

## STATUTORY INSTRUMENTS

# 2016 No. 392

## The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016

### PART 3

#### Amendment of other legislation

##### Amendment of the Consumer Credit Act 1974

3.—(1) The Consumer Credit Act 1974 <sup>M1</sup> is amended as follows.

(2) In section 8 (consumer credit agreements), in subsection (3)(b) at the beginning insert “ if entered into on or after 21st March 2016, ”.

(3) In section 189(1) (definitions), in the definition of “residential renovation agreement” after “consumer credit agreement” insert “ entered into on or after 21st March 2016 ”.

##### Marginal Citations

**M1** 1974 c. 39. Section 8(3) was substituted by [S.I. 2013/1881](#) and 2015/910. In section 189(1), the definition of “residential renovation agreement” was inserted by [S.I. 2015/910](#).

##### Amendment of the Financial Services and Markets Act 2000 (Exemption) Order 2001

4. In the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001 <sup>M2</sup>, in paragraph 48 (social housing), in sub-paragraph (1A) for paragraphs (a) to (c) substitute—

- “(a) was entered into before 21st March 2016; or
- (b) is entered into on or after 21st March 2016 and—
  - (i) is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;
  - (ii) is a bridging loan; or
  - (iii) is a restricted public loan in relation to which the requirements of sub-paragraph (1B) are met.”.

##### Marginal Citations

**M2** [S.I. 2001/1201](#). Paragraph 48 was substituted by [S.I. 2003/1675](#), and sub-paragraph (1A) was inserted by [S.I. 2015/910](#).

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## **Amendment of the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001**

5.—(1) Regulation 3 of the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 <sup>M3</sup> (requirements applying to contracts between authorised persons and appointed representatives) is amended as follows.

(2) In paragraph (2)(c) for “53” substitute “ 53(1) ”.

(3) In paragraph (3CA)—

(a) in sub-paragraph (a) delete “(within the meaning of article 36H(4) of the Regulated Activities Order)”;

(b) after sub-paragraph (a) insert—

“(aa) facilitates a person assuming the rights of the lender under an article 36H agreement by assignment or operation of law on behalf of other counterparties.”;

(c) in sub-paragraph (b), for “sub-paragraph (a)” substitute “ sub-paragraph (a) or (aa) ”;

(d) after sub-paragraph (b) insert—

“(c) gives advice (in circumstances constituting the carrying on of activity of the kind specified by article 53(2) of that Order) on the merits of—

(i) a person entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law,

(ii) a person providing instructions to an operator with a view to entering into a relevant article 36H agreement as a lender or assuming the rights of a lender under such an agreement by assignment or operation of law, where the instructions involve—

(aa) accepting particular parameters for the terms of the agreement presented by an operator,

(bb) choosing between options governing the parameters of the terms of the agreement presented by an operator, or

(cc) specifying the parameters of the terms of the agreement by other means,

(iii) a person enforcing or exercising the lender's rights under a relevant article 36H agreement, or

(iv) a person assigning rights under a relevant article 36H agreement, on behalf of other counterparties.”.

(4) After paragraph (3CA) insert—

“(3CB) In paragraph (3CA)—

“article 36H agreement” has the meaning given by article 36H of the Regulated Activities Order,

“lender” has the meaning given by article 36H of the Regulated Activities Order,

“operator” means a person carrying on an activity of the kind specified by article 36H(1) or (2D), and

“relevant article 36H agreement” means an article 36H agreement which has been, or is to be, entered into with the facilitation of a person carrying on a regulated activity of the kind specified by article 36H(1) or (2D) not in contravention of the general prohibition.”.

**Marginal Citations**

**M3** S.I. 2001/1217. Paragraph (3CA) was inserted by S.I. 2014/206. There are other amendments, but none is relevant here.

**Amendment of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005**

6.—(1) In Schedule 1 to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005<sup>M4</sup>, Part 1 (controlled activities) is amended as follows.

