that is in issue at the relevant time; or
  - (c) held a standard licence under the 1974 Act on 23rd April 2012 in respect of which the person—
    - (i) gave notice to the OFT before this Order comes into force, or
    - (ii) gives notice to the OFT before 1st April 2014,relinquishing the licence (irrespective of whether the relinquishing of the licence takes effect before 1st April 2014).
- (3) In paragraph (2), “the relevant time” means—
- (a) in relation to a payment made before 1st April 2014 to a person who is not required to make an application pursuant to a condition specified by the FCA under article 3, the time at which the payment is made;
  - (b) in relation to an application made before 1st April 2014 pursuant to a condition specified by the FCA under article 3, the time at which the application is made; or
  - (c) in any other case, immediately before 1st April 2014.

#### **Payments: supplementary provisions**

**3.**—(1) A payment under article 2(1) may be made—

- (a) for such amount as the FCA may determine;
- (b) in such manner as the FCA thinks fit;
- (c) subject to conditions specified by the FCA being satisfied.

(2) Conditions may, in particular, include—

- (a) a condition requiring an application to be made to the FCA;
- (b) a condition relating to a person whom the OFT has informed that it is—
  - (i) minded to revoke
  - (ii) minded to refuse an application for, or
  - (iii) suspending,a licence issued under the 1974 Act.

(3) The FCA may specify different conditions in relation to different descriptions or categories of person.

(4) If the FCA specifies a condition for the purposes of this article, it must publish the condition by the means it considers most likely to bring the condition to the attention of persons to whom the condition applies.

(5) Where the FCA determines that a payment under article 2(1) would be for less than £10.00, it is not obliged to make the payment.

#### **FCA power to require information**

**4.**—(1) Subject to paragraph (2), Part 11 of the 2000 Act (information gathering and investigations) has effect until 1st April 2014 as if each reference in section 165 (regulators’ power to require information: authorised persons etc.)<sup>(a)</sup> to an authorised person (except for the references in subsections 165(7)(b) and (8)) included a reference to a person of the description in paragraph (3).

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<sup>(a)</sup> Amended by the Financial Services Act 2010, section 24(1) and (2), Schedule 2, Part 1, paragraphs 1 and 15.

- (2) Part 11 of the 2000 Act only applies as so modified in respect of a requirement imposed—
- (a) by the FCA; and
  - (b) by a notice specifying that the requirement is made for the purpose of or in connection with the FCA making rules under section 137C of the 2000 Act (FCA general rules: cost of credit and duration of credit agreements)(a).
- (3) A person is within the description of this paragraph if the person—
- (a) holds a licence issued under the 1974 Act; and
  - (b) carries on activities which, if those activities were carried on on 1st April 2014, would be activities of a kind specified by any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b)—
    - (i) article 60B (regulated credit agreements);
    - (ii) article 89B (providing credit references).
- (4) In determining whether a person is connected with a person of the description in paragraph (3) under section 165(11) of the 2000 Act, Part 1 of Schedule 15 to the 2000 Act has effect as if each reference to an authorised person were a reference to a person of the description in paragraph (3).
- (5) On 1st April 2014—
- (a) any requirement imposed under section 165 or 175(1) of the 2000 Act ceases to have effect if it could not be imposed under that enactment on or after that date;
  - (b) any requirement imposed under section 175(2) or (3) of the 2000 Act ceases to have effect if the requirement pursuant to which the supplementary requirement was imposed ceases to have effect on 1st April 2014 by virtue of sub-paragraph (a) (and no such supplementary requirement may be imposed thereafter); and
  - (c) no action may be taken or continued under or pursuant to the 2000 Act in relation to any requirement which ceases to have effect by virtue of this paragraph.

*Mark Lancaster*  
*David Evennett*

9th December 2013

Two of the Lords Commissioners of Her Majesty's Treasury

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(a) Substituted by the Financial Services Act 2012 (c.21), section 24.  
(b) S.I. 2001/544. Articles 60B and 89B inserted by S.I. 2013/1881.

# SCHEDULE

Article 2

## Form of letter sent by OFT

Dear

NOTICE OF REQUIREMENT TO GIVE ACCESS TO PREMISES UNDER SECTION 36C OF THE CONSUMER CREDIT ACT 1974 (“the Act”)

On 24 February 2012 the Office of Fair Trading (“OFT”) launched its Irresponsible Lending Guidance Compliance Review of the payday lending industry (further details of the review can be found at [www.ofc.gov.uk](http://www.ofc.gov.uk)). The OFT is conducting this review due to increasing number of complaints about businesses in the sector, the apparent level of consumer detriment suggested by these complaints and concerns about the activities of some companies in the sector. The OFT considers that it is therefore appropriate that we should review both industry compliance with relevant legal requirements and the extent to which businesses operating in the market are meeting the standards we expect of them – as set out in our guidance.

