
STATUTORY INSTRUMENTS

2014 No. 366

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) Order 2014**

PART 2

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

2.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(1) is amended as follows.

(2) In article 3(1) (interpretation)—

(a) after the definition of “the Act”, insert—

““acting as an insolvency practitioner” is to be read with section 388 of the Insolvency Act 1986(2) or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989(3) and, in any provision of this Order which provides for activities to be excluded from a specified activity, references to things done by a person acting—

(a) as an insolvency practitioner, or

(b) in reasonable contemplation of that person’s appointment as an insolvency practitioner,

include anything done by the person’s firm in connection with that person so acting;”;

(b) after the definition of “pension fund management contract”(4), insert—

““the person’s firm”, in relation to a person acting as an insolvency practitioner or in reasonable contemplation of that person’s appointment as an insolvency practitioner, means—

(a) the person’s employer;

(b) where the person is a partner in a partnership other than a limited liability partnership, that partnership;

(c) where the person is a member of a limited liability partnership, that partnership;”.

(3) After article 9AB (funds received for payment services)(5), insert—

(1) S.I. 2001/544, as amended by S.I. 2013/1881. Other relevant amending instruments are noted below.
(2) Amended by the Bankruptcy (Scotland) Act 1993 (c.6), section 11, the Insolvency Act 2000 (c.39), section 4, and S.I. 1994/2421, S.I. 2002/1240, S.I. 2002/2708 and S.I. 2009/1941.
(3) S.I. 1989/2405 (N.I.19). Amended by S.R. 1995/225, S.R. 2002/334, S.I. 2002/3152 (N.I.6), S.R. 2003/660, S.R. 2004/307.
(4) There are amending instruments but none is relevant.
(5) Inserted by S.I. 2009/209 and amended by S.I. 2011/99.

“Local authorities

9AC. Article 5 is subject to the exclusion in article 72G (local authorities).”.

(4) In article 20 (dealing in investments as principal: other exclusions)(6), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)”.

(5) In article 24 (dealing in investments as agent: other exclusions)(7) for “and 72D (large risks contracts where risk situated outside the EEA)” substitute “, 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)”.

(6) In article 36 (arranging deals in investments: other exclusions)(8)—

- (a) in paragraph (1), for “and 72D (large risks contracts where risk situated outside the EEA)” substitute “, 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)”;
- (b) in paragraph (2), for “and 72AA (managers of UCITS and AIFs)”, substitute “, 72AA (managers of UCITS and AIFs) and 72G (local authorities)”;
- (c) in paragraph (3), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)”.

(7) For the heading to article 36G (information society services), substitute “Other exclusions”.

(8) In that article 36G, after “article 72A (information society services)” insert “and the exclusion in article 72G (local authorities)”.

(9) In article 36H (operating an electronic system in relation to lending)—

- (a) in paragraph (1), for “condition in paragraph (2) is” substitute “conditions in paragraphs (2), (2A) and (2C) are”;
- (b) in paragraph (2), after “condition” insert “in this paragraph”.
- (c) after paragraph (2), insert—

“(2A) The condition in this paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to—

- (a) receive payments in respect of interest and capital due under the article 36H agreement from C, and
- (b) make payments in respect of interest and capital due under the article 36H agreement to B.

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

- (a) an agreement by A to appoint X to perform the activities in that paragraph is to be treated as an undertaking by A within the meaning of that paragraph;
- (b) it is immaterial that—
 - (i) payments may be subject to conditions;
 - (ii) A, or X, may be entitled to retain a portion or the entirety of any payment received from C.

(2C) The condition in this paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to perform, or A undertakes to appoint or direct another person to perform either or both of the following activities—

- (a) taking steps to procure the payment of a debt under the article 36H agreement;

(6) Amended by S.I. 2002/1776 and S.I. 2013/1773.

(7) Amended by S.I. 2002/1776, S.I. 2003/1476 and S.I. 2013/1773.

(8) Amended by S.I. 2002/1776, S.I. 2003/1475, S.I. 2003/1476, S.I. 2006/2383, S.I. 2006/3384, S.I. 2009/1342, and SI 2013/1773.

- (b) exercising or enforcing rights under the article 36H agreement on behalf of B.”;
- (d) after paragraph (9), insert—

“(10) For the purposes of the application of section 22(1) of the Act (regulated activities) to an activity of a kind specified by this article, article 88D (credit agreement), and article 73 (investments: general) in so far as it relates to that article, has effect as if the reference to a credit agreement in article 88D includes a reference to an article 36H agreement.”.

