
DRAFT STATUTORY INSTRUMENTS

2013 No.

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

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013.

(2) This Order comes into force on the day after the day on which this Order is made for the purpose of—

- (a) the FCA, PRA and the scheme operator making rules,
- (b) the FCA designating relevant instruments under Part 8 of this Order,
- (c) the FCA giving guidance, and
- (d) the FCA and PRA imposing requirements or giving directions.

(3) Article 28 (consequential amendments to other legislation etc.) and paragraph 17 of the Schedule come into force on the day after the day on which this Order is made for the purpose of making orders.

(4) Articles 61, 62 (rules etc.) and 66 (information sharing) come into force on the day after the day on which this Order is made.

(5) Chapter 4 of Part 8 (transitional provisions in relation to permission etc.) comes into force on 2nd September 2013 to the extent it is not already in force.

(6) This Order comes into force on 1st April 2014 to the extent it is not already in force.

(7) In this Order—

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

“the 1974 Act” means the Consumer Credit Act 1974(1);

“the OFT” means the Office of Fair Trading;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(2).

(1) 1974 c.39.

(2) S.I. 2001/544.

PART 2

Amendments of the Regulated Activities Order

Amendments of the Regulated Activities Order

2. Articles 3 to 9 amend the Regulated Activities Order.

Definitions etc.

3.—(1) In article 3(1) (interpretation)(3), insert in the appropriate places the following definitions—

“assignment”, in relation to a credit agreement, has the meaning given by article 60L;

“borrower”—

(a) in relation to a credit agreement other than a regulated mortgage contract or an article 36H agreement (within the meaning given by article 36H), has the meaning given by article 60L;

(b) in relation to an article 36H agreement (within the meaning given by that article) other than a regulated mortgage contract, is to be read with article 36H(4);

“consumer hire agreement” has the meaning given by article 60N;

“credit agreement” has the meaning given by article 60B;

“hire-purchase agreement” has the meaning given by article 60L;

“hirer” is to be read with the definition of “consumer hire agreement” in article 60N;

“lender”—

(c) in relation to a credit agreement other than a regulated mortgage contract or an article 36H agreement (within the meaning given by article 36H), has the meaning given by article 60L;

(d) in relation to an article 36H agreement (within the meaning given by that article) other than a regulated mortgage contract, is to be read with article 36H(4);

“owner”, in relation to a hire purchase agreement, has the meaning given by article 60N;

“regulated consumer hire agreement” has the meaning given by article 60N;

“regulated credit agreement” has the meaning given by article 60B;

“relevant recipient of credit” has the meaning given by article 60L;

“restricted-use credit agreement” has the meaning given in article 60L.

(2) In article 3, at the end of the definition of “deposit”, insert “except where the definition given in article 60L applies”.

(3) In article 4 (specified activities: general)(4)—

(a) in paragraph (1), for “section 22” substitute “section 22(1)”;

(b) after paragraph (2), insert—

“(2A) The kinds of activity specified by Part 3A are specified for the purposes of section 22(1A)(a) of the Act(5) (and accordingly any activity of one of those kinds, when carried on by way of business, is a regulated activity).”.

(3) There are amending instruments but none is relevant to this Order.

(4) Amended by S.I. 2003/1476, S.I. 2006/3384 and S.I. 2009/1389.

(5) Inserted by section 7 of the Financial Services Act 2012.

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);
- (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⁽⁶⁾) acting in the course of contentious business (as defined in section 87(1) of that Act⁽⁷⁾);
- (c) a solicitor within the meaning of the Solicitors (Scotland) Act 1980⁽⁸⁾ 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⁽⁹⁾;
- (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⁽¹⁰⁾);

“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)⁽¹¹⁾.

⁽⁶⁾ 1974 c.47.

⁽⁷⁾ Amended by Schedule 1 to the Administration of Justice Act 1985 (c.61) and Schedule 4 to the Arbitration Act 1996 (c.23).

⁽⁸⁾ 1980 c.46.

⁽⁹⁾ S.I. 1976/582 (N.I. 12).

⁽¹⁰⁾ 1981 c.54.

⁽¹¹⁾ Inserted by S.I. 2002/1776 and amended by S.I. 2004/3379.

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”)(**12**), 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.

(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);

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

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

Activities relating to debt

5. After article 39C(13) (other exclusions relating to claims management on behalf of an insurer etc.) insert—

“CHAPTER 7B

ACTIVITIES IN RELATION TO DEBT

The activities

Debt adjusting

39D.—(1) When carried on in relation to debts due under a credit agreement—

- (a) negotiating with the lender, on behalf of the borrower, terms for the discharge of a debt,
- (b) taking over, in return for payments by the borrower, that person’s obligation to discharge a debt, or
- (c) any similar activity concerned with the liquidation of a debt,

is a specified kind of activity.

(2) When carried on in relation to debts due under a consumer hire agreement—

- (a) negotiating with the owner, on behalf of the hirer, terms for the discharge of a debt,
- (b) taking over, in return for payments by the hirer, that person’s obligation to discharge a debt, or
- (c) any similar activity concerned with the liquidation of a debt,

is a specified kind of activity.

Debt-counselling

39E.—(1) Giving advice to a borrower about the liquidation of a debt due under a credit agreement is a specified kind of activity.

(2) Giving advice to a hirer about the liquidation of a debt due under a consumer hire agreement is a specified kind of activity.

Debt-collecting

39F.—(1) Taking steps to procure the payment of a debt due under a credit agreement or a relevant article 36H agreement is a specified kind of activity.

(2) Taking steps to procure the payment of a debt due under a consumer hire agreement is a specified kind of activity.

(3) 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).

(4) In this article, “relevant article 36H agreement” means an article 36H agreement (within the meaning of article 36H) which has been entered into with the facilitation of an

authorised person with permission to carry on a regulated activity of the kind specified by that article.

Debt administration

39G.—(1) Subject to paragraph (3), taking steps—

- (a) to perform duties under a credit agreement or relevant article 36H agreement on behalf of the lender, or
- (b) to exercise or enforce rights under such an agreement on behalf of the lender,

is a specified kind of activity

(2) Subject to paragraph (3), taking steps—

- (a) to perform duties under a consumer hire agreement on behalf of the owner, or
- (b) to exercise or enforce rights under such an agreement on behalf of the owner,

is a specified kind of activity.

(3) Paragraphs (1) and (2) do 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) or article 39F (debt-collecting).

(4) In this article, “relevant article 36H agreement” means an article 36H agreement (within the meaning of article 36H) which has been entered into with the facilitation of an authorised person with permission to carry on a regulated activity of the kind specified by that article.

Exclusions

Activities where person has a connection to the agreement

39H.—(1) There are excluded from articles 39D(1), 39E(1) and 39F(1) activities carried on by a person who is—

- (a) the lender under the agreement,
- (b) the supplier in relation to that agreement,
- (c) a person carrying on an activity of the kind specified by article 36A by way of business and who has acquired the business of the person who was the supplier in relation to the agreement, or
- (d) a person who would be carrying on an activity of the kind specified by article 36A by way of business but for the exclusion in article 36B where the agreement was made in consequence of an introduction (by that person or another person) to which article 36B applies.

(2) There are excluded from articles 39D(2), 39E(2) and 39F(2) activities carried on by a person who is—

- (a) the owner under the consumer hire agreement, or
- (b) a person who would be carrying on an activity of the kind specified by article 36A by way of business but for the exclusion in article 36B where the agreement was made in consequence of an introduction (by that person or another person) to which article 36B applies.

(3) There is excluded from article 39G(1) steps taken under or in relation to an agreement on behalf of a person who is, in relation to that agreement, a person falling within paragraph (1)(a) to (d).

(4) There is excluded from article 39G(2) steps taken under or in relation to a consumer hire agreement on behalf of a person who is, in relation to that agreement, a person falling within paragraph (2)(a) or (b).

(5) In paragraph (1), “supplier”, in relation to an agreement, means—

- (a) a person, other than the lender, whose transaction with the borrower is, or is to be, financed by the agreement, or
- (b) a person to whom the rights and duties of a person falling within sub-paragraph (a) have been passed by assignment or operation of law.

Activities carried on by certain energy suppliers

39I.—(1) There are excluded from articles 39D, 39E, 39F and 39G activities carried on by a relevant energy supplier acting in that capacity in relation to debts due under a green deal plan associated with the supplier.

(2) A green deal plan is associated with a supplier if the payments under the plan are to be made to the supplier.

(3) In this article—

- (a) “green deal plan” has the meaning given by section 1 of the Energy Act 2011⁽¹⁴⁾;
- (b) “relevant energy supplier” has the meaning given in regulations made for the purpose of section 2(9) of that Act.

Activities carried on in relation to a relevant agreement in relation to land

39J. There are excluded from articles 39D, 39E, 39F and 39G activities that relate to a regulated mortgage contract or a regulated home purchase plan.

Activities carried on by members of the legal profession etc.

39K.—(1) There are excluded from articles 39D, 39E, 39F and 39G activities carried on by—

- (a) a barrister or advocate acting in that capacity;
- (b) a solicitor (within the meaning of the Solicitors Act 1974) acting in the course of contentious business (as defined in section 87(1) of that Act);
- (c) a solicitor within the meaning of the Solicitors (Scotland) Act 1980 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;
- (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⁽¹⁵⁾);

⁽¹⁴⁾ 2011 c.16.

⁽¹⁵⁾ 1981 c.54.

“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

39L. Articles 39D, 39E, 39F and 39G are also subject to the exclusion in article 72A (information society services).

Supplemental

Meaning of “consumer” etc.

39M.—(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 article 39F (debt-collecting) or 39G (debt administration), or article 64 (agreeing to carry on specified kinds of activity) so far as relevant to that activity the following are to be treated as a “consumer”—

- (a) the borrower under the agreement or the hirer under the consumer hire agreement;
- (b) someone who has been the borrower or hirer under that agreement;
- (c) a person who is treated by A as a person falling within sub-paragraph (a) or (b).

(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 article 39F or 39G, the following are to be treated as a “client”—

- (a) the borrower under the agreement or the hirer under the consumer hire agreement;
- (b) someone who has been the borrower or hirer under that agreement;
- (c) a person who is treated by A as a person falling within sub-paragraph (a) or (b).

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

- (a) any person providing a guarantee or indemnity under the 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.”.

Entering into etc. a regulated credit agreement

6. After article 60A (information society services)(16), insert—

“CHAPTER 14A

REGULATED CREDIT AGREEMENTS

The activities

Regulated credit agreements

60B.—(1) Entering into a regulated credit agreement as lender is a specified kind of activity.

(2) It is a specified kind of activity for the lender or another person to exercise, or to have the right to exercise, the lender's rights and duties under a regulated credit agreement.

(3) In this article—

“credit agreement” means an agreement between an individual or relevant recipient of credit (“A”) and any other person (“B”) under which B provides A with credit of any amount;

“exempt agreement” means a credit agreement which is an exempt agreement under articles 60C to 60H;

“regulated credit agreement” means any credit agreement which is not an exempt agreement.

Exempt agreements: exemptions relating to the nature of the agreement

60C.—(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

(2) A credit agreement is an exempt agreement if it is a regulated mortgage contract or a regulated home purchase plan.

(3) A credit agreement is an exempt agreement if—

(a) the lender provides the borrower with credit exceeding £25,000, and

(b) the agreement is 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.

(4) A credit agreement is an exempt agreement if—

(a) the lender provides the borrower with credit of £25,000 or less,

(b) the agreement is entered into by the borrower wholly for the purposes of a business carried on, or intended to be carried on, by the borrower, and

(c) the agreement is a green deal plan (within the meaning of section 1 of the Energy Act 2011).

(5) For the purposes of paragraph (3), if an agreement includes a declaration which—

(a) is made by the borrower,

(b) provides that the agreement is 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, and

(c) complies with rules made by the FCA for the purpose of this article,

the agreement is to be presumed to have been entered into by the borrower wholly or predominantly for the purposes specified in sub-paragraph (b) unless paragraph (6) applies.

(6) This paragraph applies if, when the agreement is entered into—

(a) the lender (or, if there is more than one lender, any of the lenders), or

(b) any person who has acted on behalf of the lender (or, if there is more than one lender, any of the lenders) in connection with the entering into of the agreement,

knows or has reasonable cause to suspect that 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) also apply for the purposes of paragraph (4) but with the omission of the words “or predominantly”.

(8) A credit agreement is an exempt agreement if it is made in connection with trade in goods or services—

- (a) between the United Kingdom and a country outside the United Kingdom,
- (b) within a country, or
- (c) between countries outside the United Kingdom, and

the credit is provided to the borrower in the course of a business carried on by the borrower.

Exempt agreements: exemption relating to the purchase of land for non-residential purposes

60D.—(1) A credit agreement is an exempt agreement for the purposes of this Chapter if, at the time it is entered into, any sums due under it are secured by a legal mortgage on land and the condition in paragraph (2) is satisfied.

(2) The condition is that less than 40% of the land is used, or is intended to be used, as or in connection with a dwelling—

- (a) by the borrower or a related person of the borrower, or
- (b) in the case of credit provided to trustees, by an individual who is a beneficiary of the trust or a related person of a beneficiary.

(3) For the purposes of paragraph (2)—

- (a) the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those stories;
- (b) “related person” in relation to a person (“B”) who is the borrower or (in the case of credit provided to trustees) a beneficiary of the trust, means—
 - (i) B’s spouse or civil partner,
 - (ii) a person (whether or not of the opposite sex) whose relationship with B has the characteristics of the relationship between husband and wife, or
 - (iii) B’s parent, brother, sister, child, grandparent or grandchild.

Exempt agreements: exemptions relating to the nature of the lender

60E.—(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

(2) A relevant credit agreement relating to the purchase of land is an exempt agreement if the lender is—

- (a) specified, or of a description specified, in rules made by the FCA under paragraph (3), or
- (b) a local authority.

(3) The FCA may make rules specifying any of the following for the purpose of paragraph (2)—

- (a) an authorised person with permission to effect or carry out contracts of insurance;
- (b) a friendly society;
- (c) an organisation of employers or organisation of workers;
- (d) a charity;

- (e) an improvement company (within the meaning given by section 7 of the Improvement of Land Act 1899⁽¹⁷⁾);
 - (f) a body corporate named or specifically referred to in any public general Act;
 - (g) a body corporate named or specifically referred to in, or in an order made under, a relevant housing provision;
 - (h) a building society (within the meaning of the Building Societies Act 1986⁽¹⁸⁾);
 - (i) an authorised person with permission to accept deposits.
- (4) Rules under paragraph (3) may—
- (a) specify a particular person or class of persons;
 - (b) be limited so as to apply only to agreements or classes of agreement specified in the rules.
- (5) A credit agreement is an exempt agreement if it is—
- (a) secured by a legal mortgage on land,
 - (b) that land is used or is intended to be used as or in connection with a dwelling, and
 - (c) the lender is a housing authority.
- (6) A credit agreement is an exempt agreement if—
- (a) the lender is an investment firm or a credit institution, and
 - (b) the agreement is entered into for the purpose of allowing the borrower to carry out a transaction relating to one or more financial instruments.
- (7) In this article—
- “housing authority” means—
- (a) in England and Wales, the Homes and Communities Agency, the Welsh Ministers or a private registered provider (within the meaning of Part 2 of the Housing and Regeneration Act 2008⁽¹⁹⁾);
 - (b) in Scotland, the Scottish Ministers or a registered social landlord (within the meaning of the Housing (Scotland) Act 2010⁽²⁰⁾);
 - (c) in Northern Ireland, the Northern Ireland Housing Executive;
- “relevant credit agreement relating to the purchase of land” means—
- (a) a borrower-lender-supplier agreement financing—
 - (i) the purchase of land, or
 - (ii) provision of dwellings on land, and secured by a legal mortgage on that land,
 - (b) a borrower-lender agreement secured by a legal mortgage on land, or
 - (c) a borrower-lender-supplier agreement financing a transaction which is a linked transaction in relation to—
 - (i) an agreement falling within sub-paragraph (a), or
 - (ii) an agreement falling within sub-paragraph (b) financing—
 - (aa) the purchase of land,

⁽¹⁷⁾ 1899 c.46. Section 7 has been repealed in relation to Scotland by Schedule 13 to the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5).

⁽¹⁸⁾ 1986 c.53.

⁽¹⁹⁾ 2008 c.17.

⁽²⁰⁾ 2010 asp17.

- (bb) the provision of dwellings on land,
and secured by a legal mortgage on the land referred to in sub-paragraph (a) or the land referred to in paragraph (ii);
- “relevant housing provision” means any of the following—
- (a) section 156(4) or 447(2)(a) of the Housing Act 1985**(21)**,
 - (b) section 156(4) of that Act as it has effect by virtue of section 17 of the Housing Act 1996**(22)** (the right to acquire), or
 - (c) article 154(1)(a) of the Housing (Northern Ireland) Order 1981**(23)**.
- (8) For the purposes of the definition of “relevant credit agreement relating to the purchase of land”, a transaction is, unless paragraph (9) applies, a “linked transaction” in relation to a credit agreement (“the principal agreement”) if—
- (a) it is (or will be) entered into by the borrower under the principal agreement or by a relative of the borrower,
 - (b) it does not relate to the provision of security,
 - (c) it does not form part of the principal agreement, and
 - (d) one of the following conditions is satisfied—
 - (i) the transaction is entered into in compliance with a term of the principal agreement;
 - (ii) the principal agreement is a borrower-lender-supplier agreement and the transaction is financed, or to be financed, by the principal agreement;
 - (iii) the following conditions are met—
 - (aa) the other party is a person to whom paragraph (10) applies,
 - (bb) the other party initiated the transaction by suggesting it to the borrower or the relative of the borrower, and
 - (cc) the borrower or the relative of the borrower enters into the transaction to induce the lender to enter into the principal agreement or for another purpose related to the principal agreement or to a transaction financed or to be financed by the principal agreement.
- (9) This paragraph applies if the transaction is—
- (a) a contract of insurance,
 - (b) a contract which contains a guarantee of goods, or
 - (c) a transaction which comprises, or is effected under—
 - (i) an agreement for the operation of an account (including any savings account) for the deposit of money, or
 - (ii) an agreement for the operation of a current account, under which the customer (“C”) may, by means of cheques or similar orders payable to C or to any other person, obtain or have the use of money held or made available by the person with whom the account is kept.
- (10) The persons to whom this paragraph applies are—

(21) Section 156(4) amended by Schedule 16 to the Government of Wales Act 1998, section 307 of the Housing and Regeneration Act 2008 (c.17), S.I. 2001/369 and S.I. 2010/866.

(22) 1996 c.52. Amended by sections 62 and 63 of the Housing and Regeneration Act 2008.

(23) S.R. 1981/156 (N.I. 3).

- (a) the lender;
- (b) the lender's associate;
- (c) a person who, in the negotiation of the transaction, is represented by a person who carries on an activity of the kind specified by article 36A (credit broking) by way of business who is or was also a negotiator in negotiations for the principal agreement;
- (d) a person who, at the time the transaction is initiated, knows that the principal agreement has been made or contemplates that it might be made.