As part of the preparatory work for the review, the OFT carried out an initial assessment of a number of payday lenders’ websites. Please find attached a copy of a letter sent by the OFT to relevant trade associations (the Consumer Finance Association, Finance & Leasing Association, BCCA, Consumer Credit Association, Consumer Credit Trade Association, and the National Pawnbrokers Association) which sets out some of the practices we identified. I wish to draw your attention to these examples and the other issues of concern we raised.

As part of the review we will be undertaking compliance visits to a number of payday lending licensees.

The OFT therefore proposes to visit your premises as part of this review into compliance with the Irresponsible Lending Guidance and relevant legislation across the payday lending industry. The visit will be undertaken with a view to the OFT carrying out its functions under section 1 of the Act, which includes:

- i) to administer the licensing system set up by the Act;
- ii) to monitor, as the OFT sees fit, businesses being carried on under licences issued under the Act; and
- iii) to generally superintend the working and enforcement of the Act, and regulations made under it.

In particular, the reason for this visit is to carry out our duties under section 1(1)(ba) and 1(2)(a) of the Act

Please find attached a formal Notice under section 36C of the Act which states that the OFT requires [the licensee] to secure that access to the premises described in the Notice is given to officers of the OFT in order for the officers to observe the carrying on of [the licensee’s] licensed business and to inspect such documents relating to that business as are specified or described in the Notice and situated on the premises.

The compliance visit will assess your business’s compliance with the OFT’s Irresponsible Lending Guidance (ILG). In addition, the visit will also cover compliance with the Consumer Credit Act 1974 (the Act) and applicable regulations alongside wider consumer protection legislation where relevant.

A Trading Standards Officer working on behalf of the OFT will contact you shortly to arrange a date for carrying out a compliance visit to your business premises. The evidence obtained will be used, along with that obtained from other payday lenders selected for a compliance visit, to inform the outcome of the OFT’s ILG compliance review. Furthermore, such evidence obtained during the visit will be used by the OFT to assess your business’s continuing fitness to hold a consumer credit licence. Follow up enforcement action against your business could therefore follow on from that visit.

You are referred to sections 36C, 36F and 174A of the Act which set out the powers the OFT will be exercising. Enclosed with this notice is an Explanatory Note (Annexe B) that provides additional information about the powers of the visiting officers when entering premises under section 36C of the Act and related safeguards. Section 36E of the Act sets out the circumstances in which the OFT may apply to the Court for an order in the event that you do not comply with the requirements of this Notice.

I would highlight section 36C(6) and (7) of the Act which provide that [the business] must secure that, at the time of the visit, the officer conducting the visit on behalf of the OFT is provided with such assistance or information as he may reasonably require in connection with his observation or inspection of documents, including the giving to the officer of an explanation of a document being inspected.

I should also draw your attention to section 174A(2) of the Act which provides that the OFT has power to take copies of, or extracts from, any documents inspected. In this regard it would be helpful if you could confirm to the Trading Standards Officer who arranges the visit that [the business] would be willing to make available to the OFT copying facilities located at the premises to be visited.

Yours sincerely

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order is made under section 426 of the Financial Services and Markets Act 2000 (c.8) (the “2000 Act”).

Under the Enterprise and Regulatory Reform Act 2013 (c.24), the Office of Fair Trading (“OFT”) will cease to exist on 1st April 2014. The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, S.I. 2013/1881, and the Financial Services Act 2012 (Consumer Credit) Order 2013, S.I. 2013/1882, transfer the regulatory framework for consumer credit in large part from the Consumer Credit Act 1974 (c.39) (the “CCA”) to the 2000 Act, and confer functions in relation to consumer credit on the Financial Conduct Authority (“FCA”) in place of the OFT from 1st April 2014.

Article 2 of this Order confers powers on the FCA to make payments to persons who have paid the OFT for a licence issued under the CCA, except for certain lenders who received a compliance visit from OFT. Article 3 makes supplementary provision in connection with such payments.

Section 137C of the 2000 Act confers power on the FCA to make rules in relation to the cost of credit. Article 4 provides that the FCA may use its powers under section 165 of the 2000 Act, before 1st April 2014, to obtain information from persons who undertake certain consumer credit-related activities for the purposes of the FCA making such rules.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on [www.gov.uk](http://www.gov.uk) and is published alongside the Order on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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