- (10) After article 36I (information society services), insert—

“Activities in relation to debentures and bonds

36IA. There is excluded from article 36H (operating an electronic system in relation to lending) any activity of a kind specified by article 14 (dealing in investments as principal), 25 (arranging deals in investments), 37 (managing investments) or 53 (advising on investments).”.

(11) In article 39 (managing investments: other exclusions)(**9**), for “and 72C (provision of information about contracts of insurance on an incidental basis)” substitute “, 72C (provision of information about contracts of insurance on an incidental basis) and 72H (insolvency practitioners)”.

(12) In article 39C (assisting in the administration and performance of a contract of insurance: other exclusions)(**10**), for “and 72D (large risks contracts where risk situated outside the EEA)” substitute “, 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)”.

(13) In article 39H(3) and (4) (activities where a person has a connection to the agreement), for “on behalf of” substitute “by”.

- (14) In article 39J (activities carried on in relation to a relevant agreement in relation to land)—

- (a) for “are” substitute “is”;
- (b) for “activities that relate” substitute “any activity that relates”;
- (c) after “regulated home purchase plan” insert “to the extent that the activity constitutes an activity of the kind specified by a provision of Part 2 of this Order other than articles 39D, 39E, 39F and 39G, where entering into that contract as lender constitutes an activity of the kind specified by article 61 or entering into that plan as home purchase provider constitutes an activity of the kind under article 63F”.

- (15) For the heading to article 39L (information society services), substitute “Other exclusions”.

- (16) In that article 39L—

- (a) for “exclusion” substitute “exclusions”;
- (b) after “article 72A (information society services)” insert “, article 72G (local authorities) and article 72H (insolvency practitioners)”.

(17) In article 44 (safeguarding and administering investments: other exclusions)(**11**), for “and 72C (provisions of information about contracts of insurance on an incidental basis)” substitute “, 72C (provisions of information about contracts of insurance on an incidental basis) and 72H (insolvency practitioners)”.

(18) In article 50 (sending dematerialised instructions)(**12**), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)”.

(9) Amended by [S.I. 2002/1776](#) and [S.I. 2003/1476](#).

(10) Inserted by [S.I. 2003/1476](#); amended by [S.I. 2013/1773](#).

(11) Amended by [S.I. 2002/1776](#), [S.I. 2003/1476](#) and [S.I. 2013/1773](#).

(12) Amended by [S.I. 2002/1776](#) and [S.I. 2013/1773](#).

(19) For the heading to article 51A (collective investment: information society services and managers of UCITS and AIFs)(**13**), substitute “Other exclusions”.

(20) In that article 51A, for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)”.

(21) For the heading to article 52A (establishing a pension scheme: information society services and managers of UCITS and AIFs)(**14**), substitute “Other exclusions”.

(22) In that article 52A, for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)”.

(23) In article 55 (advising: other exclusions)(**15**)—

(a) in paragraph (1), for “and 72D (large risks contracts where risk situated outside the EEA)” substitute “, 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)”;

(b) in paragraph (2), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72G (local authorities)”.

(24) In article 60C(8)(b) (exempt agreements: exemptions relating to the nature of the agreement), after “country” insert “outside the United Kingdom”.

(25) In article 60D(1) (exempt agreements: exemption relating to the purchase of land for non-residential purposes), after “legal” insert “or equitable”.

(26) In article 60E (exempt agreements: exemptions relating to the nature of the lender), in paragraph (5)(a) and in the definition of “relevant credit agreement relating to the purchase of land” in paragraph (7), after “legal”, in each place, insert “or equitable”.

(27) In article 60F (exempt agreements: exemptions relating to number of repayments to be made)—

(a) in paragraph (2), omit “significant”;

(b) in paragraphs (5)(c) and (6)(b), after “legal” insert “or equitable”.

(28) For article 60G(5)(b) (exempt agreements: exemptions relating to the total charge for credit), substitute—

“(b) the agreement—

(i) is not—

(aa) secured on land, or

(bb) offered by a lender to a borrower as an incident of employment with the lender; and

(ii) does not meet the general interest test.”.

(29) After article 60J (administration pursuant to agreement with authorised person), insert—

“Payment institutions

60JA.—(1) There are excluded from article 60B activities carried on by a person who is an EEA authorised payment institution exercising passport rights in the United Kingdom in accordance with Article 16(3) of the payment services directive.

(13) Inserted by [S.I. 2002/1776](#); amended by [S.I. 2013/1773](#).

(14) Inserted by [S.I. 2002/1776](#); amended by [S.I. 2013/1773](#).