Exempt agreements: exemptions relating to number of repayments to be made

60F.—(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

- (2) A credit agreement is an exempt agreement if—
 - (a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit,
 - (b) the number of payments to be made by the borrower is not more than four,
 - (c) those payments are required to be made within a period of 12 months or less (beginning on the date of the agreement),
 - (d) the credit is—
 - (i) secured on land, or
 - (ii) provided without interest or other significant charges, and
 - (e) paragraph (7) does not apply to the agreement.
- (3) A credit agreement is an exempt agreement if—
 - (a) the agreement is a borrower-lender-supplier agreement for running-account credit,
 - (b) the borrower is to make payments in relation to specified periods which must be, unless the agreement is secured on land, of 3 months or less,
 - (c) the number of payments to be made by the borrower in repayment of the whole amount of credit provided in each such period is not more than one,
 - (d) the credit is—
 - (i) secured on land, or
 - (ii) provided without interest or other significant charges, and
 - (e) paragraph (7) does not apply to the agreement.
- (4) A credit agreement is an exempt agreement if—
 - (a) the agreement is a borrower-lender-supplier agreement financing the purchase of land,
 - (b) the number of payments to be made by the borrower is not more than four, and
 - (c) the credit is—
 - (i) secured on land, or
 - (ii) provided without interest or other charges.
- (5) A credit agreement is an exempt agreement if—
 - (a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit,
 - (b) the credit is to finance a premium under a contract of insurance relating to land or anything on land,

- (c) the lender is the lender under a credit agreement secured by a legal mortgage on that land,
 - (d) the credit is to be repaid within the period (which must be 12 months or less) to which the premium relates,
 - (e) in the case of an agreement secured on land, there is no charge forming part of the total charge for credit under the agreement other than interest at a rate not exceeding the rate of interest from time to time payable under the agreement mentioned at sub-paragraph (c),
 - (f) in the case of an agreement which is not secured on land, the credit is provided without interest or other charges, and
 - (g) the number of payments to be made by the borrower is not more than twelve.
- (6) A credit agreement is an exempt agreement if—
- (a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit,
 - (b) the lender is the lender under a credit agreement secured by a legal mortgage on land,
 - (c) the agreement is to finance a premium under a contract of whole life insurance which provides, in the event of the death of the person on whose life the contract is effected before the credit referred to in sub-paragraph (b) has been repaid, for payment of a sum not exceeding the amount sufficient to meet the amount which, immediately after that credit has been advanced, would be payable to the lender in respect of that credit (including interest from time to time payable under that agreement),
 - (d) in the case of an agreement secured on land, there is no charge forming part of the total charge for credit under the agreement other than interest at a rate not exceeding the rate of interest from time to time payable under the agreement mentioned at sub-paragraph (b),
 - (e) in the case of an agreement which is not secured on land, the credit is provided without interest or other charges, and
 - (f) the number of payments to be made by the borrower is not more than twelve.
- (7) This paragraph applies to—
- (a) agreements financing the purchase of land;
 - (b) agreements which are conditional sale agreements or hire-purchase agreements;
 - (c) agreements secured by a pledge (other than a pledge of documents of title or of bearer bonds).
- (8) In this article, “payment” means a payment comprising an amount in respect of credit with or without any other amount.

Exempt agreements: exemptions relating to the total charge for credit

60G.—(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

- (2) A credit agreement is an exempt agreement if—
 - (a) it is a borrower-lender agreement, and
 - (b) the lender is a credit union and the rate of the total charge for credit does not exceed 42.6 per cent.
- (3) A credit agreement is an exempt agreement if—

- (a) it is a borrower-lender agreement,
 - (b) it is an agreement of a kind offered to a particular class of individual or relevant recipient of credit and not offered to the public generally,
 - (c) it provides that the only charge included in the total charge for credit is interest,
 - (d) interest under the agreement may not at any time be more than the sum of one per cent and the highest of the base rates published by the banks specified in paragraph (7) on the date 28 days before the date on which the interest is charged, and
 - (e) paragraph (5) does not apply to the agreement.
- (4) A credit agreement is an exempt agreement if—
- (a) it is a borrower-lender agreement,
 - (b) it is an agreement of a kind offered to a particular class of individual or relevant recipient of credit and not offered to the public generally,
 - (c) it does not provide for or permit an increase in the rate or amount of any item which is included in the total charge for credit,
 - (d) the total charge for credit under the agreement is not more than the sum of one per cent and the highest of the base rates published by the banks specified in paragraph (7) on the date 28 days before the date on which the charge is imposed, and
 - (e) paragraph (5) does not apply to the agreement.
- (5) This paragraph applies to an agreement if—
- (a) the total amount to be repaid by the borrower to discharge the borrower's indebtedness may vary according to a formula which is specified in the agreement and which has effect by reference to movements in the level of any index or other factor, or
 - (b) the agreement—
 - (i) is not secured on land,
 - (ii) is not offered by a lender who is an employer to a borrower as an incident of employment with the lender, and
 - (iii) does not meet the general interest test.
- (6) For the purposes of paragraph (5), an agreement meets the general interest test if—
- (a) the agreement is offered under an enactment with a general interest purpose, and
 - (b) the terms on which the credit is provided are more favourable to the borrower than those prevailing on the market, either because the rate of interest is lower than that prevailing on the market, or because the rate of interest is no higher than that prevailing on the market but the other terms on which credit is provided are more favourable to the borrower.
- (7) The banks specified in this paragraph are—
- (a) the Bank of England;
 - (b) Bank of Scotland;
 - (c) Barclays Bank plc;
 - (d) Clydesdale Bank plc;
 - (e) Co-operative Bank Public Limited Company;
 - (f) Coutts & Co;

- (g) National Westminster Bank Public Limited Company;
- (h) the Royal Bank of Scotland plc.

Exempt agreements: exemptions relating to the nature of the borrower

- 60H.** A credit agreement is an exempt agreement for the purposes of this Chapter if—
- (a) the borrower is an individual,
 - (b) the agreement is either—
 - (i) secured on land, or
 - (ii) for credit which exceeds £60,260,
 - (c) the agreement includes a declaration made by the borrower which provides that the borrower agrees to forgo the protection and remedies that would be available to the borrower if the agreement were a regulated credit agreement and which complies with rules made by the FCA for the purposes of this paragraph,
 - (d) a statement has been made in relation to the income or assets of the borrower which complies with rules made by the FCA for the purposes of this paragraph,
 - (e) the connection between the statement and the agreement complies with any rules made by the FCA for the purposes of this paragraph (including as to the period of time between the making of the statement and the agreement being entered into), and
 - (f) a copy of the statement was provided to the lender before the agreement was entered into.

Exclusions

Arranging administration by authorised person

- 60I.** A person (“A”) who is not an authorised person does not carry on an activity of the kind specified by article 60B(2) in relation to a regulated credit agreement where A—
- (a) arranges for another person, who is an authorised person with permission to carry on an activity of that kind, to exercise or to have the right to exercise the lender’s rights and duties under the agreement, or
 - (b) exercises or has the right to exercise the lender’s rights and duties under the agreement during a period of not more than one month beginning with the day on which any such arrangement comes to an end.

Administration pursuant to agreement with authorised person

60J. A person who is not an authorised person does not carry on an activity of the kind specified by article 60B(2) in relation to regulated credit agreement if that person exercises or has the right to exercise the lender’s rights and duties under the agreement pursuant to an agreement with an authorised person who has permission to carry on an activity of the kind specified by article 60B(2).

Information society services

60K. Article 60B is also subject to the exclusion in article 72A (information society services).

Supplemental

Interpretation of Chapter 14A etc.

60L.—(1) In this Chapter—

“assignment”, in relation to Scotland, means assignation;

“associate” means, in relation to a person (“P”)—

- (a) where P is an individual, any person who is or who has been—
 - (i) P’s spouse or P’s civil partner;
 - (ii) a relative of P, of P’s spouse or of P’s civil partner;
 - (iii) the spouse or civil partner of a relative of P or P’s spouse or civil partner;
 - (iv) if P is a member of a partnership, any of P’s partners and the spouse or civil partner of any such person;
- (b) where P is a body corporate—
 - (i) any person who is a controller (“C”) of P, and
 - (ii) any other person for whom C is a controller;

“borrower” means a person who receives credit under a credit agreement or a person to whom the rights and duties of a borrower under a credit agreement have passed by assignment or operation of law;

“borrower-lender agreement” means—

- (a) a credit agreement—
 - (i) to finance a transaction between the borrower and a person (“the supplier”) other than the lender, and
 - (ii) which is not made by the lender under pre-existing arrangements, or in contemplation of future arrangements, between the lender and the supplier,
- (b) a credit agreement to refinance any existing indebtedness of the borrower, whether to the lender or another person, or
- (c) a credit agreement which is—
 - (i) an unrestricted-use credit agreement, and
 - (ii) not made by the lender—
 - (aa) under pre-existing arrangements between the lender and a person other than the borrower (“the supplier”), and
 - (bb) in the knowledge that the credit is to be used to finance a transaction between the borrower and the supplier;

“borrower-lender-supplier agreement” means—

- (a) a credit agreement to finance a transaction between the borrower and the lender, whether forming part of that agreement or not;
- (b) a credit agreement—
 - (i) to finance a transaction between the borrower and a person (“the supplier”) other than the lender, and
 - (ii) which is made by the lender under pre-existing arrangements, or in contemplation of future arrangements, between the lender and the supplier, or
- (c) a credit agreement which is—

- (i) an unrestricted-use credit agreement, and
- (ii) made by the lender under pre-existing arrangements between the lender and a person (“the supplier”) other than the borrower in the knowledge that the credit is to be used to finance a transaction between the borrower and the supplier;

“conditional sale agreement” means an agreement for the sale of goods or land under which the purchase price or part of it is payable by instalments, and the property in the goods or land is to remain with the seller (notwithstanding that the buyer is to be in possession of the goods or land) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

“credit” includes a cash loan and any other form of financial accommodation;

“credit agreement” has the meaning given by article 60B;

“credit union” means a credit union within the meaning of—

- (a) the Credit Unions Act 1979⁽²⁴⁾;
- (b) the Credit Unions (Northern Ireland) Order 1985⁽²⁵⁾;

“deposit” (except where specified otherwise) means any sum payable by a borrower by way of deposit or down-payment, or credited or to be credited to the borrower on account of any deposit or down-payment, whether the sum is to be or has been paid to the lender or any other person, or is to be or has been discharged by a payment of money or a transfer or delivery of goods or other means;

“exempt agreement” has the meaning given by article 60B;

“finance” includes financing in whole or in part, and “refinance” is to be read accordingly;

“fixed-sum credit” means a facility under a credit agreement whereby the borrower is enabled to receive credit (whether in one amount or by instalments) but which is not running-account credit;

“hire-purchase agreement” means an agreement—

- (a) which is not a conditional sale agreement,
- (b) under which goods are bailed or (in Scotland) hired to a person (“P”) in return for periodical payments by P, and
- (c) the property in the goods will pass to P if the terms of the agreement are complied with and one or more of the following occurs—
 - (i) the exercise by P of an option to purchase the goods;
 - (ii) the doing by any party to the agreement of any other act specified in the agreement;
 - (iii) the happening of any event specified in the agreement;

“legal mortgage” includes charge and, in Scotland, a heritable security;

“lender” means—

- (a) the person providing credit under a credit agreement, or
- (b) a person who exercises or has the right to exercise the rights and duties of a person who provided credit under such an agreement;

⁽²⁴⁾ 1979 c.34.

⁽²⁵⁾ S.I. 1985/1205 (N.I. 12).

“payment” (except in article 60F) means a payment comprising or including an amount in respect of credit;

“regulated credit agreement” has the meaning given by article 60B;

“relative” means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendent;

“relevant recipient of credit” 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;

“restricted-use credit agreement” means a credit agreement—

- (a) to finance a transaction between the borrower and the lender, whether forming part of that agreement or not,
- (b) to finance a transaction between the borrower and a person (“the supplier”) other than the lender, or
- (c) to refinance any existing indebtedness of the borrower’s, whether to the lender or another person;

“running-account credit” means a facility under a credit agreement under which the borrower or another person is enabled to receive from time to time from the lender or a third party cash, goods or services to an amount or value such that, taking into account payments made by or to the credit of the borrower, the credit limit (if any) is not at any time exceeded;

“security” in relation to a credit agreement, means a mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right provided by the borrower or at the implied or express request of the borrower to secure the carrying out of the obligations of the borrower under the agreement;

“total charge for credit” has the meaning given in rules made by the FCA under article 60M;

“total price” means the total sum payable by the debtor under a hire-purchase agreement, including any sum payable on the exercise of an option to purchase but excluding any sum payable as a penalty or as compensation or damages for a breach of the agreement;

“unrestricted-use credit agreement” means a credit agreement which is not a restricted-use credit agreement.

(2) For the purposes of the definition of “restricted-use credit agreement”—

- (a) a credit agreement does not fall within the definition if the credit is in fact provided in such a way as to leave the borrower free to use it as the borrower chooses, even though certain uses would contravene that or any other agreement; and
- (b) an agreement may fall within paragraph (b) of the definition even though the identity of the supplier is unknown at the time the agreement is made.

(3) For the purposes of the definition of “borrower-lender agreement”, a credit agreement is, subject to paragraph (6), entered into under pre-existing arrangements between a lender and a supplier if it is entered into in accordance with, or in connection with, arrangements previously made between the lender (or the lender’s associate) and the supplier (or the supplier’s associate) unless the arrangements fall within paragraph (5).

(4) For the purposes of the definition of “borrower-lender agreement”, a credit agreement is entered into in contemplation of future arrangements between a lender and a supplier if it is entered into in the expectation that arrangements will subsequently be made between the lender (or the lender’s associate) and the supplier (or the supplier’s associate) for the supply of cash, goods or services to be financed by the credit agreement unless the arrangements fall within paragraph (5).

(5) Arrangements fall within this paragraph if they are—

- (a) for the making, in circumstances specified in the credit agreement, of payments to the supplier by the lender (“L”) and L indicates that L is willing to make, in such circumstances, payments of the kind to suppliers generally, or
- (b) for the electronic transfer of funds from a current account held with an authorised person with permission to accept deposits (within the meaning given by article 3).

(6) If a lender is an associate of the supplier’s, the credit agreement is to be treated as entered into under pre-existing arrangements between the lender and the supplier unless the lender can show that this is not the case.

(7) For the purposes of the definition of “running-account credit”, “credit limit” means, as respects any period, the maximum debit balance which, under a credit agreement, is allowed to stand on the account during that period, disregarding any term of the agreement allowing that maximum to be exceeded on a temporary basis.

(8) For the purposes of this Chapter, a person by whom goods are bailed or (in Scotland) hired to an individual or relevant recipient of credit under a hire-purchase agreement is to be taken to be providing that individual or person with fixed-sum credit to finance the transaction of an amount equal to the total price of the goods less the aggregate of the deposit (if any) and the total charge for credit.

(9) For the purposes of this Chapter, where credit is provided otherwise than in sterling, it is to be treated as provided in sterling of an equivalent amount.

Total charge for credit

60M.—(1) The FCA may make rules specifying how the total charge for credit to the borrower under a credit agreement is to be determined for the purposes of this Chapter.

(2) Rules made under paragraph (1) may in particular—

- (a) specify how the total charge for credit to a person who is, or is to become, the borrower under a credit agreement is to be determined;
- (b) specify what items are to be included in determining the total charge for credit and how the value of those items is to be determined;
- (c) specify the method of calculating the rate of the total charge for credit;
- (d) provide for the whole or part of the amount payable by the borrower or a relative of the borrower under a linked transaction (within the meaning given by article 60E(8)) to be included in the total charge for credit, whether or not the lender is a party to the transaction or derives a benefit from it.

CHAPTER 14B

REGULATED CONSUMER HIRE AGREEMENTS

The activities

Regulated consumer hire agreements

60N.—(1) Entering into a regulated consumer hire agreement as owner is a specified kind of activity.

(2) It is a specified kind of activity for the owner or another person to exercise, or to have the right to exercise, the owner’s rights and duties under a regulated consumer hire agreement.

(3) In this Chapter—

“consumer hire agreement” means an agreement between a person (“the owner”) and an individual or relevant recipient of credit (“the hirer”) for the bailment or, in Scotland, the hiring, of goods to the hirer which—

- (a) is not a hire-purchase agreement, and
- (b) is capable of subsisting for more than three months;

“exempt agreement” means a consumer hire agreement which is an exempt agreement under articles 60O to 60Q;

“owner” means—

- (a) the person who bails or, in Scotland, hires, goods under a regulated consumer hire agreement, or
- (b) a person who exercises or has the right to exercise the rights and duties of a person who bailed or, in Scotland, hired, goods under such an agreement;

“regulated consumer hire agreement” means a consumer hire agreement which is not an exempt agreement.

Exempt agreements: exemptions relating to nature of agreement

60O.—(1) An agreement is an exempt agreement for the purposes of this Chapter if—

- (a) the hirer is required by the agreement to make payments exceeding £25,000, and
- (b) the agreement is entered into by the hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the hirer.

(2) For the purposes of paragraph (1), if an agreement includes a declaration which—

- (a) is made by the hirer,
- (b) provides that the agreement is entered into by the hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the hirer, and

(c) complies with rules made by the FCA for the purposes of this article,

the agreement is to be presumed to have been entered into by the hirer wholly or predominantly for the purpose in sub-paragraph (b) unless paragraph (3) applies.

(3) This paragraph applies if, when the agreement is entered into—

- (a) the owner (or, if there is more than one owner, any of the owners), or
- (b) any person who has acted on behalf of the owner (or, if there is more than one owner, any of the owners), in connection with the entering into of the agreement,

knows or has reasonable cause to suspect that the agreement is not entered into by the hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the hirer.

(4) For the purposes of this article, where credit is provided otherwise than in sterling, it is to be treated as provided in sterling of an equivalent amount.

Exempt agreements: exemptions relating to supply of essential services

60P. An agreement is an exempt agreement for the purposes of this Chapter if—

- (a) the owner is a body corporate which is authorised by or under an enactment to supply gas, electricity or water, and
- (b) the subject of the agreement is a meter or metering equipment which is used (or is to be used) in connection with the supply of gas, electricity or water.

Exempt agreements: exemptions relating to the nature of the hirer

60Q. An agreement is an exempt agreement for the purposes of this Chapter if—

- (a) the hirer is an individual,
- (b) the agreement includes a declaration made by the hirer which provides that the hirer agrees to forgo the protection and remedies that would be available to the hirer if the agreement were a regulated consumer hire agreement and which complies with rules made by the FCA for the purposes of this paragraph,
- (c) a statement has been made in relation to the income or assets of the hirer which complies with rules made by the FCA for the purposes of this paragraph,
- (d) the connection between the statement and the agreement complies with any rules made by the FCA for the purposes of this paragraph (including as to the period of time between the making of the statement and the agreement being entered into), and
- (e) a copy of the statement was provided to the owner before the agreement was entered into.

Exclusion

Information society services

60R. Article 60N is subject to the exclusion in article 72A (information society services).”.

The investments

7. After article 88C(26), insert—

“Credit agreement

88D. Rights under a credit agreement.

Consumer hire agreement

88E. Rights under a consumer hire agreement.”.

Provision of credit information services

8.—(1) In article 64 (agreeing to carry on specified kinds of activity)(27), after “this Part” insert “or Part 3A”.

(2) After article 89 (rights to or interests in investments) insert—

“PART 3A

SPECIFIED ACTIVITIES IN RELATION TO INFORMATION

The activities

Providing credit information services

89A.—(1) Taking any of the steps in paragraph (3) on behalf of an individual or relevant recipient of credit is a specified kind of activity.

(2) Giving advice to an individual or relevant recipient of credit in relation to the taking of any of the steps specified in paragraph (3) is a specified kind of activity.

(3) Subject to paragraph (4), the steps specified in this paragraph are steps taken with a view to—

- (a) ascertaining whether a credit information agency holds information relevant to the financial standing of an individual or relevant recipient of credit;
- (b) ascertaining the contents of such information;
- (c) securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information;
- (d) 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) Steps taken by a credit information agency in relation to information held by that agency are not steps specified in paragraph (3).

(5) Paragraphs (1) and (2) do not apply to an activity of the kind specified by article 36H (operating an electronic system in relation to lending).

(6) “Credit information agency” means a person who carries on by way of business an activity of the kind specified by any of the following—

- (a) article 36A (credit broking);
- (b) article 39D (debt adjusting);
- (c) article 39E (debt-counselling);
- (d) article 39F (debt-collecting);
- (e) article 39G (debt administration);
- (f) article 60B (regulated credit agreements) disregarding the effect of article 60F;
- (g) article 60N (regulated consumer hire agreements) disregarding the effect of article 60P;
- (h) article 89B (providing credit references).

Providing credit references

89B.—(1) Furnishing of persons with information relevant to the financial standing of individuals or relevant recipients of credit is a specified kind of activity if the person has collected the information for that purpose.

(2) There are excluded from paragraph (1) activities carried on in the course of a business which does not primarily consist of activities of the kind specified by paragraph (1).

(3) Paragraph (1) does not apply to an activity of the kind specified by article 36H (operating an electronic system in relation to lending).

Exclusions

Activities carried on by members of the legal profession etc.

89C.—(1) There are excluded from articles 89A and 89B activities carried on by—

- (a) a barrister or advocate acting in that capacity;
- (b) a solicitor (within the meaning of the Solicitors Act 1974) acting in the course of contentious business (as defined in section 87(1) of that Act);
- (c) a solicitor within the meaning of the Solicitors (Scotland) Act 1980 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;
- (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~~(28)~~);

“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

89D. Articles 89A and 89B are subject to the exclusion in article 72A (information society services).