(2) In paragraph 4C (operating an electronic system in relation to lending)—

(a) in sub-paragraph (2A) for “interest and capital” in paragraphs (a) and (b) substitute “ either interest or capital or both ”;

(b) after sub-paragraph (2C) insert—

“(2D) Where A carries on the activity specified by sub-paragraph (1), it is a controlled activity for A to operate an electronic system where—

(a) that system enables A to facilitate a person (“B”) assuming the rights of the lender under a paragraph 4C agreement by assignment or operation of law, and

(b) the conditions in sub-paragraphs (2), (2A) and (2C) are satisfied where C is the borrower under the agreement in paragraph (a).”;

(c) in sub-paragraph (3)—

(i) after “sub-paragraph (1)” insert “ or (2D) ”,

(ii) in paragraph (a)—

(aa) for “B and C” substitute “ either B or C ”,

(bb) after “B becoming the lender under the paragraph 4C agreement” for “and” substitute “ or ”,

(iii) in paragraph (d), for “performing duties, or exercising or enforcing” substitute “ taking steps to perform duties, or exercise or enforce ”,

(iv) at the beginning of paragraphs (e), (f), (g) and (h), insert “ taking steps with a view to ”,

(v) delete “or” at the end of paragraph (g), and

(vi) in paragraph (h)(ii) after “person” insert—  
“, or

(i) giving advice in relation to the taking of any of the steps in sub-paragraphs (e) to (h)”;

(d) for sub-paragraph (4) substitute—

“(4) A “paragraph 4C agreement” is an agreement by which one person provides another person with credit and in relation to which—

(a) the condition in sub-paragraph (4A) is satisfied, and

(b) the condition in either sub-paragraph (5) or (6) is satisfied, or was satisfied at the time the agreement was entered into.

(4A) The condition in this sub-paragraph is that A does not provide credit, assume the rights (by assignment or operation of law) of a person who provided credit, or receive credit under the agreement.”;

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- (e) for sub-paragraph (9) substitute—
- “(9) In this paragraph—
- “assignment”, in relation to Scotland, means assignation;
- “borrower” means a person who receives credit under a paragraph 4C agreement or a person to whom the rights and duties of a borrower under such an agreement have passed by assignment or operation of law;
- “credit” has the meaning given by article 60L of the Regulated Activities Order;
- “lender” means—
- (a) a person providing credit under a paragraph 4C agreement, or
- (b) a person who by assignment or operation of law has assumed the rights of a person who provided credit under such an agreement;
- “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.”; and
- (f) in sub-paragraph (10), for “has” substitute “ have ”.
- (3) In paragraph 7 (advising on investments)—
- (a) the existing text becomes sub-paragraph (1); and
- (b) after sub-paragraph (1), insert—
- “(2) Advising a person is a controlled activity if the advice is—
- (a) given to the person in that person's capacity as a lender or potential lender under a relevant paragraph 4C agreement, or in that person's capacity as an agent for a lender or potential lender under such an agreement; and
- (b) advice on the merits of the person doing any of the following (whether as principal or agent)—
- (i) entering into a relevant paragraph 4C agreement as a lender or assuming the rights of a lender under such an agreement,
- (ii) providing instructions to an operator with a view to entering into a relevant paragraph 4C agreement as a lender or to assuming the rights of a lender under such an agreement by assignment or operation of law, where the instructions involve—
- (aa) accepting particular parameters for the terms of the agreement presented by an operator,
- (bb) choosing between options governing the parameters of the terms of the agreement presented by an operator, or
- (cc) specifying the parameters of the terms of the agreement by other means,
- (iii) enforcing or exercising the lender's rights under a relevant paragraph 4C agreement, or
- (iv) assigning rights under a relevant paragraph 4C agreement.
- (3) In sub-paragraph (2)—
- “operator” means a person carrying on a controlled activity of the kind specified by paragraph 4C(1) or (2D), and

“relevant paragraph 4C agreement” means a paragraph 4C agreement (within the meaning of that paragraph) which has been, or is to be, entered into with the facilitation of a person carrying on a controlled activity of the kind specified by paragraph 4C(1) or (2D) not in contravention of the general prohibition.

(4) 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 sub-paragraph (2), 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, have effect as if the reference to a relevant credit agreement in paragraph 26D includes a reference to a paragraph 4C agreement.”.

(4) In paragraph 10A (arranging qualifying credit etc.)—

- (a) the existing text becomes sub-paragraph (1);
- (b) in sub-paragraph (1)(b) for “, within the meaning of article 61(3) of the Regulated Activities Order, entered into after the coming into force of that article,” substitute “ falling within sub-paragraph (2) ”;
- (c) after sub-paragraph (1) insert—

“(2) A regulated mortgage contract falls within this sub-paragraph if—

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

(3) In this paragraph “regulated mortgage contract” has the meaning given by article 61(3) of the Regulated Activities Order.”.