(15) Amended by [S.I. 2002/1776](#), [S.I. 2003/1475](#), [S.I. 2003/1476](#), [S.I. 2006/2383](#), [S.I. 2009/1342](#) and [S.I. 2013/1773](#).

(2) Terms used in this article have the meanings given in Payment Services Regulations 2009(16).

Electronic money institutions

60JB.—(1) There are excluded from article 60B activities carried on by a person who is an EEA authorised electronic money institution exercising passport rights in the United Kingdom in accordance with Article 16(3) of the payment services directive as applied by Article 6 of the electronic money directive.

(2) Terms used in this article have the meanings given in the Electronic Money Regulations 2011(17).”.

(30) For the heading to article 60K (information society services), substitute “Other exclusions”.

(31) In that article 60K, after “article 72A (information society services)” insert “and the exclusion in article 72G (local authorities)”.

(32) In article 60L (interpretation of Chapter 14A etc.)—

(a) in paragraph (1), in the definition of “legal mortgage”—

(i) after “legal” insert “or equitable”;

(ii) after “includes” insert “a legal or equitable”;

(b) in paragraphs (3) and (4), after ““borrower-lender agreement”” insert “and the definition of “borrower-lender-supplier agreement””.

(33) After article 60L, insert—

“Meaning of consumer etc.

60LA.—(1) For the purposes of sections 1G, 404E and 425A(18) of the Act (meaning of “consumer”), in so far as those provisions relate to a person (“A”) carrying on a regulated activity of the kind specified by—

(a) article 60B (regulated credit agreements), or

(b) article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 60B,

a person who is treated by A as a person who is or has been the borrower under a regulated credit agreement is to be treated as a “consumer”.

(2) For the purposes of section 328(8) of the Act (meaning of “clients”) in so far as that provision relates to a person (“A”) carrying on a regulated activity of the kind specified by—

(a) article 60B (regulated credit agreements), or

(b) article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 60B,

a person who is treated by A as a person who is or has been the borrower under a regulated credit agreement is to be treated as a “client”.

(3) In this article, “borrower” includes (in addition to those persons included in the definition in article 60L)—

(16) S.I. 2009/209. Definition of “passport right” in regulation 2 (interpretation) amended by S.I. 2012/1809. There are other amending instruments but none is relevant.

(17) S.I. 2011/99. There are amending instruments but none is relevant.

(18) Section 1G substituted by the Financial Services Act 2012 (c.21), section 6. Section 404A substituted by the Financial Services Act 2010 (c.28), section 14 and amended by the Financial Services Act 2012, Schedule 18, Part 1, paragraph 19. Section 425A inserted by the Financial Services Act 2010, Schedule 2, Part 1, paragraph 32 and amended by S.I. 2013/655.

- (a) any person providing a guarantee or indemnity under a regulated credit agreement, and
- (b) a person to whom the rights and duties of a person falling within sub-paragraph (a) have passed by assignment or operation of law.”.

(34) In article 60N(3) (regulated consumer hire agreements), in the definition of “owner”, omit “regulated”.

(35) For the heading to article 60R (information society services), substitute “Other exclusions”.

(36) In that article 60R, after “article 72A (information society services)” insert “and the exclusion in article 72G (local authorities)”.

(37) After article 60R (information society services), insert—

“Supplemental

Meaning of consumer etc.

60S.—(1) For the purposes of sections 1G, 404E and 425A of the Act (meaning of “consumer”), in so far as those provisions relate to a person (“A”) carrying on a regulated activity of the kind specified by—

- (a) article 60N (regulated consumer hire agreements), or
- (b) article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 60N,

a person who is treated by A as a person who is or has been the hirer under a regulated consumer hire agreement is to be treated as a “consumer”.

(2) For the purposes of section 328(8) of the Act (meaning of “clients”) in so far as that provision relates to a person (“A”) carrying on a regulated activity of the kind specified by—

- (a) article 60N (regulated consumer hire agreements), or
- (b) article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 60N,

a person who is treated by A as a person who is or has been the hirer under a regulated consumer hire agreement is to be treated as a “client”.

(3) In this article, “hirer” includes (in addition to those persons defined as “the hirer” in the definition of “consumer hire agreement” in article 60N(3))—

- (a) any person providing a guarantee or indemnity under a consumer hire agreement, and
- (b) a person to whom the rights and duties of a person falling within sub-paragraph (a) have passed by assignment or operation of law.”.

(38) In article 63A (regulated mortgage contracts: other exclusions)(**19**), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72G (local authorities)”.