Supplemental

Meaning of “consumer” etc.

89E.—(1) For the purposes of sections 1G, 404E and 425A of the Act (meaning of “consumer”)—

- (a) an individual or a relevant recipient of credit who is, may be, has been or may have been the subject of the information referred to in article 89A, and
- (b) an individual or a relevant recipient of credit who is, may be, has been or may have been the subject of information furnished in the course of a person carrying on an activity of the kind specified by article 89B,

is to be treated as a “consumer”.

(2) For the purposes of section 328(8) of the Act (meaning of “clients”)—

- (a) an individual or a relevant recipient of credit who is, may be, has been or may have been the subject of the information referred to in article 89A, and
- (b) an individual or a relevant recipient of credit who is, may be, has been or may have been the subject of information furnished in the course of a person carrying on an activity of the kind specified by article 89B,

is to be treated as a “client”.”.

Other amendments

9.—(1) In article 72B(1) (activities carried on by a provider of relevant goods or services)(**29**), in the definition of “provider”, omit “within the meaning of section 189(1) of the Consumer Credit Act 1974”.

(2) Omit article 90 (consequential amendments of the Consumer Credit Act 1974).

(3) Omit article 91 (consequential amendments of subordinate legislation under the Consumer Credit Act 1974).

PART 3

Amendments of the Act etc.

Amendments of the Act

10.—(1) The Act is amended as follows.

(2) In section 1H (further interpretative provisions for sections 1B to 1G)(**30**)—

- (a) omit paragraph (b) of subsection (2);
- (b) in subsection (8), omit the definitions of “accepting” and “consumer credit business”.

(3) In section 194 (general grounds on which power of intervention in relation to EEA firm is exercisable), omit subsections (2) to (4).

(4) Sections 203 and 204 (powers to prohibit or restrict the carrying on of Consumer Credit Act business)(**31**) are omitted.

(5) Section 226A (consumer credit jurisdiction)(**32**) is omitted.

(6) In section 227 (voluntary jurisdiction)(**33**), in subsection (2)(e), omit “or the consumer credit jurisdiction”.

(7) In section 228 (determination under the compulsory jurisdiction)(**34**), in subsection (1), omit “and to the consumer credit jurisdiction”.

(8) In section 229 (awards)(**35**)—

- (a) in subsection (1), omit “and to the consumer credit jurisdiction”;

(29) Inserted by [S.I. 2003/1476](#) and amended by [S.I. 2007/3510](#) and [S.I. 2011/1265](#).

(30) Inserted by section 6 of the Financial Services Act 2012.

(31) Section 203 was amended by [S.I. 2000/2952](#), Schedule 25 to the Enterprise Act 2002 and section 33 of the Consumer Credit Act 2006. Section 204 was amended by Schedule 25 to the Enterprise Act 2002.

(32) Inserted by section 59 of the Consumer Credit Act 2006.

(33) Amended by section 61 of the Consumer Credit Act 2006.

(34) Amended by section 61 of the Consumer Credit Act 2006.

(35) Amended by section 61 of the Consumer Credit Act 2006.

- (b) omit subsection (4A);
- (c) in subsection (8)(b), omit “or (as the case may be) Part 3A of that Schedule(36)”;
- (d) for subsection (11), substitute—
 - “(11) “Specified” means specified in compulsory jurisdiction rules.”;
- (e) omit subsection (12).
- (9) In section 230 (costs)(37)—
 - (a) in subsection (1), omit “or the consumer credit jurisdiction”;
 - (b) in subsection (7), omit “or (as the case may be) paragraph 16D of that Schedule”.
- (10) Section 234A (funding by consumer credit licensees etc)(38) is omitted.
- (11) In section 234D (reference by scheme operator or regulated person)(39), in subsection (6)(c)(i), omit “or the consumer credit jurisdiction”.
- (12) In section 328 (directions in relation to the general prohibition)(40), in subsection (6)(b), after “insurance mediation directive” insert “or [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/EEC](#)(41)”.
- (13) In section 353 (removal of other restrictions on disclosure)(42), in subsection (1), omit paragraph (c).
- (14) In section 401 (proceedings for offences)(43), omit subsection (4).
- (15) In section 404E (meaning of “consumers”)(44)—
 - (a) in subsection (2), omit paragraph (b);
 - (b) in subsection (6), omit the definitions of “accepting” and “consumer credit business”.
- (16) In Schedule 1A to the Act (further provision about the consumer financial education body)(45)—
 - (a) in paragraph 7(4), omit paragraph (c) (but not the “and” following it);
 - (b) in paragraph 8(6), omit paragraph (c);
 - (c) omit paragraph 10(1) and the heading immediately before it;
 - (d) in paragraph 10(2), for “that Act” substitute “the Consumer Credit Act 1974”;
 - (e) omit paragraph 13.
- (17) In Schedule 2 (regulated activities), in paragraph 24C(46)—
 - (a) in sub-paragraph (1), for “regulated person” substitute “person who is carrying on a regulated activity”;
 - (b) omit sub-paragraph (2).
- (18) In Schedule 3 (EEA passport rights)—
 - (a) in paragraph 15(47), omit sub-paragraphs (3) and (4);

(36) Inserted by Schedule 2 to the Consumer Credit Act 2006.

(37) Amended by section 61 of the Consumer Credit Act 2006.

(38) Inserted by section 60 of the Consumer Credit Act 2006.

(39) Inserted by section 43 of the Financial Services Act 2012.

(40) Amended by [S.I. 2003/1473](#).

(41) OJ L 133/66 22.5.2008 p.1.

(42) Amended by section 61 of the Consumer Credit Act 2006.

(43) Amended by Schedule 25 to the Enterprise Act 2002.

(44) Inserted by section 14 of the Financial Services Act 2010.

(45) Inserted by section 2 of, and Schedule 1 to, the Financial Services Act 2010.

(46) Inserted by section 7 of the Financial Services Act 2012.

(47) Amended by Schedule 25 to the Enterprise Act 2002 and section 33 of the Consumer Credit Act 2006.

- (b) omit paragraph 23⁽⁴⁸⁾.
- (19) In Schedule 6 (threshold conditions)⁽⁴⁹⁾—
 - (a) in paragraph 2C, after sub-paragraph (1), insert—
 - “(1A) Paragraphs (a), (b) and (e) of sub-paragraph (1) do not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are relevant credit activities.”;
 - (b) in paragraph 2D—
 - (i) in sub-paragraph (3), for “The matters” substitute “Except in a case within sub-paragraph (3A), the matters”;
 - (ii) after sub-paragraph (3) insert—
 - “(3A) Where the only regulated activities that A carries on, or seeks to carry on, are relevant credit activities, A has adequate financial resources if A is capable of meeting A’s debts as they fall due.”;
 - (c) in paragraph 2F, after sub-paragraph (2) insert—
 - “(3) This paragraph does not apply where the only regulated activities that the person concerned carries on, or seeks to carry on, are relevant credit activities.”;
 - (d) after paragraph 2F insert—

“Interpretation

2G.—(1) In this Part of this Schedule, each of the following is a “relevant credit activity” —

- (a) an activity of the kind specified by article 36A of the Regulated Activities Order (credit broking) when carried on in the case specified in sub-paragraph (3), (4) or (5),
- (b) an activity of the kind specified by article 39D of that Order (debt adjusting) when carried on—
 - (i) in the case specified in sub-paragraph (3), by a person who also carries on an activity of the kind specified by paragraph (a),
 - (ii) by a person who also carries on an activity of the kind specified by paragraph (d) or (e), or
 - (iii) by a not-for-profit body,
- (c) an activity of the kind specified by article 39E of that Order (debt-counselling) when carried on—
 - (i) in the case specified in sub-paragraph (3), by a person who also carries on an activity of the kind specified by paragraph (a),
 - (ii) by a person who also carries on an activity of the kind specified by paragraph (d) or (e), or
 - (iii) by a not-for-profit body,
- (d) an activity of the kind specified by article 60B of that Order (regulated credit agreements) if—
 - (i) it is carried on by a supplier,

⁽⁴⁸⁾ Amended by Schedule 25 to the Enterprise Act 2002 and section 33 of the Consumer Credit Act 2006.

⁽⁴⁹⁾ Amended by S.I 2013/555.

- (ii) no charge (by way of interest or otherwise) is payable by the borrower in connection with the provision of credit under the regulated credit agreement, and
 - (iii) the regulated credit agreement is not a hire-purchase agreement or a conditional sale agreement,
 - (e) an activity of the kind specified by article 60N of that Order (regulated consumer hire agreements),
 - (f) an activity of the kind specified by article 89A of that Order (providing credit information services) where carried on by a person who also carries on an activity of the kind specified by any of paragraphs (a) to (e), or
 - (g) an activity of the kind specified by article 64 of that Order (agreeing to carry on specified kinds of activity) so far as relevant to any of the activities specified in paragraphs (a) to (f).
- (2) But an activity is not a relevant credit activity for the purposes of—
- (a) paragraph (a) to (e) of sub-paragraph (1), and
 - (b) paragraph (g) of that sub-paragraph so far as it relates to activities of the kind specified by any of those paragraphs,
- if it relates to an agreement under which the obligation of the borrower to repay is secured, or is to be secured, by a legal mortgage on land.
- (3) The case specified in this sub-paragraph is where a supplier (other than a domestic premises supplier) carries on the activity for the purposes of, or in connection with, the sale of goods or supply of services by the supplier to a customer (who need not be the borrower under the credit agreement or the hirer under the consumer hire agreement).
- (4) The case specified in this sub-paragraph is where the activity relates to a green deal plan.
- (5) The case specified in this sub-paragraph is where the activity relates to a consumer hire agreement where the goods being hired is a vehicle.
- (6) For the purposes of this paragraph—
- “borrower” includes—
- (a) any person providing a guarantee or indemnity under an agreement, and
 - (b) a person to whom the rights and duties of the borrower under an agreement or a person falling within paragraph (a) have passed by assignment or operation of law;
- “conditional sale agreement” has the meaning given by article 60L of the Regulated Activities Order;
- “customer” means a person to whom a supplier sells goods or supplies services or agrees to do so;
- “domestic premises supplier” means a supplier who sells goods or supplies services to customers who are individuals while physically present in the dwelling of the customer or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer (though a supplier who does so on an occasional basis is not to be treated as a “domestic premises supplier”);
- “green deal plan” has the meaning given by section 1 of the Energy Act 2011⁽⁵⁰⁾;
- “hire-purchase agreement” has the meaning given by the Regulated Activities Order;

“not-for-profit body” means a body which, by virtue of its constitution or any enactment—

- (a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and
- (b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes);

“Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“regulated credit agreement” has the meaning given by the Regulated Activities Order;

“supplier” means a person whose main business is to sell goods or supply services and not to carry on a regulated activity, other than an activity of the kind specified by article 60N of the Regulated Activities Order (regulated consumer hire agreements).”.

(20) Schedule 16 (prohibitions and restrictions imposed by the Office of Fair Trading)(**51**) is omitted.

(21) In Schedule 17 (the ombudsman scheme)(**52**)—

- (a) in paragraph 3(4), omit “, the function of making consumer credit rules, the function of making determinations under section 234A(1)”;
- (b) in paragraph 7(2), omit “, functions in relation to its consumer credit jurisdiction”;
- (c) in paragraph 9(3), omit “, consumer credit”;
- (d) in paragraph 10(1), omit “or to the consumer credit jurisdiction”;
- (e) in paragraph 11, omit “or to the consumer credit jurisdiction”;
- (f) omit Part 3A.

Transitional and savings provisions related to article 10

11.—(1) This article makes provision in connection with the amendments to the Act made by article 10.

(2) The amendments to sections 1H and 404E do not apply in so far as those provisions relate to, or apply for the purposes of, anything done under the Act concerning things done (or not done) before 1st April 2014.

(3) The repeal of section 194(2) to (4) does not affect the continued validity of any requirement imposed under section 194(3).

(4) The repeal of sections 203 and 204 and Schedule 16 does not affect the continued validity of any prohibition or restriction imposed; and in relation to such a prohibition or restriction, sections 203(6) and (7) and 204(3) and Schedule 16 continue to apply as if each reference to the OFT were a reference to the FCA.

(5) A complaint made under the ombudsman scheme before 1st April 2014 and being dealt with under section 226A (consumer credit jurisdiction) is to be dealt with under section 226 (compulsory jurisdiction)

(6) It is immaterial for the purposes of paragraph (5) that the conditions mentioned in section 226(2) are not satisfied.

(7) A complaint made under the ombudsman scheme on or after 1st April 2014—

(51) Amended by section 278 of, and Schedule 25 to, the Enterprise Act 2002.

(52) Amended by section 59 of the Consumer Credit Act 2006.

- (a) which relates to an act or omission which took place before 1st April 2014,
 - (b) which could have been dealt with under the ombudsman scheme under section 226A (disregarding the effect of section 226A(2)(a) and (b)) but for the repeal of that section, and
 - (c) in relation to which the condition mentioned in section 226(2)(a) is satisfied,
- is to be dealt with under the ombudsman scheme under section 226 (compulsory jurisdiction).

(8) It is immaterial for the purposes of paragraph (7) that the conditions mentioned in section 226(2)(b) and (c) are not satisfied.

(9) Contributions received by the scheme operator under section 234A (funding by consumer credit licensees etc.) may be used by the scheme operator for the purpose of funding its operation in relation to complaints of the kind referred to in paragraph (5) or (7) and other complaints dealt with under the ombudsman scheme by virtue of section 226.

(10) The repeal of paragraph 23 of Schedule 3 does not affect the continued validity of anything done under section 55L or 55M.

Obligations of certain credit brokers who are not authorised persons

12.—(1) This article applies to a person (“P”) who—

- (a) is not an authorised person,
- (b) carries on an activity of the kind specified by article 36A(1)(d) to (f) of the Regulated Activities Order (credit broking), and
- (c) is not exempt from the general prohibition in relation to the carrying on of that activity by virtue of section 327(1) of the Act (exemption from the general prohibition for members of a designated professional body).

(2) P must indicate in advertising and documentation intended for borrowers or those who may become a borrower the extent of P’s powers, in particular whether P works exclusively for one or more lenders or does not work for any lender.

(3) P must disclose to the borrower or any person who may become a borrower the fee, if any, payable by the borrower to P for P’s services.

(4) Any fee to be paid by the borrower to P must be agreed between the borrower and P and that agreement must be recorded in writing or other durable medium before the credit agreement is entered into.

(5) P must disclose to the lender the fee, if any, payable by the borrower to P for P’s services for the purpose of enabling the lender to calculate the annual percentage rate of charge in relation to the credit agreement.

(6) In this article, “borrower” and “lender” have the meanings given by Article 60L of the Regulated Activities Order.

(7) A contravention by P of a provision of this article is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duties.

(8) “Private person” has the meaning prescribed for the purposes of section 138D of the Act (action for damages)(**53**).

(9) Sections 165 (regulator’s power to require information: authorised persons etc.)(**54**) and 167 (appointment of persons to carry out general investigations)(**55**) apply as if each reference to an

(53) Inserted by section 24 of the Financial Services Act 2012.

(54) Amended by Schedule 2 to the Financial Services Act 2010, Schedule 12 to the Financial Services Act 2012, [S.I. 2001/3083](#) and [S.I. 2002/775](#).

(55) Amended by Schedule 12 to the Financial Services Act 2012 and [S.I. 2007/126](#).

authorised person (except in section 165(11) and 167(2)) included a reference to a person who falls within paragraph (1).

(10) Part 14 of the Act (disciplinary measures) applies to the requirements imposed by this article as if each reference to an authorised person included a reference to a person who, at the time of the contravention of the requirement, fell within paragraph (1).

PART 4

Amendments of secondary legislation made under the Act

The Financial Services and Markets Act 2000 (Carrying on Regulated Activities By Way of Business) Order 2001

13. In the Financial Services and Markets Act 2000 (Carrying on Regulated Activities By Way of Business) Order 2001(**56**), after article 3D (arranging and advising on regulated sale and rent back agreements), insert—

“Debt adjusting, debt-counselling etc. by not-for-profit bodies

3E.—(1) A not-for-profit body which carries on an activity of the kind specified by article 39D (debt adjusting), 39E (debt-counselling) or 89A (providing credit information services) of the Regulated Activities Order or article 64 of that Order (agreeing to carry on specified kinds of activity) so far as relevant to any of those activities is to be regarded as carrying on that activity by way of business if the activities being carried on by that body consist of, or relate to, that activity.

(2) Paragraph (1) does not apply if the body carries on that activity only on an occasional basis.

(3) It is immaterial for the purposes of paragraph (1) if the activities being carried on by the body also consist of, or relates to, other activities.

(4) In this article, a “not-for-profit body” means a body which, by virtue of its constitution or any enactment—

- (a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and
- (b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes).”

The Financial Services and Markets Act 2000 (Exemption) Order 2001

14.—(1) The Financial Services and Markets Act 2000 (Exemption) Order 2001(**57**) is amended as follows.

(2) In paragraph 40(1) of the Schedule (enterprise schemes)(**58**), for “article 25 of the Regulated Activities Order (arranging deals in investments)” substitute “articles 25, 36A, 39D, 39E and 89A of the Regulated Activities Order (arranging deals in investments, credit broking, debt adjusting, debt-counselling and providing credit information services)”.

(3) In paragraph 47 of the Schedule (local authorities)(**59**)—

(56) [S.I. 2001/1177](#). Article 3D was inserted by [S.I. 2009/1342](#). There are amending instruments but none is relevant to this Order.

(57) [S.I. 2001/1201](#).

(58) Amended by [S.I. 2007/125](#) and [S.I. 2007/1821](#).

(59) Substituted by [S.I. 2003/1675](#) and amended by [S.I. 2006/2383](#) and [S.I. 2009/1342](#).

- (a) at the end of paragraph (d), omit “or”;
- (b) at the end of paragraph (e), insert—
 - “(f) article 36A or 60B of that Order (credit broking or entering into a regulated credit agreement) in so far as the credit agreement (within the meaning of that Order) is secured on land; or
 - (g) article 39D, 39E, 39F, 39G, 60N or 89A of that Order (activities in relation to debt, regulated consumer hire agreements and providing credit information services).”.
- (4) After paragraph 51 of the Schedule (policyholder advocates)(60) insert—

“Insolvency practitioners etc.

52.—(1) A person acting as—

- (a) an insolvency practitioner,
- (b) an official receiver within the meaning of section 399 of the Insolvency Act 1986(61) or article 2 of the Insolvency (Northern Ireland) Order 1989(62), or
- (c) a judicial factor,

is exempt from the general prohibition in respect of any regulated activity of the kind specified by any of articles 39D to 39G (activities in relation to debt) or 89A (providing credit information services) of the Regulated Activities Order.

(2) A person acting in reasonable contemplation of appointment as an insolvency practitioner is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 39D (debt adjusting), 39E (debt-counselling) or 89A (providing credit information services) of that Order.

(3) In this paragraph, “acting as an insolvency practitioner” is to be read with section 388 of the Insolvency Act 1986(63) or article 3 of the Insolvency (Northern Ireland) Order 1989.

Cycle to work

53.—(1) An employer who provides or makes available to their employees a cycle or cyclist’s safety equipment up to the value of £1,000 under a relevant employee benefit scheme is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 60N of the Regulated Activities Order (regulated consumer hire agreements).

(2) For the purposes of this paragraph—

“cycle” has the meaning given by section 192(1) of the Road Traffic Act 1988(64) (general interpretation);

“relevant employee benefit scheme” means a scheme operated by an employer which is designed to allow employees to take advantage of section 244 of the Income Tax (Earnings and Pensions) Act 2003(65) (no liability to income tax in relation to cycles and cyclist’s safety equipment) and under which cycles or cyclist’s safety equipment are made available in the manner described in any guidance issued by the Secretary of State.

(60) Inserted by S.I. 2007/1821.

(61) 1988 c.45. Amended by Schedule 23 to the Enterprise Act 2002 and Schedule 20 to the Tribunals, Courts and Enforcement Act 2007 (c.15).

(62) S.I. 1989/2405 (N.I.19). Amended by SR 1995/225, SR 2002/334, S.I. 2002/3152 (N.I.6), SR 2003/660, SR 2004/307.

