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## STATUTORY INSTRUMENTS

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### 2014 No. 208

## The Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014

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

7.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013<sup>(1)</sup> is amended as follows.

- (2) In article 48 (enforcement of agreements made by unlicensed trader), in paragraph (3)—
- (a) in the opening words of that paragraph, after “of the 1974” insert “Act”;
  - (b) in sub-paragraph (c), in the text inserted as subsection (1B) of section 40 of the Consumer Credit Act 1974—
    - (i) in paragraph (a), for “subsection (2)” substitute “subsections (1) and (2)”;
    - (ii) in paragraph (c), for “subsection (1A)” substitute “section 40(1A) of the Consumer Credit Act 1974”.
- (3) After article 48, insert—

#### **“Enforcement of agreements for ancillary credit services**

**48A.**—(1) Section 148(1) (agreement for services of unlicensed trader)<sup>(2)</sup> of the Consumer Credit Act 1974 and section 145 (types of ancillary credit business) of that Act, in so far as that section relates to section 148(1), continue to apply to a relevant agreement and for that purpose section 148 is to be treated as if—

- (a) in subsection (1)—
  - (i) after “the OFT has”, there were inserted “before 1st April 2014;
  - (ii) after “applies to the agreement”, there were inserted “or the FCA has given a notice under section 28A of the Financial Services and Markets Act 2000<sup>(3)</sup> by virtue of subsection (1A);
- (b) after subsection (1), there were inserted—
  - “(1A) Sections 28A and 28B of the Financial Services and Markets Act 2000 apply to an agreement which is not enforceable by virtue of subsection (1) with the following modifications—
    - (a) in section 28A, subsections (1), (2) and (3)(b) do not apply;
    - (b) for section 28A(4) to (6), substitute—
      - “(4) In considering whether to allow the agreement to be enforced the FCA must have regard to whether the relevant firm reasonably believed that a licence

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<sup>(1)</sup> [S.I. 2013/1881](#).

<sup>(2)</sup> Amended by the Enterprise Act 2002 (c.40), Schedule 25, paragraph 6(28).

<sup>(3)</sup> Sections 28A and 28B inserted by the Financial Services Act 2012 (c.21), Schedule 9, paragraph 8.

under the Consumer Credit Act 1974 was not required by the trader to enter into the agreement.”;

(c) for section 28A(8), substitute—

“(8) “The relevant firm” means the person who, disregarding the effect of section 148(1) of the Consumer Credit Act 1974, would be entitled to enforce the agreement.””

(2) In paragraph (1), a “relevant agreement” means an agreement entered into before 1st April 2014 to which section 148(1) of the Consumer Credit Act 1974 applies on 31st March 2014.

### **Enforcement of agreements made on introductions by unlicensed credit-broker**

**48B.**—(1) Section 149(1) (regulated agreements made on introductions by unlicensed credit broker)(4) of the Consumer Credit Act 1974 continues to apply to a relevant agreement and for that purpose section 149 is to be treated as if—

(a) in subsection (1)—

(i) after “the OFT has”, in each place, there were inserted “before 1st April 2014;

(ii) after “applies to the agreement”, there were inserted “or the FCA has given a notice under section 28A of the Financial Services and Markets Act 2000(5) by virtue of subsection (1A);

(b) after subsection (1), there were inserted—

“(1A) Sections 28A and 28B of the Financial Services and Markets Act 2000 apply to an agreement which is not enforceable by virtue of subsection (1) with the following modifications—

(a) in section 28A, subsections (1), (2) and (3)(b) do not apply;

(b) for section 28A(4) to (6), substitute—

“(4) In considering whether to allow the agreement to be enforced the FCA must have regard to whether the relevant firm reasonably believed that a licence under the Consumer Credit Act 1974 was not required by the credit-broker when introducing the debtor or hirer to the creditor or owner.”;

(c) for section 28A(8), substitute—

“(8) “The relevant firm” means the person who, disregarding the effect of section 149(1) of the Consumer Credit Act 1974, would be entitled to enforce the agreement.””

(2) In paragraph (1), a “relevant agreement” means an agreement entered into before 1st April 2014 to which section 149(1) of the Consumer Credit Act 1974 applies on 31st March 2014.”.

(4) In article 58 (duration of interim permission)—

(a) in paragraph (4)—

(i) in sub-paragraph (a), for “classes of person (including classes of person” substitute “a particular person or class of person (including a class of person”;

(ii) after sub-paragraph (c), insert—

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(4) Amended by the [Enterprise Act 2002 \(c.40\)](#), Schedule 25, paragraph 6(29) and by [S.I. 2001/3649](#).

(5) Sections 28A and 28B inserted by the [Financial Services Act 2012 \(c.21\)](#), Schedule 9, paragraph 8.

- “(ca) specify a date before which an application may not be made (“the opening date”), provided that the opening date is at least three months before the application date;”;
- (b) after paragraph (4), insert—
- “(5) Subject to article 59(5) and (5A), an application made before the opening date is to be treated for the purposes of sections 55A (application for permission) and 55V (determination of applications) of the Act(6) as if it had not been made.”.
- (5) In article 59 (application of the Act to persons with an interim permission)—
- (a) after paragraph (2)(c), insert—
- “(d) section 327(7) of the Act (exemption from the general prohibition)”;
- (b) in paragraph (5)(a), after “a regulated activity” insert “other than a regulated activity for which A has interim permission”;
- (c) after paragraph (5), insert —
- “(5A) If the appropriate regulator treats the application as relating also to some or all of the regulated activities for which A has interim permission, article 58(5) does not apply in relation to the application.”.
- (6) After article 59, insert—

**“Application of article 72B of the Regulated Activities Order to persons with an interim permission**

**59A.**—(1) For the purposes of the definition of “provider” in article 72B (activities carried on by a provider of relevant goods or services) of the Regulated Activities Order(7), any regulated activity of the kind specified by a provision of the Regulated Activities Order listed in paragraph (2) for which a person has interim permission are to be ignored.

- (2) The provisions are—
- (a) article 36A (credit broking);
  - (b) article 36H (operating an electronic system in relation to lending);
  - (c) article 39D (debt adjusting);
  - (d) article 39E (debt-counselling);
  - (e) article 39F (debt-collecting);
  - (f) article 39G (debt administration);
  - (g) article 60B (regulated credit agreements);
  - (h) article 60N (regulated consumer hire agreements);
  - (i) article 89A (providing credit information services);
  - (j) article 89B (providing credit references);
  - (k) article 64 (agreeing to carry on specified kinds of activity) in so far as it relates to an activity of the kind specified by a provision listed in sub-paragraphs (a) to (j).”.

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**Commencement Information**

**II** Art. 7 in force at 26.2.2014 for specified purposes, see [art. 1\(3\)](#)

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(6) Sections 55A and 55V substituted by the Financial Services Act 2012, section 11.

(7) Inserted by [S.I. 2003/1476](#); amended by [S.I. 2007/3510](#), [S.I. 2011/1265](#) and [S.I. 2013/1881](#).

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**Changes to legislation:** *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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**I2** Art. 7 in force at 1.4.2014 in so far as not already in force, see [art. 1\(4\)](#)

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**Changes and effects yet to be applied to :**

- [art. 7](#) coming into force by [S.I. 2014/208 art. 1\(4\)](#)

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

- Order power to modify conferred by [2023 c. 29 s. 3 Sch. 1 Pt. 2](#)
- Order revoked by [2023 c. 29 Sch. 1 Pt. 2](#)