(39) In article 63E (entering into and administering regulated home reversion plans: other exclusions)(**20**), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72G (local authorities)”.

(40) In article 63I (entering into and administering regulated home purchase plans: other exclusions), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72G (local authorities)”.

(19) Inserted by [S.I. 2002/1776](#) and amended by [S.I. 2003/1475](#) and [S.I. 2013/1773](#).

(20) Articles 63B to 63I inserted by [S.I. 2006/2383](#) and amended by [S.I. 2011/2581](#) and [S.I. 2013/1773](#).

(41) In article 63M (entering into and administering regulated sale and rent back agreements: other exclusions)(**21**), for “and 72AA (managers of UCITS and AIFs)” substitute “, 72AA (managers of UCITS and AIFs) and 72G (local authorities)”.

(42) In article 65 (agreeing: other exclusions)(**22**), for “and 72A (information society services)” substitute “, 72A (information society services), 72G (local authorities) and 72H (insolvency practitioners)”.

(43) After article 72F (interpretation)(**23**), insert—

“Local authorities

72G.—(1) There is excluded from article 5 any activity which is carried on by a local authority.

(2) There is excluded from articles 21, 25(1) and (2), 39A and 53 any activity carried on by a local authority which relates to a contract of insurance which is not a qualifying contract of insurance.

(3) There is excluded from articles 25A, 25B, 25C, 25E, 36A, 39D, 39E, 39F, 39G, 53A, 53B, 53C, 53D, 60N, 61, 63B, 63F, 63J or 89A any activity which is carried on by a local authority.

(4) There is excluded from article 60B any activity which is carried on by a local authority in so far as the credit agreement is of a kind to which [Directive 2008/48/EC](#) of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council [Directive 87/102/EC](#)(**24**) does not apply by virtue of Article 2(2) of that Directive.

(5) There is excluded from article 64 any agreement made by a local authority to carry on an activity of the kind excluded by paragraphs (2) to (4).

Insolvency practitioners

72H.—(1) There is excluded from the provisions listed in paragraph (2) any activity carried on by a person acting as an insolvency practitioner.

(2) The provisions are—

- (a) article 14 (dealing in investments as principal);
- (b) article 21 (dealing in investments as agent);
- (c) article 25 (arranging deals in investments);
- (d) article 25D (operating a multilateral trading facility);
- (e) article 37 (managing investments);
- (f) article 39A (assisting in the administration and performance of a contract of insurance);
- (g) article 39D (debt adjusting);
- (h) article 39E (debt-counselling);
- (i) article 39F (debt-collecting);
- (j) article 39G (debt administration);
- (k) article 40 (safeguarding and administering investments);

(21) Inserted by [S.I. 2009/1342](#) and amended by [S.I. 2013/1773](#).

(22) Amended by [S.I. 2002/1776](#).

(23) Inserted by [S.I. 2005/1518](#) and amended by [S.I. 2006/2383](#) and [S.I. 2010/86](#).

(24) OJ L 133, 22.5.2008, p.66.

- (l) article 45 (sending dematerialised instructions);
- (m) article 51ZA (managing a UCITS);
- (n) article 51ZB (acting as trustee or depositary of a UCITS);
- (o) article 51ZC (managing an AIF);
- (p) article 51ZD (acting as trustee or depositary of an AIF);
- (q) article 51ZE (establishing etc. a collective investment scheme);
- (r) article 52 (establishing etc. a pension scheme);
- (s) article 53 (advising on investments);
- (t) article 89A (providing credit information services).

(3) There is excluded from articles 39D, 39E and 89A any activity carried on by a person acting in reasonable contemplation of that person's appointment as an insolvency practitioner.

(4) There is excluded from article 64 any agreement made by a person acting as an insolvency practitioner to carry on an activity of the kind excluded by paragraph (1).

(5) There is excluded from article 64 any agreement made by a person acting in reasonable contemplation of that person's appointment as an insolvency practitioner to carry on an activity of the kind excluded by paragraph (3)."

(44) For the heading to article 89D (information society services), substitute "Other exclusions".

(45) In that article 89D—

- (a) renumber the existing provision as paragraph (1);
- (b) after that paragraph (1), insert—

“(2) Article 89A is also subject to the exclusions in articles 72G (local authorities) and 72H (insolvency practitioners).”.

(46) In article 89E(1)(b) and (2)(b) (meaning of “consumer” etc.), after “89B,” insert “or article 64 (agreeing to carry on specified kinds of activity) in so far as that article relates to article 89B,”.