(63) Amended by section 11 of the Bankruptcy (Scotland) Act 1993 (c.6), S.I./1994/2421, section 4 of the Insolvency Act 2000 (c.39), S.I. 2002/1240, S.I. 2002/2708 and S.I. 2009/1941.

(64) 1988 c.52. There are amending instruments but none is relevant to this Order.

(65) 2003 c.1. Amended by section 16 of the Finance Act 2005 (c.7).

Tracing agents

54.—(1) A person who takes steps to ascertain the identity or location (or the means of ascertaining the identity or location) of a borrower or hirer is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 39F of the Regulated Activities Order (debt-collecting) so long as the person is not the lender under the agreement concerned or the owner under the consumer hire agreement concerned and takes no other steps to procure the payment of debts due under the agreement.

(2) In this article, “borrower”, “hirer” “lender” and “owner” have the meanings given by the Regulated Activities Order.”.

The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001

15.—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001⁽⁶⁶⁾ are amended as follows.

(2) In regulation 2(1) (descriptions of business for which appointed representatives are exempt)⁽⁶⁷⁾—

(a) after sub-paragraph (abb) insert—

“(abc) an activity of the kind specified by article 36A of that Order (credit broking);”;

(b) after sub-paragraph (ac) insert—

“(ad) an activity of the kind specified by article 39D of that Order (debt adjusting);

(ae) an activity of the kind specified by article 39E of that Order (debt-counselling);

(af) an activity of the kind specified by article 39F of that Order (debt-collecting);

(ag) an activity of the kind specified by article 39G of that Order (debt administration);”;

(c) at the end of sub-paragraph (cc), omit “or” and insert—

“(cd) an activity of the kind specified by article 60B of that Order (regulated credit agreements) when carried on in relation to a credit agreement (within the meaning of that Order) under which the credit is provided free of interest and without any other charges;

(ce) an activity of the kind specified by article 60N of that Order (regulated consumer hire agreements);”;

(d) in paragraph (d)—

(i) after “(abb),” insert “(abc),”;

(ii) after “(ac),” insert “(ad), (ae), (af), (ag),”;

(iii) for “or (cc)” substitute “, (cc), (cd) or (ce)”;

(e) at the end of sub-paragraph (d) insert—

“or

(e) an activity of the kind specified by article 89A of that Order (providing credit information services);”.

(3) In regulation 3 (requirements applying to contracts between authorised persons and appointed representatives)⁽⁶⁸⁾, after paragraph (3B) insert—

⁽⁶⁶⁾ S.I. 2001/1217.

⁽⁶⁷⁾ Amended by S.I. 2001/2508, S.I. 2003/1475, S.I. 2003/1476, S.I. 2004/453, S.I. 2004/2737, S.I. 2006/2383 and S.I. 2006/3414.

⁽⁶⁸⁾ Amended by S.I. 2001/2508, S.I. 2003/1475, S.I. 2003/1476, S.I. 2004/453, S.I. 2004/2737, S.I. 2006/2383 and S.I. 2006/3414.

“(3C) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative effects introductions (in circumstances constituting the carrying on of an activity of the kind specified by article 36A of that Order) of individuals or relevant recipients of credit (within the meaning of that Order) to other counterparties.

(3D) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative takes steps (in circumstances constituting the carrying on of an activity of the kind specified by article 39D of that Order) on behalf of other counterparties.

(3E) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative gives advice to a borrower (in circumstances constituting the carrying on of an activity of the kind specified by article 39E or 89A of that Order) about the liquidation of a debt due under a credit agreement or consumer hire agreement (in each case, within the meaning of that Order) on behalf of other counterparties.

(3F) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative takes steps (in circumstances constituting the carrying on of an activity of the kind specified by article 39F of that Order) to procure the payment of debts on behalf of other counterparties.

(3G) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative performs duties (in circumstances constituting the carrying on of an activity of the kind specified by article 39G of that Order) under, or exercises or enforces rights under, an agreement on behalf of other counterparties.

(3H) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative enters into regulated credit agreements or exercises or has the right to exercise the lender’s rights and duties under such agreements (in circumstances constituting the carrying on of an activity of the kind specified by article 60B of that Order) on behalf of other counterparties

(3I) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative enters into regulated consumer hire agreements or exercises or has the right to exercise the owner’s rights and duties under such agreements (in circumstances constituting the carrying on of an activity of the kind specified by article 60N of that Order) on behalf of other counterparties.”.

The Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001

16. In regulation 3(1) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (private person)(**69**)—

- (a) at the end of sub-paragraph (a), omit “and”;
- (b) at the end of sub-paragraph (b) insert—
 - “(c) a relevant recipient of credit (within the meaning of the Regulated Activities Order) who is not an individual and who has suffered the loss in question in connection with an activity of the kind specified by article 36A, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of that Order or article 64 of that Order so far as relevant to any of those activities, and
 - (d) a person who is, by virtue of article 36J of that Order, to be regarded as a person who uses, may use, has or may have used or has or may have contemplated using, services provided by authorised persons in carrying on a regulated activity of the

(69) S.I. 2001/2256. Amended by S.I. 2002/1775.

kind specified by article 36H of that Order or article 64 of that Order so far as relevant to that activity.”.

The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

17.—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005⁽⁷⁰⁾ is amended as follows.

(2) In article 28B (real time communications: introductions)⁽⁷¹⁾, in paragraph (1)(a)—

- (a) after “paragraph” insert “4B, 4C, 5A, 5B,”;
- (b) after “10B,”, insert “10BA, 10BB,”.

(3) In article 30(2) (overseas communications: solicited real time communications), in the definition of “relevant investment activities”, after “10 to 10B” insert “, 10BA or 10BB”.

(4) In article 46 (qualifying credit to bodies corporate), for “or 10B” substitute “10B, 10BA or 10BB”.

(5) After article 46, insert—

“Promotions of credit etc. for business purposes

46A.—(1) The financial promotion restriction does not apply to a communication which relates to a controlled activity falling within paragraph 4C of Schedule 1 and which—

- (a) indicates clearly (by express words or otherwise) that a person is willing to facilitate another person (“B”) becoming the borrower under a paragraph 4C agreement for the purposes of B’s business, and
- (b) does not indicate (by express words or otherwise) that the person is willing to facilitate B becoming the borrower under such an agreement for any other purpose.

(2) The financial promotion restriction does not apply to a communication which relates to a controlled activity falling within paragraph 10BA of Schedule 1 and which—

- (a) indicates clearly (by express words or otherwise) that a person is willing to enter into a relevant credit agreement as lender for the purposes of another person’s business, and
- (b) does not indicate (by express words or otherwise) that the person is willing to enter into a relevant credit agreement as lender for any other purpose.

(3) The financial promotion restriction does not apply to a communication which relates to a controlled activity falling within paragraph 10BB of Schedule 1 and which—

- (a) indicates clearly (by express words or otherwise) that a person is willing to enter into a regulated consumer hire agreement as owner for the purposes of another person’s business, and
- (b) does not indicate (by express words or otherwise) that the person is willing to enter into a regulated consumer hire agreement as owner for any other purpose.

(4) In this article—

- (a) references to a “business” do not include a business carried on by—
 - (i) the person communicating the promotion, or
 - (ii) a person carrying on an activity of the kind specified by article 36A of the Regulated Activities Order (credit broking) in relation to the relevant credit

⁽⁷⁰⁾ S.I. 2005/1529.

⁽⁷¹⁾ Amended by S.I. 2006/2383 and S.I. 2009/1342.

- agreement, paragraph 4C agreement or regulated consumer hire agreement to which the promotion relates;
- (b) “paragraph 4C agreement” has the meaning given in paragraph 4C of Schedule 1;
 - (c) “relevant credit agreement” has the meaning given in paragraph 28 of Schedule 1.”.
- (6) In Schedule 1 (controlled activities and controlled investments)—
- (a) after paragraph 4A (operating a multilateral trading facility)(72), insert—

“Credit broking

4B.—(1) Each of the following is a controlled activity—

- (a) effecting an introduction of an individual or relevant recipient of credit to a person who enters into as lender relevant credit agreements by way of business;
- (b) effecting an introduction of an individual or relevant recipient of credit to a person who enters into as lender regulated consumer hire agreements by way of business;
- (c) effecting an introduction of an individual or relevant recipient of credit to a person who carries on an activity of the kind specified in paragraph (a) or (b) by way of business;
- (d) presenting or offering an agreement which would (if entered into) be a relevant credit agreement to an individual or relevant recipient of credit;
- (e) assisting an individual or relevant recipient of credit by undertaking preparatory work in respect of a relevant credit agreement;
- (f) entering into a relevant credit agreement on behalf of a lender.

(2) For the purposes of paragraph (1) it is immaterial whether the relevant credit agreement or regulated consumer hire agreement is subject to the law of a country outside the United Kingdom.

Operating an electronic system in relation to lending

4C.—(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 a paragraph 4C agreement is a controlled 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 controlled 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 paragraph 4C agreements to B and C with a view to B becoming the lender under the paragraph 4C agreement and C becoming the borrower under the paragraph 4C 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, a paragraph 4C agreement with Y, or
 - (ii) assume the rights of the lender under a paragraph 4C agreement under which Y is the borrower,

(72) Inserted by [S.I. 2006/3384](#).

- (c) taking steps to procure the payment of a debt due under a paragraph 4C agreement,
- (d) performing duties, or exercising or enforcing rights under a paragraph 4C 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) A “paragraph 4C agreement” is an agreement between one person (“the borrower”) and another person (“the lender”) by which the lender provides the borrower with credit and in relation to which either the condition in 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 of the Regulated Activities Order (exempt agreements: exemptions relating to nature of agreement) apply for the purposes of paragraph (6)(b).

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

(9) In this paragraph, “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.”;

(b) after paragraph 5 (managing investments), insert—

“Debt adjusting

5A.—(1) The following activities are, when carried on in relation to debts due under a relevant credit agreement, controlled activities—

- (a) negotiating with the lender, on behalf of the borrower, terms for the discharge of a debt;
- (b) taking over, in return for payments by the borrower, that person’s obligation to discharge a debt;
- (c) any similar activity concerned with the liquidation of a debt.

(2) The following activities are, when carried on in relation to debts due under a consumer hire agreement, controlled activities—

- (a) negotiating with the owner, on behalf of the hirer, terms for the discharge of a debt;
- (b) taking over, in return for payments by the hirer, that person's obligation to discharge a debt;
- (c) any similar activity concerned with the liquidation of a debt.

Debt-counselling

5B.—(1) Advising a borrower about the liquidation of a debt due under a relevant credit agreement is a controlled activity.

(2) Advising a hirer about the liquidation of a debt due under a consumer hire agreement is a controlled activity.”;

(c) after paragraph 10B (advising on qualifying credit etc.)(**73**), insert—

“Providing relevant consumer credit

10BA. Entering into a relevant credit agreement as lender, or exercising or having the rights to exercise the rights of the lender under such an agreement, is a controlled activity.

Providing consumer hire

10BB. Entering into a regulated consumer hire agreement as owner or exercising or having the right to exercise the rights of the owner under such an agreement is a controlled activity.”;

(d) after paragraph 26C(**74**), insert—

“Relevant credit agreements

26D. Rights under a relevant credit agreement

Consumer hire agreements

26E. Rights under a consumer hire agreement”;

(e) in paragraph 28 (interpretation)(**75**), insert in the appropriate place the following definitions—

“borrower” has the meaning given by article 60L of the Regulated Activities Order;

“consumer hire agreement” has the meaning given by article 60N of the Regulated Activities Order;

“hirer” has the meaning given by article 60N of the Regulated Activities Order;

“lender” has the meaning given by article 60L of the Regulated Activities Order;

“regulated consumer hire agreement” has the meaning given by article 60N of the Regulated Activities Order;

(73) Inserted by [S.I. 2006/2383](#).

(74) Inserted by [S.I. 2009/1342](#).

(75) There are amending instruments but none is relevant to this Order.

“relevant credit agreement” means a credit agreement (within the meaning given by article 60B of the Regulated Activities Order) other than a regulated mortgage contract (within the meaning of that Order);

“regulated credit agreement” has the meaning given by article 60B of the Regulated Activities Order;

“relevant recipient of credit” has the meaning given by article 60L of the Regulated Activities Order.

The Financial Services and Markets Act 2000 (Ombudsman Scheme) (Consumer Credit Jurisdiction) Order 2007

18. The Financial Services and Markets Act 2000 (Ombudsman Scheme) (Consumer Credit Jurisdiction) Order 2007⁽⁷⁶⁾ is revoked.

The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009

19. In the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009⁽⁷⁷⁾, after article 6 (specific exemptions in respect of friendly societies), insert—

“Specific exemptions in respect of consumer credit

6A.—(1) This article provides exemptions from the obligations in sections 178 and 191D of the Act⁽⁷⁸⁾ in relation to a person (“A”) who decides to acquire, increase, reduce or cease to have control over a UK authorised person (“B”) who—

- (a) carries on regulated activities which are relevant credit activities, and
- (b) does not carry on any other regulated activities.

(2) Where A decides to acquire or increase control over B, A is exempt from the obligation imposed by section 178 unless giving effect to the decision would result in A beginning to be in the position of holding—

- (a) 33% or more of the shares in B or in a parent undertaking of B (“P”),
- (b) 33% or more of the voting power in B or P, or
- (c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

(3) Where A decides to reduce or cease to have control over B, A is exempt from the obligation imposed by section 191D unless giving effect to the decision would result in A ceasing to be in the position of holding—

- (a) 33% or more of the shares in B or in a parent undertaking of B (“P”),
- (b) 33% or more of the voting power in B or P, or
- (c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

(4) For the purposes of this article, each of the following is a “relevant credit activity”—

- (a) an activity of the kind specified by article 36A of the Regulated Activities Order (credit broking) when carried on in the case specified in paragraph (6), (7) or (8),
- (b) an activity of the kind specified by article 39D of that Order (debt adjusting) when carried on—

⁽⁷⁶⁾ S.I. 2007/383.

⁽⁷⁷⁾ S.I. 2009/774.

⁽⁷⁸⁾ Sections 178 to 191G were substituted by S.I. 2009/534 and amended by section 26 of the Financial Services Act 2012.

- (i) in the case specified in paragraph (6), by a person who also carries on an activity of the kind specified by sub-paragraph (a),
 - (ii) by a person who also carries on an activity of the kind specified by sub-paragraph (d) or (e), or
 - (iii) by a not-for-profit body,
 - (c) an activity of the kind specified by article 39E of that Order (debt-counselling) when carried on—
 - (i) in the case specified in paragraph (6), by a person who also carries on an activity of the kind specified by sub-paragraph (a),
 - (ii) by a person who also carries on an activity of the kind specified by sub-paragraph (d) or (e), or
 - (iii) by a not-for-profit body,
 - (d) an activity of the kind specified by article 60B of that Order (regulated credit agreements) if—
 - (i) it is carried on by a supplier,
 - (ii) no charge (by way of interest or otherwise) is payable by the borrower in connection with the provision of credit under the regulated credit agreement, and
 - (iii) the regulated credit agreement is not a hire-purchase agreement or a conditional sale agreement,
 - (e) an activity of the kind specified by article 60N of that Order (regulated consumer hire agreements),
 - (f) an activity of the kind specified by article 89A of that Order (providing credit information services) where carried on by a person who also carries on an activity of the kind specified by any of sub-paragraphs (a) to (e), or
 - (g) an activity of the kind specified by article 64 of that Order (agreeing to carry on specified activities) so far as relevant to any activity of the kind specified by sub-paragraphs (a) to (f).
- (5) But an activity is not a relevant credit activity for the purposes of—
- (a) sub-paragraphs (a) to (e) of paragraph (4), and
 - (b) sub-paragraph (g) of that paragraph so far as it relates to activities of the kind specified by any of those sub-paragraphs,
- if it relates to an agreement under which the obligation of the borrower to repay is secured, or is to be secured, by a legal mortgage on land.
- (6) The case specified in this paragraph is where a supplier (other than a domestic premises supplier) carries on the activity for the purposes of, or in connection with, the sale of goods or supply of services by the supplier to a customer (who need not be the borrower under the credit agreement or the hirer under the consumer hire agreement).
- (7) The case specified in this paragraph is where the activity relates to a green deal plan.
- (8) The case specified in this paragraph is where activity relates to a consumer hire agreement where the good being hired is a vehicle.
- (9) For the purposes of this regulation—
- “borrower” includes—
- (a) any person providing a guarantee or indemnity under an agreement, and

- (b) a person to whom the rights and duties of the borrower under an agreement or a person falling within sub-paragraph (a) have passed by assignment or operation of law;

“conditional sale agreement” has the meaning given by article 60L of the Regulated Activities Order;

“customer” means a person to whom a supplier sells goods or supplies services or agrees to do so;

“domestic premises supplier” means a supplier who sells goods or supplies services to customers who are individuals while physically present in the dwelling of the customer or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer (though a supplier who does so on an occasional basis is not to be treated as a “domestic premises supplier”);

“green deal plan” has the meaning given by section 1 of the Energy Act 2011⁽⁷⁹⁾;

“hire-purchase agreement” has the meaning given by the Regulated Activities Order;

“not-for-profit body” means a body which, by virtue of its constitution or any enactment—

- (a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and

- (b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes);

“Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“regulated credit agreement” has the meaning given by the Regulated Activities Order;

“supplier” means a person whose main business is to sell goods or supply services and not to carry on a regulated activity, other than an activity of the kind specified by article 60N of the Regulated Activities Order (regulated consumer hire agreements).”.

PART 5

Amendments of the Consumer Credit Act 1974 etc.

Amendments of the 1974 Act

20.—(1) The 1974 Act is amended as follows.

(2) Part 1 (sections 1 to 7) (Office of Fair Trading)⁽⁸⁰⁾ is omitted.

(3) In section 8 (consumer credit agreements)⁽⁸¹⁾, for subsection (3) substitute—

“(3) A consumer credit agreement is a regulated agreement within the meaning of this Act if it is a regulated credit agreement for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order.”.

(4) In section 15 (consumer hire agreements)⁽⁸²⁾ for subsection (2) substitute—

⁽⁷⁹⁾ 2011 c.16.

⁽⁸⁰⁾ Part 1 was amended by Schedules 25 and 26 to the Enterprise Act 2002 (c.40), Schedule 4 to the Tribunals and Inquiries Act 1998 and sections 27, 44, 51, 58, 61, 62 and 70 of, and Schedule 4 to, the Consumer Credit Act 2006 (c.14) and S.I. 2009/1835.

⁽⁸¹⁾ Amended by sections 2 and 5 of, and Schedule 4 to, the Consumer Credit Act 2006 and S.I. 2008/2826.

⁽⁸²⁾ Repealed in part by Schedule 4 to the Consumer Credit Act 2006.

“(2) A consumer hire agreement is a regulated agreement with the meaning of this Act if it is a regulated consumer hire agreement for the purposes of Chapter 14B of Part 2 of the Regulated Activities Order.”.

- (5) Section 16 (exempt agreements)(**83**) is omitted.
- (6) Section 16A (exemption relating to high net worth debtors and hirers)(**84**) is omitted.
- (7) Section 16B (exemption relating to businesses)(**85**) is omitted.
- (8) Section 16C (exemption relating to investment properties)(**86**) is omitted.
- (9) For section 20 (total charge for credit), substitute—

“Total charge for credit

20. In this Act, “the total charge for credit” has the meaning given by the Regulated Activities Order for the purposes of Chapter 14A of Part 2 of that Order.”.

- (10) Part 3 (sections 21 to 41ZB) (licensing of credit and hire business)(**87**) is omitted(**88**).
- (11) Section 43 (advertisements to which Part IV applies)(**89**) and the heading immediately before it are omitted.
- (12) Section 44 (form and content of advertisements) is omitted.
- (13) Section 45 (prohibition of advertisement where goods etc. not sold for cash) is omitted.
- (14) Section 47 (advertising infringements)(**90**) is omitted.
- (15) Section 51 (prohibition of unsolicited credit-tokens) is omitted.
- (16) Section 51A (restrictions on provision of credit card cheques)(**91**) is omitted.
- (17) Section 51B (section 51A: exemption for business) is omitted.
- (18) Section 52 (quotations)(**92**) and the heading immediately before it are omitted.
- (19) Section 53 (duty to display information)(**93**) is omitted.
- (20) Section 54 (conduct of business regulations)(**94**) is omitted.
- (21) Section 55A (pre-contractual explanations etc.)(**95**) is omitted.
- (22) Section 55B (assessment of creditworthiness) is omitted.
- (23) In section 55C (copy of draft consumer credit agreement), for subsection (5) substitute—

(**83**) Amended by Schedule 4 to the Telecommunications Act 1984, Schedule 18 to the Building Societies Act 1986, section 22 of the Housing and Planning Act 1986, section 88 of the Banking Act 1987, Schedule 19 to the Housing Act 1996, Schedule 17 to the Communications Act 2003, Schedule 8 to the Charities Act 2006, section 22 of and Schedule 4 to the Consumer Credit Act 2006, Schedule 18 to the Financial Services Act 2012, [S.I. 1997/627](#), [S.I. 2001/544](#), [S.I. 2001/3649](#), [S.I. 2006/2383](#), [S.I. 2009/1941](#) and [S.I. 2010/866](#).