(5) In paragraph 10B (advising on qualifying credit etc.)—

- (a) in sub-paragraph (1) for “entered into by him after the coming into force of article 61 of the Regulated Activities Order” substitute “ falling within sub-paragraph (1A) ”;
- (b) after sub-paragraph (1) insert—

“(1A) A regulated mortgage contract falls within this sub-paragraph if—

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

#### **Marginal Citations**

**M4** S.I. 2005/1529. Paragraph 4C was inserted by S.I. 2013/1881 and amended by S.I. 2014/366. There are other amendments, but none is relevant here. Paragraphs 10A & 10B to Schedule 1 were numbered as such in the Order when originally made.

### **Amendment of 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>M5</sup> is amended as follows.

- (2) In article 56 (interim permission) <sup>M6</sup>, after paragraph (2) insert—

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“(2A) On and after the relevant date, any relevant person (“P”) is to be treated as having an interim permission to carry on relevant mortgage activity.

(2B) For the purposes of paragraph (2A)—

(a) a person is a “relevant person” if—

- (i) the person is a housing authority within the meaning of article 60E of the Regulated Activities Order,
- (ii) the person has notified the FCA before 1st April 2016 that the person wishes to obtain an interim permission under paragraph (2A) to carry on relevant mortgage activity,
- (iii) immediately before 1st April 2014 the person carried on an activity which would be relevant mortgage activity if carried on on or after that date, and held a standard licence under the 1974 Act covering such activity,
- (iv) immediately before 20th March 2016 the person did not hold an interim permission to carry on relevant mortgage activity, and
- (v) the person did not previously obtain interim permission to carry on relevant mortgage activity under this article, or the person did obtain such an interim permission and the FCA did not cancel such permission or vary the permission by removing relevant mortgage activity from the activities to which the interim permission related, otherwise than on an application by the person;

(b) “the relevant date” means the later of—

- (i) the date on which a person notifies the FCA that the person wishes to obtain an interim permission under paragraph (2A), or
- (ii) 20th March 2016.

(2C) A person is to be treated as having notified the FCA that the person wishes to obtain an interim permission under paragraph (2A) to carry on relevant mortgage activity only if the notice has been given in writing and includes—

- (a) the person's name and address,
- (b) the number of the person's licence under the 1974 Act, and
- (c) confirmation that the person carries on relevant mortgage activity.

(2D) For the purposes of paragraphs (2A) to (2C), “relevant mortgage activity” means activity of the kind specified by article 60B(2) of the Regulated Activities Order (exercising, or having the right to exercise the lender's rights and duties under a regulated credit agreement) in relation to agreements entered into before 1st April 2014 which, if entered into on or after 20th March 2016, would be exempt agreements pursuant to article 60E(5) of the Regulated Activities Order (mortgage lending by housing authorities).

(2E) Section 347 of the Act (the record of authorised persons etc.)<sup>M7</sup> does not apply in relation to a person who appears to the FCA to be an authorised person only by virtue of an interim permission obtained under paragraph (2A), but this does not prevent the FCA from maintaining a record of such persons.”

(3) In article 58 (duration of interim permissions)<sup>M8</sup>—

(a) after paragraph (1) insert—

“(1ZA) If P has obtained an interim permission by virtue of article 56(2A), 1st July 2016 is to be treated as the application date in relation to that interim permission unless the FCA specifies a different date in a direction made on or after 20th March 2016.”;

(b) in paragraph (1A)(a) after “36A” insert “, 39F(1), 39G(1)”; and

- (c) in paragraphs (1A)(b) and (1D)(b), after “the Mortgage Credit Directive Order 2015” insert “, the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.3) Order 2015 and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 ”.

#### Marginal Citations

- M5** [S.I. 2013/1881](#).
- M6** [Article 56](#) was amended by [S.I. 2014/366](#), 376 and 1446.
- M7** There are amendments to section 347 of the Financial Services and Markets Act 2000, but none is relevant here.
- M8** [Article 58](#) was amended by [S.I. 2014/208](#), 366, 506 and 2632 and 2015/910.