(**84**) Inserted by section 3 of the Consumer Credit Act 2006.

(**85**) Inserted by section 4 of the Consumer Credit Act 2004 and amended by section 25 of the Energy Act 2011 ([c.16](#)).

(**86**) Inserted by [S.I. 2008/2826](#).

(**87**) Part 3 is amended by Schedule 25 to the Enterprise Act 2002, sections 28 to 55 of the Consumer Credit Act 2006, section 26 of the Energy Act 2006, section 24 of, and Schedule 2 to, the Financial Services Act 2010, section 108 of, and Schedule 18 to, the Financial Services Act 2012, [S.I. 2001/3649](#), [S.I. 2007/126](#), [S.I. 2009/1835](#) and [S.I. 2011/99](#).

(**88**) One consequence of this repeal is that any licences issued by the OFT under the 1974 Act will cease to have effect on 1st April 2014. Article 56 of this Order makes transitional provision in connection with licences which have effect immediately before that date.

(**89**) Amended by section 5 of, and Schedule 4 to, the Contracts (Applicable Law) Act 1990, Schedule 4 to the Consumer Credit Act 2006 and [S.I. 2001/544](#).

(**90**) Amended by [S.I.2008/1277](#).

(**91**) Sections 51A and 51B were inserted by section 15 of the Financial Services Act 2010.

(**92**) Amended by [S.I. 2001/544](#).

(**93**) Amended by [S.I. 2001/544](#) and [S.I. 2006/2383](#).

(**94**) Amended by [S.I. 2001/3649](#).

(**95**) Sections 55A to 55C were inserted by [S.I. 2010/1010](#).

- “(5) Article 60C(5) and (6) of the Regulated Activities Order applies for the purposes of subsection (4)(d).”.
- (24) In section 60 (form and content of agreements)(**96**), for subsection (6) substitute—
- “(6) Article 60C(5) and (6) of the Regulated Activities Order applies for the purposes of subsection (5)(d).”.
- (25) In section 61A (duty to supply copy of executed consumer credit agreement)(**97**), for subsection (7) substitute—
- “(7) Article 60C(5) and (6) of the Regulated Activities Order applies for the purposes of subsection (6)(b)(iii).
- (8) In this section, “credit intermediary” means a person who in the course of business—
- (a) carries on any of the activities specified in article 36A(1)(d) to (f) of the Regulated Activities Order for a consideration that is or includes a financial consideration, and
 - (b) does not do so as a creditor.”.
- (26) In section 74 (exclusion of certain agreements from Part V)(**98**)—
- (a) in subsection (1B), omit paragraph (a);
 - (b) in subsection (1C), omit paragraph (b);
 - (c) in subsection (1D), omit paragraphs (b) and (c);
 - (d) in subsection (1F), omit paragraphs (b) and (c).
- (27) Part 5A (sections 74A to 74B) (current account overdrafts)(**99**) is omitted.
- (28) In section 75A (further provision for liability of creditor for breaches by supplier)(**100**), for subsection (7) substitute—
- “(7) Article 60C(5) and (6) of the Regulated Activities Order applies for the purposes of subsection (6)(c).”.
- (29) In section 77B (fixed-sum credit agreement: statement of account to be provided on request)(**101**), for subsection (10) substitute—
- “(10) Article 60C(5) and (6) of the Regulated Activities Order applies for the purposes of subsection (9)(d).”.
- (30) Section 81 (appropriation of payments) is omitted.
- (31) In section 82 (variation of agreements)(**102**)—
- (a) in subsection (2A), omit “as a result of section 16(6C) or 16C”;
 - (b) in subsection (3)(b), omit “as a result of section 16(6C) or 16C”;
 - (c) in subsection (5A), omit “as a result of section 16(6C) or 16C”;
 - (d) after subsection (7) insert—
- “(8) In this section, an “exempt agreement” means an agreement which is an exempt agreement for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) (regulated mortgage contracts and regulated home purchase plans)

(96) Amended by Schedule 25 to the Enterprise Act 2002 and [S.I. 2010/1010](#).

(97) Inserted by [S.I. 2010/1010](#).

(98) Subsections (1A) to (1F) were substituted by [S.I. 2010/1010](#).

(99) Inserted by [S.I. 2010/1010](#).

(100) Inserted by [S.I. 2010/1010](#).

(101) Inserted by [S.I. 2010/1010](#).

(102) Amended by [S.I. 2005/2967](#), [S.I. 2008/733](#), [S.I. 2008/2826](#) and [S.I. 2010/1010](#).

or article 60D (exemption relating to the purchase of land for non-residential purposes) of that Order.”.

(32) Section 82A (assignment of rights)(**103**) is omitted.

(33) In section 93 (interest not to be increased on default), in paragraph (b) for “section 20(2)” substitute “rules made by the FCA under paragraph (2)(d) of article 60M of the Regulated Activities Order”.

(34) Section 112 (realisation of securities) is omitted.

(35) In section 113 (Act not to be evaded by use of security)(**104**), in subsection (3)(c), for “40(2), 65(1), 124(1) or 149(2)” substitute “65(1) or 124(1) or a notice under section 28A of the Financial Services and Markets Act 2000(**105**)”.

(36) In section 114(3) (pawn-receipts)(**106**), for “115” substitute “117”.

(37) Section 115 (penalty for failure to supply copies of pledge agreement, etc.) is omitted.

(38) In section 126 (enforcement of land mortgages), after “regulated agreement” insert “or a regulated mortgage contract (within the meaning of the Regulated Activities Order)”.

(39) In section 140A(5) (unfair relationships between creditors and debtors)(**107**), for “by virtue of section 16(6C)” substitute “for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)”.

(40) Section 140D (advice and information)(**108**) is omitted.

(41) In section 145 (types of ancillary credit business)(**109**)—

(a) for subsections (2) to (4) substitute—

“(2) “Credit brokerage” means the carrying on of an activity of the kind specified by article 36A(1)(a) to (c) of the Regulated Activities Order (credit broking), disregarding the effect of paragraph (2) of that article.”;

(b) for subsection (5), substitute—

“(5) “Debt adjusting” means the carrying on of an activity of the kind specified by article 39D of that Order (debt adjusting).”;

(c) for subsection (6), substitute—

“(6) “Debt-counselling” means the carrying on of an activity of the kind specified by article 39E of that Order (debt-counselling).”;

(d) for subsection (7), substitute—

“(7) “Debt-collecting” means the carrying on of an activity of the kind specified by article 39F of that Order (debt-collecting).”;

(e) for subsection (7A), substitute—

“(7A) “Debt administration” means the carrying on of an activity of the kind specified by article 39G of that Order (debt administration), disregarding the effect of paragraph (3) of that article.”;

(f) for subsections (7B) to (7D) substitute—

(103) Inserted by [S.I. 2010/1010](#).

(104) Amended by section 4 of the Minors’ Contracts Act 1987 and Schedule 25 to the Enterprise Act 2002.

(105) Inserted by Schedule 9 to the Financial Services Act 2012.

(106) Amended by section 38 of the Banking Act 1979.

(107) Inserted by section 19 of the Consumer Credit Act 2006.

(108) Inserted by section 22 of the Consumer Credit Act 2006.

(109) Amended by Schedule 4 to the Contracts (Applicable Law) Act 1990, sections 5, 24 and 25 of the Consumer Credit Act 2006 and [S.I. 2003/1475](#).

“(7B) A person (“P”) provides credit information services if P carries on, by way of business, an activity of the kind specified by article 89A(1) or (2) of that Order (providing credit information services).”;

(g) for subsection (8) substitute—

“(8) A person (“P”) operates a credit reference agency if P carries on, by way of business, an activity of the kind specified by article 89B of that Order (providing credit references).”.

(42) Sections 146 to 152 (including the heading immediately before section 147) **(110)** are omitted.

(43) In section 155 (right to recover brokerage fees)**(111)**—

(a) in subsection (2)—

(i) in paragraph (b), for “such as is referred to in section 145(2)(a)(ii)” substitute “desiring to obtain credit to finance the acquisition or provision of a dwelling occupied or to be occupied by that individual or a relative of that individual”;

(ii) for paragraph (c) and the “or” before it, substitute—

“(c) a credit agreement which is an exempt agreement for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order, or

(d) an agreement which is not a regulated credit agreement or a regulated consumer hire agreement but which would be such an agreement if the law applicable to the agreement were the law of a part of the United Kingdom.”;

(b) in subsection (2A)(a), for “section 146(5A)” substitute “article 36E of the Regulated Activities Order (activities in relation to certain agreements relating to land)”.

(44) Section 156 (entry into agreements)**(112)** and the heading immediately before it are omitted.

(45) In section 159(5) (correction of wrong information)**(113)**, for “the specified fee” substitute “the prescribed fee”.

(46) In section 160(4)(c) (alternative procedure for business consumers)**(114)**, for “the specified fee” substitute “the prescribed fee”.

(47) Section 160A (credit intermediaries)**(115)** is omitted.

(48) In section 161 (enforcement authorities)**(116)**—

(a) paragraph (a) of subsection (1) is omitted;

(b) after subsection (1), insert—

“(1A) Subsection (1) does not limit any function of the FCA in relation to the enforcement of this Act or regulations made under it.”.

(110) Section 146 was amended by Schedule 3 to the Arbitration Act 1996, section 24 of the Consumer Credit Act 2006, Schedule 21 to the Legal Services Act 2007, S.I. 2003/1475 and S.I. 2006/2383. Section 147 was repealed in part by section 70 of, and Schedule 4 to, the Consumer Credit Act 2006. Section 148 was amended by Schedule 25 to the Enterprise Act 2002 and S.I. 2001/3649. Section 149 was amended by Schedule 25 to the Enterprise Act 2002 and S.I. 2001/3649. Section 150 was repealed by Schedule 4 to the Consumer Credit Act 2006. Section 151 was amended by section 25 of the Consumer Credit Act 2006, S.I. 2001/544 and S.I. 2008/1277. Section 152 was amended by section 25 of the Consumer Credit Act 2006.

(111) Amended by S.I. 1998/997 and S.I. 2003/1475.

(112) Amended by section 25 of the Consumer Credit Act 2006.

(113) Amended by section 62 of the Data Protection Act 1998 (c.29).

(114) Amended by section 62 of the Data Protection Act 1998 and Schedule 25 to the Enterprise Act 2002.

(115) Inserted by S.I. 2010/1010.

(116) Amended by Schedule 25 to the Enterprise Act 2002 and S.I. 2001/3649. There are other amending instruments but none is relevant to this Order.

- (49) In section 162 (powers of entry and inspection)(**117**), subsections (5) and (8) are omitted.
- (50) In section 165 (obstruction of authorised officers)(**118**), subsection (1A) is omitted.
- (51) In section 167 (penalties), subsection (2) is omitted.
- (52) In section 171 (onus of proof in various proceedings), subsection (3) is omitted.
- (53) In section 173(3) (contracting-out forbidden)(**119**), for “OFT” substitute “FCA”.
- (54) In section 174A (powers to require provision of information or documents etc)(**120**), for subsection (5) substitute—
- “(5) In this section, “relevant authority” means an enforcement authority or an officer of an enforcement authority.”.
- (55) In section 180(2) (power to prescribe form etc. of copies), omit “(except section 35)”.
- (56) In section 181 (power to alter monetary limits etc)(**121**)—
- (a) in subsection (1), omit “16B(1),” “39A(3),” and “118(1)(b), 120(1)(a),”;
- (b) in subsection (2), omit “16B(1),” and “39A(3),”.
- (57) In section 182 (regulations and orders)(**122**), in subsection (1), omit “2(1)(a),”.
- (58) In section 183 (determinations etc. by OFT)(**123**), omit subsection (2).
- (59) In section 185 (agreement with more than one debtor or hirer)(**124**), omit subsection (1A).
- (60) In section 189 (definitions)—
- (a) in subsection (1)—
- (i) omit the definitions of “advertiser”, “appeal period”(125), “exempt agreement”(126), “group licence”, “licence”(127), “licensed”, “licensee”, “quotation”, “register”(128), “specified fee”, “standard licence” and “unlicensed”;
- (ii) in the definition of “credit information services”(129), for “has the meaning given by” substitute “is to be read in accordance with”;
- (iii) in the definition of “credit reference agency”, for “has the meaning given by” substitute “is to be read in accordance with”;
- (iv) in the definition of “deposit”(130), omit “(except in section 16(10) and 25(1B))”;
- (v) after the definition of “redemption period” insert—
- ““Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;”;
- (vi) for the definition of “regulated agreement” substitute—

(117) Subsection (5) was amended by Schedule 25 to the Enterprise Act 2002. Subsection (8) was inserted by section 51 of the Consumer Credit Act 2006. There are other amending instruments but none is relevant to this Order.

(118) Subsection (1A) was inserted by section 51 of the Consumer Credit Act 2006. There are other amending instruments but none is relevant to this Order.

(119) Amended by Schedule 25 to the Enterprise Act 2002.

(120) Inserted by section 51 of the Consumer Credit Act 2006.

(121) Amended by sections 5 and 53 of the Consumer Credit Act 2006. There are other amending instruments but none is relevant to this Order.

(122) There are amending instruments but none is relevant to this Order.

(123) Substituted by section 64 of the Consumer Credit Act 2006.

(124) Amended by [S.I. 2010/1010](#). There are other amending instruments but none is relevant to this Order.

(125) Amended by [S.I. 2009/1835](#).

(126) Amended by section 5 of the Consumer Credit Act 2006 and [S.I. 2007/3300](#).

(127) Amended by Schedule 4 to the Consumer Credit Act 2006.

(128) Amended by Schedule 25 to the Enterprise Act 2002.

(129) Inserted by section 25 of the Consumer Credit Act 2006.

(130) Amended by [S.I. 2001/3649](#).

““regulated agreement” means a consumer credit agreement which is a regulated agreement (within the meaning of section 8(3)) or a consumer hire agreement which is a regulated agreement (within the meaning of section 15(2));”;

(vii) for the definition of “total charge for credit” substitute—

““total charge for credit” has the meaning given by section 20;”;

- (b) in subsection (1A)(**131**), omit “36E(3);”;
 - (c) in subsection (2A)(**132**), for the words from “subsections (2) to (5)” to the end, substitute “article 60C(5) and (6) of the Regulated Activities Order applies”;
 - (d) in subsection (5)(**133**), omit “or the OFT” in the first place and “or the OFT (as the case may be)”.
- (61) Section 189A (meaning of “consumer credit EEA firm”)(**134**) is omitted.
- (62) In section 190 (financial provisions)(**135**), subsection (2) is omitted.
- (63) In section 191 (special provisions as to Northern Ireland)(**136**), subsections (1) and (2) are omitted.
- (64) In Schedule 1 (prosecution and punishment of offences)(**137**), in the table, omit the entries for sections 7, 39(1), 39(2), 39(3), 45, 47(1), 51(1), 51A(1), 115, 160A, 167(2) and 174(5).
- (65) In Schedule 2 (examples of use of new terminology)—
- (a) in Part 1, omit the entry for “advertiser”;
 - (b) in example 5, for “, according to regulations made under section 20(1), constitutes the total charge for credit” substitute “constitutes the total charge for credit (within the meaning given by section 20)”.
- (66) In Schedule 3 (transitional and commencement provisions)(**138**)—
- (a) omit paragraphs 5 to 7 and the headings immediately before each of those paragraphs;
 - (b) omit paragraph 11 and the heading immediately before it;
 - (c) omit paragraphs 44, 45 and 46 and the headings immediately before each of those paragraphs.

PART 6

Amendments to secondary legislation made under the 1974 Act

Revocation of secondary legislation made under the 1974 Act

21. The following subordinate instruments, or the provisions of subordinate instruments, are revoked—

(131) Inserted by section 27 of the Consumer Credit Act 2006 and repealed in part by S.I. 2009/1835.

(132) Inserted by S.I. 2010/1010.

(133) Amended by Schedule 25 to the Enterprise Act 2002.

(134) Inserted by S.I. 2001/3649.

(135) Amended by section 2 of the Enterprise Act 2002 and section 65 the Consumer Credit Act 2006.

(136) Amended by Schedule 25 to the Enterprise Act 2002 and section 27 of the Consumer Credit Act 2006.

(137) Amended by section 32 of the Magistrates’ Courts Act 1980 (c.43), Schedule 25 to the Enterprise Act 2002, section 15 of the Financial Services Act 2010 and S.I. 2010/1010. There are other amending instruments but none is relevant to this Order.

(138) Amended by S.I. 1977/325, S.I. 1977/2163, S.I. 1983/1551 and S.I. 1989/1128. There are other amending instruments but none is relevant to this Order.

- (a) the Consumer Credit Licensing (Representations) Order 1976(**139**);
- (b) the Consumer Credit (Termination of Licences) Regulations 1976(**140**);
- (c) the Consumer Credit (Conduct of Business) (Credit References) Regulations 1977(**141**);
- (d) the Consumer Credit (Total Charge for Credit) Regulations 1980(**142**);
- (e) the Consumer Credit (Termination of Licences) (Amendment) Regulations 1981(**143**);
- (f) the Consumer Credit (Conduct of Business) (Pawn Records) Regulations 1983(**144**);
- (g) the Consumer Credit (Exempt Advertisements) Order 1985(**145**);
- (h) the Consumer Credit (Total Charge for Credit and Rebate on Early Settlement) (Amendment) Regulations 1989(**146**);
- (i) the Consumer Credit (Exempt Agreements) Order 1989(**147**);
- (j) the Consumer Credit (Exempt Agreements) (Amendment) Order 1989(**148**);
- (k) the Consumer Credit (Exempt Agreements) (Amendment) (No. 2) Order 1989(**149**);
- (l) the Consumer Credit (Exempt Agreements) (Amendment) Order 1991(**150**);
- (m) the Consumer Credit (Exempt Agreements) (Amendment) (No. 2) Order 1991(**151**);
- (n) the Consumer Credit (Exempt Agreements) (Amendment) (No. 3) Order 1991(**152**);
- (o) the Consumer Credit (Exempt Agreements) (Amendment) Order 1993(**153**);
- (p) the Consumer Credit (Exempt Agreements) (Amendment) (No. 2) Order 1993(**154**);
- (q) the Consumer Credit (Exempt Agreements) (Amendment) Order 1994(**155**);
- (r) the Consumer Credit (Exempt Agreements) (Amendment) (No. 2) Order 1995(**156**);
- (s) the Consumer Credit (Exempt Agreements) (Amendment) Order 1996(**157**);
- (t) the Consumer Credit (Exempt Agreements) (Amendment) (No. 2) Order 1996(**158**);
- (u) the Consumer Credit (Quotations) (Revocation) Regulations 1997(**159**);
- (v) the Consumer Credit (Exempt Agreements) (Amendment) Order 1998(**160**);
- (w) the Consumer Credit (Exempt Agreements) (Amendment) Order 1999(**161**);
- (x) the Consumer Credit (Content of Quotations) and Consumer Credit (Advertisements) (Amendment) Regulations 1999(**162**);

(139) S.I. 1976/191.

(140) S.I. 1976/1002.

(141) S.I. 1977/330.

(142) S.I. 1980/51.

(143) S.I. 1981/614.

(144) S.I. 1983/1565.

(145) S.I. 1985/621.

(146) S.I. 1989/596.

(147) S.I. 1989/869.

(148) S.I. 1989/1841.

(149) S.I. 1989/2337.

(150) S.I. 1991/1393.

(151) S.I. 1991/1949.

(152) S.I. 1991/2844.

(153) S.I. 1993/346.

(154) S.I. 1993/2922.

(155) S.I. 1994/2420.

(156) S.I. 1995/2914.

(157) S.I. 1996/1445.

(158) S.I. 1996/3081.

(159) S.I. 1997/211.

(160) S.I. 1998/1944.

(161) S.I. 1999/1956.

(162) S.I. 1999/2725.

- (y) regulations 3 and 5 of the Consumer Credit (Total Charge for Credit, Agreements and Advertisements) (Amendment) Regulations 1999(**163**);
- (z) the Consumer Credit (Conduct of Business) (Credit References) (Amendment) Regulations 2000(**164**);
- (aa) the Consumer Credit (Advertisements and Content of Quotations) (Amendment) Regulations 2000(**165**);
- (bb) the Consumer Credit (Advertisements) Regulations 2004(**166**);
- (cc) the Consumer Credit (Exempt Agreements) (Amendment) Order 2006(**167**);
- (dd) the Consumer Credit (Advertisements) (Amendment) Regulations 2007(**168**);
- (ee) the Consumer Credit (Exempt Agreements) Order 2007(**169**);
- (ff) the Consumer Credit (Exempt Agreements) (Amendment) Regulations 2008(**170**);
- (gg) the Consumer Credit (Total Charge for Credit) Regulations 2010(**171**);
- (hh) the Consumer Credit (Advertisements) Regulations 2010(**172**);
- (ii) the Consumer Credit (Total Charge for Credit) (Amendment) Regulations 2012(**173**).

Saving provision related to article 21

22. Articles 1, 3 and 4 of the Consumer Credit Licensing (Representations) Order 1976(**174**) continue to apply in so far as section 34 or 34ZA of the 1974 Act continue to have effect by virtue of Part 8; and for that purpose each reference to the Director is to be treated as a reference to the FCA.

The Consumer Credit (Agreements) Regulations 1983

23.—(1) The Consumer Credit (Agreements) Regulations 1983(**175**) are amended as follows.

(2) In regulation 1(2) (interpretation)(**176**), for the definition of “the Total Charge for Credit Regulations” substitute—

““the total charge for credit rules” means rules made by the Financial Conduct Authority under article 60M of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 for the purposes of Chapter 14A of Part 2 of that Order;”.

(3) In every other place where “Total Charge for Credit Regulations” appears, substitute “total charge for credit rules”.

(4) In regulation 8 (application of Regulations), for paragraph (1B)(**177**), substitute—

“(1B) Article 60C(5) and (6) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 applies for the purposes of paragraph (1A)(c).”.

(**163**) S.I. 1999/3177.

(**164**) S.I. 2000/291.

(**165**) S.I. 2000/1797.

(**166**) S.I. 2004/1484.

(**167**) S.I. 2006/1273.

(**168**) S.I. 2007/827.

(**169**) S.I. 2007/1168.

(**170**) S.I. 2008/645.

(**171**) S.I. 2010/1011.

(**172**) S.I. 2010/1970.

(**173**) S.I. 2012/1745.

(**174**) Amended by S.I. 2013/472.

(**175**) S.I. 1983/1553.

(**176**) Amended by S.I. 2010/1010. There are other amending instruments but none is relevant to this Order.

(**177**) Inserted by S.I. 2010/1010.

- (5) In Schedule 1 (information to be contained in documents embodying regulated consumer credit agreements other than modifying agreements)(**178**)—
- (a) in paragraph 10, in the second column, omit “regulation 6 of”;
 - (b) before paragraph 19A, insert the heading “*Land-related agreements*”;
 - (c) in paragraph 19A—
 - (i) for the entry in the first column, substitute—

“Agreements which—

 - (a) are intended primarily to finance the acquisition or retention of land or the renovation or improvement of a building or any other agreement secured by a mortgage on land or, in Scotland, by a standard security within the meaning of the Conveyancing and Feudal Reform (Scotland) Act 1970(**179**), and
 - (b) provide for the possibility of any variation of the rate of interest if it is to be assumed, by virtue of the total charge for credit rules, that the variation will take place but the amount of the variation cannot be ascertained at the date of the making of the agreement.”;
 - (ii) for the entry in the second column, for “regulation 15A(2) of the Total Charge for Credit Regulations 1980” substitute “the total charge for credit rules”.
- (6) In Schedule 7 (provisions relating to the disclosure of the APR)(**180**)—
- (a) in paragraph 1, omit “regulation 6 of”;
 - (b) in paragraphs 2 and 3, omit “the Schedule to”.
- (7) In Schedule 8 (regulated modifying agreements)(**181**)—
- (a) in paragraph 9, in sub-paragraph (1) of column 2, omit “regulation 6 of”;
 - (b) before paragraph 19A, insert the heading “*Land-related agreements*”;
 - (c) in paragraph 19A—
 - (i) in the entry in the first column, for “regulation 15A of the Total Charge for Credit Regulations 1980” substitute “paragraph 19A of Schedule 1”;
 - (ii) for the entry in the second column, for “regulation 15A(2) of the Total Charge for Credit Regulations 1980” substitute “the total charge for credit rules”.

The Consumer Credit (Early Settlement) Regulations 2004

- 24.** In regulation 1(2) of the Consumer Credit (Early Settlement) Regulations 2004 (interpretation)(**182**)—
- (a) for the definition of “the Total Charge for Credit Regulations” substitute—

““the total charge for credit rules” means rules made by the Financial Conduct Authority under article 60M of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 for the purposes of Chapter 14A of Part 2 of that Order.”
 - (b) in every other place where “Total Charge for Credit Regulations” appears, substitute “total charge for credit rules”.

(**178**) Amended by [S.I. 2004/1482](#), [S.I. 1999/3177](#) and [S.I. 2010/1010](#). There are other amending instruments but none is relevant to this Order.

(**179**) [1970 c.35](#).

(**180**) Amended by [S.I. 2004/1482](#) and [S.I. 2010/1010](#). There are other amending instruments but none is relevant to this Order.

(**181**) Amended by [S.I. 2004/1482](#) and [S.I. 2010/1010](#). There are other amending instruments but none is relevant to this Order.

(**182**) [S.I. 2004/1483](#). Amended by [S.I. 2010/1010](#). There are other amending instruments but none is relevant to this Order.

The Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007

25. In the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007(**183**), omit regulation 42 and 43 (duration of licences and charges).

The Consumer Credit (Disclosure of Information) Regulations 2010

26.—(1) The Consumer Credit (Disclosure of Information) Regulations 2010(**184**) are amended as follows.

(2) In every place where “Total Charge for Credit Regulations” appears (other than in the definition of “the Total Charge for Credit Regulations” and in regulation 1(7)), substitute “total charge for credit rules”.

(3) In regulation 1 (citation, commencement interpretation)(**185**)—

(a) in paragraph (2), in the definition of “credit intermediary”, for “section 160A” substitute “section 61A”;

(b) in paragraph (2), for the definition of “the Total Charge for Credit Regulations” substitute—

““the total charge for credit rules” means rules made by the Financial Conduct Authority under article 60M of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 for the purposes of Chapter 14A of Part 2 of that Order;”;

(c) omit paragraph (7).

(4) In regulation 2 (agreements to which these Regulations apply)(**186**), for paragraph (6) substitute—

“(6) Article 60C(5) and (6) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 applies for the purposes of paragraph (4)(c).”.

(5) In regulation 3(5)(b) (information to be disclosed: agreements other than telephone contracts, non-telephone distance contracts, excluded pawn agreements and overdraft agreements), for “regulation 6(g) of the Consumer Credit (Total Charge for Credit) Regulations 2010” substitute “the total charge for credit rules”.

(6) In regulation 6 (information to be disclosed: distance contracts for the purpose of a business), for paragraph (3) substitute—

“(3) Article 60C(5) and (6) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 applies for the purposes of paragraph (1).”.

(7) In regulation 7, for paragraph (3) substitute—

“(3) Article 60C(5) and (6) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 applies for the purposes of paragraph (1).”.

(8) In Schedule 1 (pre-contract credit information)—

(a) in table 3, omit “regulation 6(g) of”;

(b) in table 5, for “Office of Fair Trading” substitute “Financial Conduct Authority”.

(9) In Schedule 2 (provisions relating to calculation and disclosure of the total charge for credit and APR)—

(183) S.I. 2007/1167.

(184) S.I. 2010/1013.

(185) There are amending instruments but none is relevant to this Order.

(186) Amended by S.I. 2010/1969.

- (a) in paragraph 1(a), for “regulation 6(o) of the Consumer Credit (Total Charge for Credit) Regulations 2010” substitute “the total charge for credit rules”;
 - (b) in paragraphs 3 and 4, for “regulation 5 of the Consumer Credit (Total Charge for Credit) Regulations 2010” substitute “the total charge for credit rules”.
- (10) In Schedule 3 (European Consumer Credit Information), in table 5, for “Office of Fair Trading” substitute “Financial Conduct Authority”.

The Consumer Credit (Agreements) Regulations 2010

- 27.**—(1) The Consumer Credit (Agreements) Regulations 2010(**187**) are amended as follows.
- (2) In every place where “Total Charge for Credit Regulations” appears (other than in the definition of “the Total Charge for Credit Regulations” and in regulation 1(6)), substitute “total charge for credit rules”.
- (3) In regulation 1 (citation, commencement interpretation)(**188**)—
- (a) in paragraph (3), in the definition of “credit intermediary”, for “section 160A” substitute “section 61A”;
 - (b) in paragraph (3), for the definition of “the Total Charge for Credit Regulations” substitute—
““the total charge for credit rules” means rules made by the Financial Conduct Authority under article 60M of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 for the purposes of Chapter 14A of Part 2 of that Order.”;
 - (c) omit paragraph (6).
- (4) In regulation 2 (agreements to which these regulations apply), for paragraph (6) substitute—
“(6) Article 60C(5) and (6) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 applies for the purposes of paragraphs (3)(c) and (5).”.
- (5) In Schedule 1 (information to be included in regulated consumer credit agreements), in paragraph 33, in the second column, for “Office of Fair Trading” substitute “Financial Conduct Authority”.
- (6) In Schedule 4 (provisions relating to calculation and disclosure of the total charge for credit and APR)—
- (a) in paragraph 1(a), for “regulation 6(o) of the Consumer Credit (Total Charge for Credit) Regulations 2010” substitute “the total charge for credit rules”;
 - (b) in paragraphs 3 and 4, for “regulation 5 of the Consumer Credit (Total Charge for Credit) Regulations 2010” substitute “the total charge for credit rules”.

PART 7

Consequential amendments and transitional provisions

Consequential amendments to other legislation etc.

28. The Schedule to this Order contains further consequential amendments and transitional provisions.

(187) S.I. 2010/1014.

(188) There are amending instruments but none is relevant to this Order.

PART 8

Transitional provisions

CHAPTER 1

Interpretation

Interpretation of Part 8

29. In this Part—

“appeal period”, “debtor”, “hirer”, “licence”, “licensee”, “regulated agreement” and “standard licence” have the meanings given by the 1974 Act (disregarding any repeal of the 1974 Act by this Order);

“appropriate regulator” means—

- (a) in relation to a person who is, or is applying to become, a PRA-authorised person, the PRA;
- (b) in any other case, the FCA.

CHAPTER 2

Licensing etc.

Meaning of “relevant person” in Chapter 2

30. In this Chapter, “relevant person” means a person who—

- (a) immediately before 1st April 2014 held a licence under the 1974 Act, and
- (b) on 1st April 2014 has a Part 4A permission to carry on a regulated activity by virtue of this Order (regardless of whether the person had permission via other means).

Applications for a standard licence where no determination made before 1st April 2014

31.—(1) Paragraphs (3) to (9) apply if, before 1st April 2014—

- (a) the OFT received an application under section 24A of the 1974 Act (applications for standard licences)**(189)** for a standard licence,
- (b) the applicant (“A”) had not withdrawn the application, and
- (c) the OFT had not determined whether to issue a licence in accordance with the application.

(2) It is immaterial for the purposes of this article whether the OFT had, before 1st April 2014, given notice to A under section 27 of the 1974 Act (determination of applications)**(190)** that the OFT was minded to refuse A’s application.

(3) The application is to be treated as if it had been made to the appropriate regulator—

- (a) if A is an authorised person, and the appropriate regulator is the PRA, under section 55I of the Act (variation by PRA at request of authorised person);
- (b) if A is not an authorised person, under section 55A of the Act**(191)** (application for permission);
- (c) if A is an authorised person and the appropriate regulator is the FCA, under section 55H of the Act (variation by the FCA at request of authorised person).

(189) Inserted by section 28 of the Consumer Credit Act 2006.

(190) Amended by Schedule 25 to the Enterprise Act 2002.

(191) Sections 55A to 55Z4 inserted by section 11 of the Financial Services Act 2012.

- (4) The application is to be treated as relating to the following regulated activities—
- (a) if A's application related to the carrying on of an ancillary credit business in so far as it comprised or related to credit brokerage (within the meaning of the 1974 Act), the regulated activity of the kind specified by article 36A of the Regulated Activities Order (credit broking),
 - (b) if—
 - (i) A's application related to the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act), and
 - (ii) A—
 - (aa) indicated in A's application that A envisaged carrying on a business in a manner which would, if carried on after 1st April 2014, involve the carrying on of an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), or
 - (bb) had, before 1st April 2014, given notice to the FCA of A's intention to carry on such a business,
- a regulated activity of the kind specified by article 36H of the Regulated Activities Order,
- (c) to the extent that A's application related to any other activity, those regulated activities which are activities which were described in the application.
- (5) If—
- (a) A's application related to the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),
 - (b) A's application is not, by virtue of paragraph (4), treated as relating to a regulated activity of the kind specified by article 36H of the Regulated Activities Order, and
 - (c) A, before 1st June 2014, gives notice to the FCA of A's intention to carry on that activity,
- the application is, from the date on which the FCA receives the notice, to be treated as relating to that activity, in addition to any activity to which the application is to be treated as relating to under paragraph (4).
- (6) Any description of business specified in A's application is to be treated for the purposes of Part 4A of the Act as forming part of A's application.
- (7) Section 55U(1) to (4) of the Act (applications under Part 4A) does not apply to A's application.
- (8) For the purposes of section 55V of the Act (determination of applications), the appropriate regulator is to be treated as having received the application on 1st April 2014.
- (9) For the purpose of paragraph (4), it is the nature of the activities in relation to which a licence is sought that matters, not how they are described in the application.

Applications for a standard licence where determination has been made but appeal period has not ended

- 32.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—
- (a) the OFT had given a notice to a person ("A") of its determination to refuse to issue a standard licence to A in accordance with A's application, and
 - (b) the appeal period in relation to that decision had not ended.
- (2) The notice is to be treated as—

- (a) if A does not have a Part 4A permission, a decision notice given under section 55X(4) of the Act by the FCA to A of the decision to refuse A's application for Part 4A permission;
 - (b) in any other case, a decision notice given under section 55X(4) of the Act of the decision of the appropriate regulator to refuse A's application to vary A's Part 4A permission.
- (3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3)(**192**) —
- (a) section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply, and
 - (b) for the purposes of section 55V(4) of the Act, the appropriate regulator is not to be taken as having determined the application.
- (4) The notice has effect subject to any necessary modifications.

Variation of licence at request of licensee where no determination made before 1st April 2014

33.—(1) Paragraphs (3) to (6) apply if, before 1st April 2014—

- (a) the OFT received an application under section 30(1) of the 1974 Act (variation by request)(**193**) for a variation of a standard licence,
- (b) the applicant (“A”) had not withdrawn the application,
- (c) the OFT had not determined whether to vary the licence in accordance with the application, and

A is a relevant person.

(2) It is immaterial for the purposes of this article whether the OFT had, before 1st April 2014, given notice to A under section 30(4) of the 1974 Act (variation by request) that the OFT was minded to refuse A's application.

(3) The application is to be treated as if it had been made to the appropriate regulator under section 55I or 55H of the Act (as the case may be).

(4) The application has effect subject to any necessary modifications.

(5) Section 55U(1) to (4) of the Act (applications under Part 4A) does not apply to A's application.

(6) For the purposes of section 55V of the Act (determination of applications), the appropriate regulator is to be treated as having received the application on 1st April 2014.

Variation of licence at request of licensee where determination has been made but appeal period has not ended

34.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given notice to a person (“A”) of its decision to refuse to vary a standard licence in accordance with an application made by A,
- (b) the appeal period in relation to that determination had not ended, and

A is a relevant person.

(2) The notice is to be treated as a decision notice under section 55X(4) of the Act of the decision of the appropriate regulator to refuse A's application to vary A's Part 4A permission.

(3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.

(**192**) Amended by Schedule 25 to the Enterprise Act 2002, sections 33, 43, 53 and 56 of, and Schedule 4 to, the Consumer Credit Act 2006, [S.I. 2001/3649](#) and [S.I. 2009/1835](#).

(**193**) Amended by Schedule 25 to the Enterprise Act 2002 and section 31 of the Consumer Credit Act 2006.

- (4) The notice has effect subject to any necessary modifications.

Compulsory variation of a licence where no determination to vary made before 1st April 2014

35.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given notice to a person (“A”) under section 31(2) of the 1974 Act (compulsory variation)(**194**) that it is minded to vary the terms of A’s licence,
(b) the OFT had not determined to vary A’s licence under that section, and

A is a relevant person.

(2) The notice is to be treated as a written notice given under section 55Y(4) of the Act by the FCA of a proposal to vary A’s Part 4A permission (except for subsections (5) and (6) of section 55Y which do not apply).

(3) The notice has effect subject to any necessary modifications.

(4) If the period for making representations under section 34 of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—

- (a) in subsection (1), references to the OFT (apart from the first reference) were references to the FCA or, before 1st April 2014, the OFT;
(b) in subsection (2), the reference to the OFT was to the FCA.

Compulsory variation of a licence where determination to vary made before 1st April 2014

36.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given notice of its determination under section 31 of the 1974 Act(**195**) to vary the terms of the licence of a person (“A”),
(b) the appeal period in relation to that determination had not ended, and

A is a relevant person.

(2) The notice is to be treated as a written notice given under section 55Y(7) of the Act by the FCA of its decision to vary A’s Part 4A permission (except for subsection (9) of section 55Y which does not apply).

(3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.

(4) The notice has effect subject to any necessary modifications.

Revocation etc. of licence where no determination made before 1st April 2014

37.—(1) Paragraphs (3) to (5) apply if, before 1st April 2014—

- (a) the OFT had given a notice under section 27 of the 1974 Act (determination of applications)(**196**) to a person (“A”) that it is minded to refuse A’s application to renew A’s standard licence,
(b) the OFT had not determined to refuse to renew A’s licence, and

A is a relevant person.

(**194**) Amended by Schedule 25 to the Enterprise Act 2002.

(**195**) Amended by Schedule 25 to the Enterprise Act 2002 and section 31, 32 and 34 of the Consumer Credit Act 2006.

(**196**) Section 27 is applied for the purposes of applications to renew a licence by section 29 of the 1974 Act.

- (2) Paragraphs (3) and (4) apply if, before 1st April 2014—
- (a) the OFT had given a notice under section 32(2) of the 1974 Act (revocation of a standard licence)⁽¹⁹⁷⁾ to a person (“A”),
 - (b) the OFT had not determined to revoke A’s licence under that section, and
- A is a relevant person.
- (3) The notice is to be treated as—
- (a) if A has Part 4A permission only by virtue of this Order, a warning notice given under section 55Z(1) of the Act by the FCA to A of the proposal by the FCA to cancel A’s Part 4A permission (except for the purposes of section 387 of the Act (warning notices)⁽¹⁹⁸⁾ which does not apply);
 - (b) in any other case, a written notice under section 55Y(4) of the Act of the proposal by the FCA to vary A’s Part 4A permission (except for subsections (5) and (6) of section 55Y which do not apply).
- (4) The notice has effect subject to any necessary modifications.
- (5) If the period for making representations under section 34 of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—
- (a) in subsection (1), references to the OFT (apart from the first reference) were references to the FCA or, before 1st April 2014, the OFT;
 - (b) in subsection (2), the reference to the OFT was to the FCA.