### Amendment of the Mortgage Credit Directive Order 2015

**8.—(1)** The Mortgage Credit Directive Order 2015 <sup>M9</sup> is amended as follows.

(2) In article 2(1) (interpretation), in the definition of “consumer credit back book mortgage contract”—

(a) in sub-paragraph (a)—

(i) the second paragraph (iii) is renumbered as paragraph (iv) <sup>M10</sup>, and

(ii) in that paragraph, omit “but for article 28(1),”; and

(b) for sub-paragraph (b) substitute—

“(b) (i) is entered into on or after 21st March 2016 in the circumstances described in article 28,

(ii) would be a regulated credit agreement within the meaning of article 60B(3) of the Regulated Activities Order if it had been entered into immediately before 21st March 2016, and

(iii) is a regulated mortgage contract immediately after it is entered into.”

(3) In Part 3 (consumer buy-to-let mortgages), before article 4 (interpretation of Part 3) insert—

#### “Application of this Part

**3A.** This Part does not apply in relation to any agreement entered into before 21st March 2016.”

(4) For article 28 (transitional provision: agreements before 21st March 2016) substitute—

#### “Transitional provision: agreements before 21st March 2016

**28.** Where a credit agreement is entered into before 21st March 2016 and a further agreement relating to the same credit is to be entered into before the borrower is to be entitled to the credit, the following enactments do not apply to the agreements until immediately after the later agreement has been entered into—

(a) this Order;

(b) paragraphs (3) to (5) of article 2 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.3) Order 2015 <sup>M11</sup>; and

(c) articles 2(3), (4), (7), (8), (10)(b), (11), (12), (14) to (16) and (18) to (21), 3, 4 and 6(4) and (5) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016.”

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(5) In article 29 (transitional provision: consumer credit back book mortgage contracts), in paragraph (1) after “consumer credit back book mortgage contract” insert “ other than one in relation to which the Consumer Credit Act 1974 applies as described in article 31(2) ”.

(6) After article 31 <sup>M12</sup> (transitional provision: person subject to the Consumer Credit Act 1974 who chooses to adopt new rules before 21st March 2016), insert—

**“Transitional provision: first charge mortgages entered into before 31st October 2004 which are regulated credit agreements immediately before 21st March 2016**

**31A.**—(1) This article applies to an agreement—

- (a) entered into before 31st October 2004,
- (b) which is a consumer credit back book mortgage contract, and
- (d) under which the mortgage securing the borrower's obligation to repay is a first charge mortgage.

(2) Until the relevant date—

- (a) the agreement continues to be a regulated credit agreement within the meaning of article 60B(3) of the Regulated Activities Order,
- (b) making arrangements for a person to vary the terms of the agreement is not a regulated activity pursuant to article 25A(1) of the Regulated Activities Order,
- (c) advising a person on the merits of varying the terms of the agreement is not a regulated activity pursuant to article 53A(1) of the Regulated Activities Order,
- (d) administering the agreement is not a regulated activity pursuant to article 61(2)(b) of the Regulated Activities Order,
- (e) the agreement continues to be a regulated agreement within the meaning of section 8(1) of the Consumer Credit Act 1974, and
- (f) article 29 (transitional provision: consumer credit back book mortgage contracts) does not apply to the agreement.

(3) Article 60C(2)(c) of the Regulated Activities Order <sup>M13</sup> applies to the agreement as if the reference to 21st March 2016 were a reference to the relevant date.

(4) In this article “the relevant date” means the earlier of—

- (a) the date on which the lender first acts in respect of the agreement in compliance or purported compliance with rules made by the FCA which apply to regulated mortgage contracts and which are different from rules made by the FCA which apply to regulated credit agreements;
- (b) the date which the lender notifies in writing to the borrower as being the date from which the lender will act in respect of the agreement in compliance with rules made by the FCA which apply to regulated mortgage contracts; or
- (c) 21st March 2017.”.

**Marginal Citations**

**M9** [S.I. 2015/910](#).

**M10** [S.I. 2015/1557](#) inserted a new paragraph (iii) after the existing sub-paragraph (ii). There was, however, an original paragraph (iii), and this provision renumbers that original paragraph (iii) as paragraph (iv).

**M11** [S.I. 2015/1863](#).

**M12** [Article 31](#) was amended by [S.I. 2015/1557](#).

**M13** [Article 60C\(2\)\(c\)](#) was inserted by [S.I. 2015/1863](#) and is amended by article 2 of this Order.



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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](#)