Revocation etc. of licence where determination made before 1st April 2014

- 38.**—(1) Paragraphs (3) to (5) apply if, before 1st April 2014—
- (a) the OFT had given notice of its determination under section 27 of the 1974 Act not to renew the standard licence of a person (“A”),
 - (b) the appeal period in relation to that determination had not ended, and
- A is a relevant person.
- (2) Paragraphs (3) to (5) apply if, before 1st April 2014—
- (a) the OFT had given notice of its determination under section 32 of the 1974 Act to revoke the standard licence of a person (“A”),
 - (b) the appeal period in relation to that determination had not ended, and
- A is a relevant person.
- (3) The notice is to be treated as—
- (a) if A has Part 4A permission only by virtue of this Order, a decision notice given under section 55Z(2) of the Act by the FCA to A of the decision by the FCA to cancel A’s Part 4A permission;
 - (b) in any other case, a written notice under section 55Y(7) of the Act of the decision of the FCA to vary A’s Part 4A permission (except for subsection (9) of section 55Y which does not apply).
- (4) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.

⁽¹⁹⁷⁾Section 32 was amended by Schedule 25 to the Enterprise Act 2002, section 32 of the Consumer Credit Act 2006 and section 108 of the Financial Services Act 2012. There are other amending instruments but none is relevant to this Order.

⁽¹⁹⁸⁾Amended by Schedule 9 to the Financial Services Act 2012.

- (5) The notice has effect subject to any necessary modifications.

Suspension of licence where determination made before 1st April 2014 but not confirmed

39.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given a notice to a person (“A”) under section 32A(2) of the 1974 Act (suspension of a standard licence)(**199**) that it is suspending A’s licence,
- (b) the OFT had not, under section 34ZA of the 1974 Act (representations to OFT: suspension under section 32A) determined whether or not to confirm such a decision,
- (c) the suspension had not taken effect, and

A is a relevant person.

(2) The notice is to be treated as—

- (a) if A has Part 4A permission only by virtue of this Order—
 - (i) a written notice under section 55Y(4) of the Act of the decision of the FCA to vary A’s Part 4A permission (except for subsections (5) and (6) of section 55Y which do not apply), and
 - (ii) a warning notice given under section 55Z(1) of the Act by the FCA to A of the proposal by the FCA to cancel A’s Part 4A permission (except for the purpose of section 387 which does not apply);
- (b) in any other case, a written notice under section 55Y(4) of the Act of the decision of the FCA to vary A’s Part 4A permission (except for subsections (5) and (6) of section 55Y which do not apply).

(3) The notice has effect subject to any necessary modifications.

(4) If the period for making representations under section 34ZA of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—

- (a) in subsection (1) each reference to the OFT (apart from the first reference) were a reference to the FCA or, before 1st April 2014, the OFT;
- (b) in subsection (2)—
 - (i) the reference to the OFT was to the FCA;
 - (ii) the words from “reconsider its determination” to “doing so must” were omitted.

Suspension of licence where determination made before 1st April 2014 and confirmed

40.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given a notice to a person (“A”) under section 34ZA of the 1974 Act (representations to OFT: suspension under section 32A) of its determination to confirm a decision to suspend A’s licence under section 32A of that Act,
- (b) that determination had not taken effect, and

A is a relevant person.

(2) The notice is to be treated as—

- (a) if A has Part 4A permission only by virtue of this Order—

(199) Sections 32A and 34Z were inserted by section 108 of the Financial Services Act 2012.

- (i) a written notice under section 55Y(7) of the Act of the decision of the FCA to vary A's Part 4A permission (except for subsection (9) of section 55Y which does not apply), and
- (ii) a decision notice given under section 55Z(2) of the Act by the FCA of the decision by the FCA to cancel A's Part 4A permission;
- (b) in any other case, a written notice under section 55Y(7) of the Act of the decision of the FCA to vary A's Part 4A permission (except for subsection (9) of section 55Y which does not apply).
- (3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.
- (4) The notice has effect subject to any necessary modifications.

Imposition of requirements etc. where no determination made before 1st April 2014

41.—(1) Paragraphs (2) to (5) apply if, before 1st April 2014—

- (a) the OFT had given a notice under section 33D(2) of the 1974 Act (notice of intention of OFT to impose requirements on licensee)(**200**) to a person (“A”) that the OFT is minded to make a determination to impose a requirement on A under section 33A of the 1974 Act(**201**) or to vary or revoke a requirement imposed under section 33A of that Act,
- (b) the OFT had not determined to impose a requirement on A or to vary or revoke a requirement imposed on A, and

A is a relevant person.

(2) The notice is to be treated as written notice under section 55Y(4) of the Act of a proposal by the FCA to impose a requirement on A or to vary or to cancel a requirement (except for subsections (5) and (6) of section 55Y which do not apply).

(3) The notice has effect subject to any necessary modifications.

(4) In deciding whether to impose a requirement on A, the FCA must have regard to the guidance prepared by the OFT under section 33E of the 1974 Act in force immediately before 1st April 2014.

(5) If the period for making representations under section 34 of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—

- (a) in subsection (1), references to the OFT (apart from the first reference) were references to the FCA or, before 1st April 2014, the OFT;
- (b) in subsection (2), the reference to the OFT was to the FCA.

Imposition of requirements etc. where determination made but appeal period has not ended

42.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given notice to a person (“A”) under section 33D of the 1974 Act of its determination to impose a requirement on A under section 33A of the 1974 Act or to vary or revoke a requirement imposed under section 33A of that Act,
- (b) the appeal period in relation to that determination had not ended, and

A is a relevant person.

(**200**) Inserted by section 41 of the Consumer Credit Act 2006.

(**201**) Sections 33A to 33E inserted by sections 38 to 41 of the Consumer Credit Act 2006 and amended by section 107 of the Financial Services Act 2012.

(2) The notice is to be treated as written notice under section 55Y(7) of the Act of the decision by the FCA under section 55L of the Act to impose a requirement on A or to vary or to cancel a requirement (except for subsection (9) of section 55Y which does not apply).

(3) But if A had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 55Z3 of the Act (right to refer matters to the Tribunal) does not apply.

(4) The notice has effect subject to any necessary modifications.

Failure to comply with information requirement

43.—(1) Paragraph (2) applies if, before 1st April 2014, a relevant person (“A”) had failed to do something A was required to do by virtue of section 36B or 36C of the 1974 Act (power of OFT to require information or to require access to premises)(**202**).

(2) Section 36E of the 1974 Act (failure to comply with information requirement) continues to apply in connection with A’s failure as if the reference to the OFT were a reference to the FCA.

Civil penalties – where no determination made before 1st April 2014

44.—(1) Paragraphs (2) to (7) apply if, before 1st April 2014—

(a) the OFT had given a notice under section 39B(1) of the 1974 Act (notice that OFT is minded to impose a civil penalty)(**203**) to a person (“A”) that it is minded to impose a penalty on A under section 39A of the 1974 Act (power to impose civil penalties)(**204**), and

(b) the OFT had not before 1st April 2014—

(i) given A a penalty notice under section 39A of the 1974 Act, or

(ii) given notice to A under section 34 of the 1974 Act of its determination not to give such a penalty notice.

(2) The notice is to be treated as a warning notice given by the FCA to A under section 207(1) (b) of the Act(**205**) (except for the purposes of sections 210 (statements of policy) and 387 (warning notices) which do not apply).

(3) The notice has effect subject to any necessary modifications.

(4) For the purposes of this article, each reference in Part 14 of the Act and any provision made under Part 14 of the Act to an “authorised person” is to be treated as including a reference to A.

(5) If the period for making representations under section 34 of the 1974 Act in connection with that notice had not expired before 1st April 2014, subsections (1) and (2) of that section continue to apply as if—

(a) in subsection (1), references to the OFT (apart from the first reference) were references to the FCA or, before 1st April 2014, the OFT;

(b) in subsection (2), the reference to the OFT was to the FCA.

(6) In determining what if any financial penalty to impose on A, the FCA must have regard to—

(a) any penalty or fine that has been imposed on A by another body in relation to the conduct giving rise to the possible imposition of the penalty;

(b) other steps the OFT or FCA has taken, or the FCA might take, in relation to that conduct;

(**202**) Section 36B was inserted by section 46 of the Consumer Credit Act 2006. Section 36C was inserted by section 47 of that Act.

(**203**) Inserted by section 53 of the Consumer Credit Act 2006.

(**204**) Inserted by section 52 of the Consumer Credit Act 2006.

(**205**) Amended by Schedule 2 to the Financial Services Act 2010 and Schedule 9 to the Financial Services Act 2012.

(c) the statement of policy prepared by the OFT under section 39C of the 1974 Act⁽²⁰⁶⁾ as most recently published at the time the conduct occurred.

(7) The financial penalty imposed on A by the FCA in relation to each failure to comply with a requirement may not exceed £50,000.

(8) Section 210 of the Act (statement of policy) does not apply to a penalty imposed by the FCA by virtue of this article.

Civil penalties – where determination made but appeal period has not ended

45.—(1) Paragraphs (2) to (5) apply if, before 1st April 2014—

- (a) the OFT had given A a penalty notice under section 39A of the 1974 Act, and
- (b) the appeal period in relation to that notice had not expired.

(2) The notice is to be treated as a decision notice given by the FCA to A under section 208(1) (b) of the Act⁽²⁰⁷⁾ (except for the purposes of section 210 which does not apply).

(3) But if A has, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3), section 208(4) of the Act (right to refer matters to the Tribunal) does not apply.

(4) The notice has effect subject to any necessary modifications.

(5) For the purposes of this article, each reference in Part 14 of the Act (disciplinary measures) and any provision made under Part 14 of the Act to an “authorised person” is to be treated as including a reference to A.

Civil penalties – where determination made before 1st April 2014 and penalty due

46.—(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given A a penalty notice under section 39A of the 1974 Act⁽²⁰⁸⁾, and
- (b) the appeal period in relation to that notice had expired.

(2) The penalty is payable to the FCA (rather than the OFT).

(3) If a defaulter (within the meaning of section 39A of the 1974 Act) had not paid to the OFT before 1st April 2014 the penalty imposed under that section—

- (a) the defaulter must pay the unpaid balance to the FCA;
- (b) section 39A(5) of the 1974 Act continues to apply to the defaulter with the following modifications—
 - (i) omit “to the OFT”;
 - (ii) the reference to the OFT in paragraph (b) is to be treated as a reference to the FCA.

(4) For the purposes of Part 3 of Schedule 1ZA to the Act (penalties and fees)⁽²⁰⁹⁾—

- (a) any amounts received by the FCA by virtue of this article are to be treated as amounts received by way of penalties imposed under the Act;
- (b) any expenses incurred by the FCA in connection with the recovery of penalties due to it by virtue of this article are to be treated as incurred in connection with the recovery of penalties imposed under the Act.

⁽²⁰⁶⁾ Inserted by section 54 of the Consumer Credit Act 2006.

⁽²⁰⁷⁾ Amended by Schedule 2 to the Financial Services Act 2010 and Schedule 9 to the Financial Services Act 2012.

⁽²⁰⁸⁾ Inserted by section 52 of the Consumer Credit Act 2006.

⁽²⁰⁹⁾ Inserted by Schedule 3 to the Financial Services Act 2012.

Civil penalties – where no formal action taken before 1st April 2014

47.—(1) Paragraphs (2) to (6) apply if—

- (a) the FCA is satisfied that a person (“A”) had, before 1st April 2014, failed to comply with a requirement imposed on A under section 33A, 33B or 36A of the 1974 Act⁽²¹⁰⁾, and
- (b) the OFT had not, before 1st April 2014, given a notice under section 39B(1) of the 1974 Act to A that the OFT was minded to impose a penalty on A under section 39A of the 1974 Act.

(2) The FCA may impose a penalty, in respect of the failure, on A under section 206 of the Act (financial penalties)⁽²¹¹⁾.

(3) For the purposes of this article, each reference in Part 14 of the Act and any provision made under Part 14 of the Act to an “authorised person” is to be treated as including a reference to A.

(4) In determining what if any financial penalty to impose on A, the FCA must have regard to—

- (a) any penalty or fine that has been imposed on A by another body in relation to the conduct giving rise to the possible imposition of the penalty;
- (b) other steps the OFT or FCA has taken, or the FCA might take, in relation to that conduct;
- (c) the statement of policy prepared by the OFT under section 39C of the 1974 Act as most recently published at the time the conduct occurred.

(5) The financial penalty imposed on A by the FCA in relation to each failure to comply with a requirement may not exceed £50,000.

(6) Section 210 of the Act (statement of policy) does not apply to a penalty imposed by the FCA by virtue of this article.

Enforcement of agreements made by unlicensed trader

48.—(1) This article applies to a regulated agreement entered into before 1st April 2014 (“a relevant agreement”).

(2) A relevant agreement is not enforceable against the debtor or hirer by a person carrying on a regulated activity of the kind specified by article 60B(2) or 60N(2) of the Regulated Activities Order (as the case may be) if that person does not have permission to carry on that activity.

(3) Section 40(1A) and (2) of the 1974 continue to apply to a relevant agreement with the following modifications—

- (a) after “Unless the OFT has” insert “before 1st April 2014”;
- (b) after “applies to the agreement” insert “or the FCA has given a notice under section 28A of the Financial Services and Markets Act 2000 by virtue of subsection (1B)”;
- (c) after subsection (1A) there is inserted—

“(1B) Sections 28A and 28B of the Financial Services and Markets Act 2000⁽²¹²⁾ apply to a regulated agreement which is not enforceable by virtue of subsection (1A) with the following modifications—

- (a) subsection (2) and paragraph (b) of subsection (3) of section 28A do not apply;
- (b) for subsections (4) to (6) of section 28A 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

⁽²¹⁰⁾Section 36A inserted by section 45 of the Consumer Credit Act 2006.

⁽²¹¹⁾Amended by section 10 of the Financial Services Act 2010 and Schedule 9 to the Financial Services Act 2012.

⁽²¹²⁾Sections 28A and 28B were inserted by Schedule 9 to the Financial Services Act 2012.

under the Consumer Credit Act 1974 was not required by the creditor or owner (as the case may be) to enter into the agreement.”;

(c) for subsection (8) of section 28A substitute—

“(8) “The relevant firm” means the person who (disregarding the effect of subsection (1A)), would be entitled to enforce the agreement.”.”

Offences committed under the 1974 Act before 1st April 2014

49. Section 402(1) of the Act (power of FCA to institute proceedings for certain offences)(**213**) applies as if it included a reference to offences committed under the 1974 Act before 1st April 2014.

Information and investigation powers

50.—(1) Section 165 of the Act (regulators’ power to require information)(**214**) has effect as if each reference to “authorised person” (except in subsection (7)) included a reference to a person who at any time held a standard licence under the 1974 Act.

(2) Section 168 of the Act (appointment of persons to carry out investigations in particular cases)(**215**) applies as if—

(a) subsection (1) included a reference to an offence under the 1974 Act;

(b) subsection (4) included a reference to circumstances suggesting that a person may have, before 1st April 2014, failed to comply with a requirement imposed on that person under section 33A, 33B or 36A of the 1974 Act.

(3) Part 27 of the Act (offences) (**216**) applies as if references to an offence included references to an offence under Part 11 of the Act as modified by this Order.

Applications made to the OFT which have not been determined by 1st April 2014

51.—(1) Any application which before 1st April 2014—

(a) had been made to the OFT under the 1974 Act, and

(b) had not been determined by the OFT,

is to be treated as having been made to the FCA, unless paragraph (2) applies.

(2) This paragraph applies if the application had been made under a provision of the 1974 Act which is repealed by this Order.

Decision notices

52. In relation to any notice which is, by virtue of this Chapter of this Part, to be treated as a decision notice given under the Act—

(a) it is immaterial whether the notice complies with section 388(1)(b) to (e) of the Act (decision notices)(**217**), and

(b) that section applies as if, for subsections (3) and (4), there were substituted—

“(3) The regulator concerned may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice.

(213) Amended by Schedule 7 to the Counter-Terrorism Act 2008 and Schedule 9 to the Financial Services Act 2012.

(214) Amended by Schedule 2 to the Financial Services Act 2010 and Schedule 12 to the Financial Services Act 2012.

(215) Amended by Schedule 7 to the Counter-Terrorism Act 2008, Schedule 12 to the Financial Services Act 2012, [S.I. 2007/126](#) and [S.I. 2012/2554](#).

(216) Part 27 was amended by Schedule 25 to the Enterprise Act 2002, Schedule 7 to the Counter Terrorism Act 2008, section 95 of, and Schedule 9 to, the Financial Services Act 2012 and [S.I. 2012/2554](#).

(217) Amended by Schedule 9 to the Financial Services Act 2012.

- (4) A further decision notice given under subsection (3) may in particular—
 - (a) relate to different action in respect of the same matter, or
 - (b) vary the original notice.”.

Waivers

53. Any of the following given or made by the OFT which are in effect immediately before 1st April 2014 are to have effect as if they had been given or made by the FCA—

- (a) a direction given under section 60(3) of the 1974 Act (form and content of agreements)(**218**);
- (b) a determination made under regulations made under section 64(4) of the 1974 Act (duty to give notice of cancellation rights)(**219**);
- (c) a direction given under section 101(8) or (8A) of the 1974 Act (right to terminate hire agreement)(**220**);
- (d) a direction given under section 160(1) of the 1974 Act (alternative procedure for business consumers)(**221**).

CHAPTER 3

Appeals

Appeals – where steps taken before 1st April 2014

54.—(1) Paragraphs (2) and (3) (in addition to provision made in Chapter 2) apply where a person (“A”) had, before 1st April 2014, submitted a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act (appeals to First-tier Tribunal under Part 3)(**222**) (“a relevant appeal”).

(2) Sections 41 to 41ZB of the 1974 Act (appeals, Tribunal procedure rules and disposal of appeals)(**223**) continue to apply to a relevant appeal (notwithstanding any repeal made by this Order) with the following modifications to section 41ZB—

- (a) for each reference to the “OFT” substitute “FCA”;
 - (b) omit subsections (5) and (6).
- (3) In any relevant appeal—
- (a) anything done by the OFT before 1st April 2014 in relation to the appeal is to be treated as having been done by the FCA;
 - (b) the FCA is substituted for the OFT as a party to the appeal.

Appeals – where no steps taken before 1st April 2014

55.—(1) Paragraphs (2) to (4) (in addition to provision made in Chapter 2) apply where a person (“A”) had, before 1st April 2014, a right to submit a notice of appeal to the First-tier Tribunal under section 41 of the 1974 Act but had not exercised that right before that date.

- (2) A may refer the matter to the Tribunal within the specified period.

(218) Amended by Schedule 25 to the Enterprise Act 2002.

(219) Amended by Schedule 25 to the Enterprise Act 2002.

(220) Amended by Schedule 25 to the Enterprise Act 2002 and by section 63 of the Consumer Credit Act 2006.

(221) Amended by Schedule 25 to the Enterprise Act 2002.

(222) Amended by Schedule 25 to the Enterprise Act 2002, sections 33, 43, 53 and 56 of, and Schedule 4 to, the Consumer Credit Act 2006, [S.I. 2001/3649](#) and [S.I. 2009/1835](#).

(223) Sections 41ZA and 41ZB were inserted by [S.I. 2009/1938](#).

(3) Section 133 of the Act (proceedings before Tribunal: general provision)(**224**) applies to any such reference as if it were a disciplinary reference (within the meaning of that section).

(4) In this article, “specified period” has the same meaning as in the 1974 Act.

CHAPTER 4

Permission etc.

Interim permission

56.—(1) Unless paragraph (12) applies, on and after 1st April 2014, any relevant person (“P”) who, immediately before that date, held a standard licence under the 1974 Act(**225**) is to be treated as having an interim permission to carry on—

(a) if P’s licence covered the carrying on of an ancillary credit business in so far as it comprised or related to credit brokerage (within the meaning of the 1974 Act), the regulated activity specified in article 36A of the Regulated Activities Order (credit broking) and article 64 of that Order in so far as relevant to that activity;

(b) if—

(i) P’s licence covered the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),

(ii) immediately before 1st April 2014, P carried on an activity which, if carried on after that date would be an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), and

(iii) immediately before 1st April 2014, P did not also carry on an activity which, if carried on after that date, would be an activity of the kind specified by article 39G of that Order (debt administration),

the regulated activity specified in article 36H of the Regulated Activities Order and article 64 of that Order in so far as relevant to that activity;

(c) if—

(i) P’s licence covered the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),

(ii) immediately before 1st April 2014, P carried on an activity which, if carried on after that date would be an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), and

(iii) immediately before that date, P also carried on an activity which, if carried on after that date, would be an activity of the kind specified by article 39G of that Order (debt administration),

the regulated activities specified in articles 36H and 39G of the Regulated Activities Order and article 64 of that Order in so far as relevant to those activities;

(d) to the extent that P’s licence covers any other activities, those regulated activities which are activities which were described in the licence and article 64 of that Order in so far as relevant to those activities.

(2) On and after 1st April 2014, any relevant person (“P”) who, immediately before that date—

(**224**) Amended by [S.I. 2010/22](#) and amended by section 23 of the Financial Services Act 2012.

(**225**) “Standard licence” is defined in section 189 of the 1974 Act. By virtue of section 32A(5) of that Act, a licensee under a suspended licence is to be treated, in respect of the period of suspension, as if the licence had not been issued (see section 32A).

- (a) held a standard licence under the 1974 Act,
- (b) was a credit intermediary (within the meaning given by section 160A of the 1974 Act(226)), but
- (c) did not carry on an activity which, if carried on after 1st April 2014, would be an activity of the kind specified by article 36H of the Regulated Activities Order,

is to be treated as having an interim permission to carry on regulated activities of the kind specified by articles 36A(1)(d) to (f) of the Regulated Activities Order to the extent that P was carrying on such activities immediately before 1st April 2014 and article 64 of that Order in so far as relevant to that activity; and such interim permission may be in addition to any interim permission the person obtains by virtue of paragraph (1).

(3) On and after 1st April 2014, any relevant person (“P”) who is a local authority is to be treated as having an interim permission to carry on regulated activities which are activities which P was carrying on at any point in the period of one year ending on that date.

(4) For the purposes of paragraphs (1), (2) and (3), P is a “relevant person” if P has, in the period beginning with 2nd September 2013 and ending on 31st March 2014 (including both days), notified the FCA of P’s desire to obtain interim permission under this article and paid any fee which is provided for in rules made by the FCA for this purpose.

(5) On and after the notice date (see paragraph (7)), a relevant recent licensee (“P”) is to be treated as having an interim permission to carry on—

- (a) if P’s licence covered the carrying on of an ancillary credit business in so far as it comprised or related to credit brokerage (within the meaning of the 1974 Act), the regulated activity specified in article 36A of the Regulated Activities Order (credit broking) and article 64 of that Order in so far as relevant to that activity;
- (b) if—
 - (i) P’s licence covered the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),
 - (ii) immediately before 1st April 2014 P carried on an activity which, if carried on after that date would be an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), and
 - (iii) immediately before that date, P did not also carry on an activity which, if carried on after that date, would be an activity of the kind specified by article 39G of that Order (debt administration),

the regulated activity specified in article 36H of the Regulated Activities Order and article 64 of that Order in so far as relevant to that activity;

- (c) if—
 - (i) P’s licence covered the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),
 - (ii) immediately before 1st April 2014, P carried on an activity which, if carried on after that date would be an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), and
 - (iii) immediately before that date, P also carries on an activity which, if carried on after that date, would be an activity of the kind specified by article 39G of that Order (debt administration),

the regulated activities specified in articles 36H and 39G of the Regulated Activities Order and article 64 of that Order in so far as relevant to those activities;

- (d) to the extent that P's licence covers any other activities, those regulated activities which are activities which were described in the licence and article 64 of that Order in so far as relevant to those activities.

(6) Unless paragraph (12) applies, on and after the notice date, any relevant recent licensee ("P") who, immediately before 1st April 2014—

- (a) held a standard licence under the 1974 Act,
 (b) was a credit intermediary (within the meaning given by section 160A of the 1974 Act⁽²²⁷⁾), but
 (c) did not carry on an activity which, if carried on after 1st April 2014, would be an activity of the kind specified by article 36H of the Regulated Activities Order,

is to be treated as having an interim permission to carry on regulated activities of the kind specified by articles 36A(1)(d) to (f) of the Regulated Activities Order and article 64 of that Order in so far as relevant to that activity, to the extent that P was carrying on such activities immediately before 1st April 2014; and such interim permission may be in addition to any interim permission the person obtains by virtue of paragraph (5).

(7) For the purposes of paragraphs (5) and (6), P is a "relevant recent licensee" if—

- (a) P had been given a standard licence under the 1974 Act in the period beginning 18th March 2014 and ending on 31st March 2014 (including both days), and
 (b) on a date in the period beginning on 1st April 2014 and ending on 14th April 2014 (including both days) ("the notice date") P notified the FCA of P's desire to obtain interim permission under this article and has in that period paid any fee which is provided for in rules made by the FCA for this purpose.

(8) Interim permission which a person ("A") is treated as having under this article does not permit A to canvass off trade premises borrower-lender-supplier agreements (within the meaning given by article 60L of the Regulated Activities Order) or regulated consumer hire agreements (within the meaning of article 60N of that Order) except to the extent that A's licence under the 1974 Act, immediately before 1st April 2014, specifically provided that A's licence covered that activity; and the reference to canvassing off trade premises is to be read with article 36B of that Order.

(9) Subject to article 61 (application of Act), an interim permission is to be treated as—

- (a) if P was an authorised person immediately before commencement, a variation of permission,
 (b) in any other case, a Part 4A permission.

(10) If P was, immediately before 1st April 2014, subject to a requirement imposed by the OFT under section 33A of the 1974 Act (power of OFT to impose requirements on licensees)⁽²²⁸⁾ and P obtains interim permission under this article, that requirement is to be treated as a requirement imposed by the FCA under section 55L of the Act (subject to any necessary modifications).

(11) For the purpose of paragraphs (1) and (5), it is the effect of the licence that matters, not how the activities for which a licence is given are described.

(12) This paragraph applies if—

- (a) P has, before 1st April 2014, notified the FCA that P does not wish to obtain interim permission under this article, or

⁽²²⁷⁾ Inserted by S.I. 2010/1010.

⁽²²⁸⁾ Inserted by section 38 of the Consumer Credit Act 2006.

- (b) the FCA has, before 1st April 2014, notified P in writing, that in the FCA's opinion, P is not carrying on the activities which are described in P's licence.

Procedure for notifying FCA

57.—(1) Notices under article 56 must—

- (a) be made in such manner as the FCA may direct; and
- (b) contain or be accompanied by such other information as the FCA may reasonably require.

(2) Different directions may be given and different requirements imposed, in relation to different applications or categories of application.

(3) At any time after receiving the notification, the FCA may require the person giving the notification to provide the FCA with such further information as it reasonably considers necessary to enable the FCA to discharge its functions.

(4) The FCA may require information to be provided in such form, or for it to be verified in such a way, as the FCA may direct.

Duration of interim permission

58.—(1) P's interim permission, in so far as it relates to a particular regulated activity or class of activity ceases to have effect—

- (a) if P applies to the appropriate regulator for Part 4A permission to carry on that activity or (as the case may be) to vary P's permission to add that activity to those to which the permission relates, before a date specified in a direction given by the FCA ("the application date"), the date on which that application is determined;
- (b) if P does not make such an application before the application date, the application date;
- (c) in any other case, 1st April 2016.

(2) Paragraph (1) does not affect the ability of the FCA or the PRA to vary or to cancel an interim permission under the Act.

(3) For the purposes of paragraph (1)(a) the date on which an application is determined is—

- (a) if the applicant by notice withdraws the application under section 55V(4) of the Act, the date on which the notice of withdrawal takes effect;
- (b) if the application is granted by the appropriate regulator, the date on which the written notice given under section 55V(5) of the Act takes effect;
- (c) if the appropriate regulator gives a decision notice under section 388 of the Act in relation to the application, the date on which that notice takes effect.

(4) Directions under this article may—

- (a) relate to classes of person (including classes of person identified by reference to whether they have, or have not, provided the FCA with a notification in a form specified in the direction by the FCA);
- (b) contain different dates;
- (c) relate to different descriptions of activities;
- (d) be amended by the FCA by further direction.

Application of the Act to persons with an interim permission

59.—(1) This article applies to each person ("A") who has an interim permission by virtue of this Order.

- (2) A's interim permission is to be disregarded for the purposes of—
- (a) section 38(2) of the Act (exemption orders)(**229**);
 - (b) section 55A(3)(**230**) of the Act (application for permission);
 - (c) sections 55E and 55F of the Act (giving permission).
- (3) For the purposes of section 21(2) of the Act (restrictions on financial promotions), if A does not have permission other than an interim permission, A may only approve the content of a communication if the communication invites or induces a person to—
- (a) enter into (or offer to enter into) an agreement the making or performance of which constitutes a controlled activity which corresponds to a regulated activity for which A has interim permission; or
 - (b) exercise any rights conferred by a credit agreement (within the meaning of the Regulated Activities Order) to acquire, dispose of, underwrite or convert a controlled investment which is relevant to the regulated activity for which A has interim permission to carry on.
- (4) For the purposes of section 39 of the Act (appointed representatives)(**231**), A—
- (a) may not be a principal in relation to an activity for which A has interim permission;
 - (b) may be an appointed representative in relation to an activity which A does not have interim permission to carry on.
- (5) If A applies to the appropriate regulator—
- (a) under section 55A of the Act for Part 4A permission to carry on a regulated activity, or
 - (b) under section 55H or 55I of the Act to vary a Part 4A permission that A has otherwise than by virtue of this Order by adding a regulated activity to those which the permission relates,
- the application may be treated by the appropriate regulator as relating also to some or all of the regulated activities for which A has interim permission.
- (6) When the FCA or PRA—
- (a) exercises its power under section 55J of the Act (variation or cancellation on initiative of regulator) in relation to A,
 - (b) exercises its power under section 55H (in the case of the FCA) or section 55I of the Act (in the case of the PRA) (variation at request of authorised person) to remove a regulated activity from those for which A has interim permission, or
 - (c) exercises its power under section 55L of the Act (in the case of the FCA) or section 55M of the Act (in the case of the PRA) (imposition of requirements by the regulator) in relation to A,
- section 55B(3) of the Act (satisfaction of threshold conditions) does not require the regulator to ensure that A will satisfy, and continue to satisfy, in relation to the regulated activities for which A has an interim permission, the threshold conditions for which that regulator is responsible.
- (7) A is not to be regarded as an authorised person for the purposes of Part 12 of the Act (control over authorised person) unless A has permission otherwise than by virtue of an interim permission.
- (8) Subsection (3)(a) of section 213 (compensation scheme)(**232**) does not apply to a person who is a relevant person (within the meaning of that section) only by virtue of having an interim permission.

(**229**) Amended by Schedule 18 to the Financial Services Act 2012.

(**230**) Sections 55A to 55Z4 were inserted by section 9 of the Financial Services Act 2012.

(**231**) Amended by section 10 of and Schedule 18 to the Financial Services Act 2012 and [S.I. 2007/126](#).

(**232**) Amended by section 170 of the Banking Act 2009, Schedule 10 to the Financial Services Act 2012 and [S.I. 2011/1613](#)

Grandfathered permission for certain debt-counsellors

60.—(1) On and after 1st April 2014, a not-for-profit body which, immediately before 1st April 2014, was covered by a group licence under the 1974 Act to carry on the activity of debt-counselling (within the meaning of the 1974 Act) is to be treated for all purposes as having Part 4A permission to carry on regulated activities of the kind specified by 39D (debt adjusting), articles 39E (debt-counselling) and 89A (providing credit information services) of the Regulated Activities Order and article 64 of that Order in so far as relevant to those activities, to the extent that those regulated activities are activities which are described in the licence.

(2) In this article, a “not-for-profit body” means a body which, by virtue of its constitution or any enactment—

- (a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and
- (b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes).

(3) For the purposes of this article, it is the effect of the group licence that matters, not how the activities for which a licence is given are described.

CHAPTER 5

Rules and guidance

Credit-related rules and guidance made by the FCA

61.—(1) This article applies to rules made or guidance given by the FCA which relate or relates to a credit-related regulated activity or the carrying on of such an activity.

(2) Section 1B(4) of the Act (competition duty) does not apply to the extent that—

- (a) the rules are the same as, or substantially the same as, or have the same, or substantially the same, effect as any of the Consumer Credit Act provisions, or
- (b) the guidance is the same as, or substantially the same as, or which has the same, or substantially the same, effect as any of the Consumer Credit Act provisions.

(3) Section 138I(2)(a) of the Act (cost benefit analysis) does not apply in relation to a draft of rules to which this article applies which are the same as, or substantially the same as, any of the Consumer Credit Act provisions or which have the same, or substantially the same, effect as any such provisions.

(4) For the purposes of this article, the “Consumer Credit Act provisions” are—

- (a) the Consumer Credit Act 1974,
- (b) any subordinate legislation made, or guidance issued, under that Act, and
- (c) any notice issued by the OFT under section 86A of that Act⁽²³³⁾ (information sheets on arrears and defaults),

disregarding the effect of article 20 (amendments of the Consumer Credit Act 1974) and any order made before 1st April 2014 under section 107 of the Financial Services Act 2012.

(5) Section 138I of the Act (consultation by the FCA) applies as if for subsections (7) and (8) there were substituted—

“(7) “Cost benefit analysis” means—

- (a) an analysis of the difference between the costs and benefits of the Consumer Credit Act provisions and the costs and benefits that will arise—

⁽²³³⁾ Inserted by section 8 of the Consumer Credit Act 2006.

- (i) if the proposed rules are made, or
- (ii) if subsection (5) applies, from the rules that have been made, and
- (b) subject to subsection (8), an estimate of that difference.
- (7A) For the purposes of subsection (7), the “Consumer Credit Act provisions” are—
 - (a) the Consumer Credit Act 1974,
 - (b) any subordinate legislation made, or guidance issued, under that Act, and
 - (c) any notice issued by the OFT under section 86A of that Act (information sheets on arrears and defaults),
 disregarding the effect of article 20 (amendments of the Consumer Credit Act 1974) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 and any order made before 1st April 2014 under section 107 of the Financial Services Act 2012.
- (8) If, in the opinion of the FCA—
 - (a) the difference referred to in subsection (7) cannot reasonably be estimated; or
 - (b) it is not reasonably practicable to produce an estimate,
 the cost benefit analysis need not estimate the difference but must include a statement of the FCA’s opinion and an explanation of it.”.

(6) The requirements of section 138I of the Act (as modified above) in so far as they apply to a proposal to make rules to which this article applies may be satisfied by things done (wholly or in part) before the date on which this article comes into force.

(7) It is immaterial for the purposes of paragraph (5) if, when the things were done, they were not compatible with section 138I of the Act or, in the case of things done by the Financial Services Authority before 1st April 2013, section 155 of the Act.

(8) In this article, “credit-related regulated activities” means the activities which will, from 1st April 2014, be regulated activities by virtue of Part 2 of this Order.

Credit-related rules made by the PRA

62.—(1) This article applies to rules made by the PRA which relate to credit-related regulated activities or the carrying on of those activities.

(2) Section 138J(2)(a) of the Act (cost benefit analysis) does not apply in relation to a draft of rules to which this article applies which are the same as, or substantially the same as, any of the Consumer Credit Act provisions or which have the same, or substantially the same, effect as any such provisions.

- (3) For the purposes of this article, the “Consumer Credit Act provisions” are—
 - (a) the Consumer Credit Act 1974,
 - (b) any subordinate legislation made, or guidance issued, under that Act, and
 - (c) any notice issued by the OFT under section 86A of that Act⁽²³⁴⁾ (information sheets on arrears and defaults),

disregarding the effect of article 20 (amendments of the Consumer Credit Act 1974) and any order made before 1st April 2014 under section 107 of the Financial Services Act 2012.

(4) Section 138J of the Act (consultation by the PRA) is to apply as if for subsections (7) and (8) there were substituted—

(234) Inserted by section 8 of the Consumer Credit Act 2006.

- “(7) “Cost benefit analysis” means—
- (a) an analysis of the difference between the costs and benefits of the Consumer Credit Act provisions and the costs and benefits that will arise—
 - (i) if the proposed rules are made, or
 - (ii) if subsection (5) applies, from the rules that have been made, and
 - (b) subject to subsection (8), an estimate of that difference.

- (7A) For the purposes of subsection (7), the “Consumer Credit Act provisions” are—
- (a) the Consumer Credit Act 1974,
 - (b) any subordinate legislation made, or guidance issued, under that Act, and
 - (c) any notice issued by the OFT under section 86A of that Act (information sheets on arrears and defaults),

disregarding the effect of article 20 (amendments of the Consumer Credit Act 1974) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 and any order made before 1st April 2014 under section 107 of the Financial Services Act 2012.

- (8) If, in the opinion of the PRA—
- (a) the difference referred to in subsection (7) cannot reasonably be estimated; or
 - (b) it is not reasonably practicable to produce an estimate,
- the cost benefit analysis need not estimate the difference but must include a statement of the PRA’s opinion and an explanation of it.”.

(5) The requirements of section 138J of the Act (as modified above) in so far as they apply to a proposal to make rules to which this article applies may be satisfied by things done (wholly or in part) before the date on which this article comes into force.

- (6) For the purposes of paragraph (4)—
- (a) it is immaterial if, when the things were done, they were not compatible with section 138J of the Act or, in the case of things done by the Financial Services Authority before 1st April 2013, section 155 of the Act;
 - (b) the requirements may be satisfied by things done by the Financial Services Authority.

(7) In this article, “credit-related regulated activities” means the activities which will, from 1st April 2014, be regulated activities by virtue of Part 2 of this Order.

Designation of provisions made under the 1974 Act

63.—(1) The FCA may designate a relevant instrument, or part of a relevant instrument, if the FCA considers it necessary or expedient to do so in consequence of any provision made by or under this Order.

(2) If the FCA designates a relevant instrument or part of such an instrument, in accordance with this article, the FCA must specify whether the instrument or part is to be treated as having been made by the FCA as a rule under section 137A of the Act or under a specified provision of the Regulated Activities Order (“the specified section or provision”).

(3) An instrument or part which is designated by the FCA in accordance with this article is to be treated for all purposes as having been made as a rule under the specified section or provision.

(4) The FCA may make such modifications to a relevant instrument or part designated, or being designated, as it considers necessary or expedient in consequence of any provision made by this Order.

- (5) For the purposes of this article and article 64—

“relevant instrument” means any subordinate legislation or part of any subordinate legislation which is—

- (a) made under Part 2 of the 1974 Act (irrespective of whether it is also made under section 182 of that Act), and
- (b) revoked by this Order;

“specified” means specified by the FCA in a designating instrument.

Designating instruments

64.—(1) To designate or modify a relevant instrument or part of a relevant instrument, the FCA must make an instrument in writing which specifies, or more than one instrument in writing which between them specify—

- (a) the relevant instrument or part,
- (b) any modifications being made to the relevant instrument or part,
- (c) the date on which the designation is to come into effect, and
- (d) whether the instrument or part is to be treated as having been made by the FCA as a rule under section 137A of the Act or under a specified provision of the Regulated Activities Order.

(2) The FCA must publish each designating instrument in the way appearing to it to be best calculated to bring it to the attention of the public.

(3) A person is not to be taken to have contravened a relevant instrument designated by the FCA if the person shows that, at the time of the alleged contravention, the designating instrument concerned had not been published.

(4) A designating instrument is to be treated as a rule-making instrument for the purposes of section 138H (verification of rules) of the Act⁽²³⁵⁾.

(5) A designating instrument may contain provision other than that required by paragraph (1).

(6) The making of a designating instrument is a legislative function of the FCA for the purposes of paragraph 8(2) of Schedule 1ZA to the Act⁽²³⁶⁾ (arrangements for discharging functions).

CHAPTER 6

Miscellaneous

Definition of “consumers”

65.—(1) For the purposes of the provisions listed in paragraph (3), “consumers” includes persons—

- (a) who before 1st April 2014 used a relevant credit service,
- (b) who have rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons, or
- (c) who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them.

(2) For the purposes of paragraph (1), “relevant credit services” are services provided—

- (i) by a person who held or was covered by a licence under the 1974 Act, or

⁽²³⁵⁾ Section 138H was inserted by section 24 of the Financial Services Act 2012.

⁽²³⁶⁾ Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012.

- (ii) in carrying on a consumer credit business or an ancillary credit business (in each case, within the meaning of the 1974 Act).
- (3) The provisions are—
- (a) section 1G of the Act(**237**) (meaning of consumer);
 - (b) section 1Q of the Act (Consumer Panel);
 - (c) section 391(6)(b) of the Act(**238**) (publication);
 - (d) section 68 of the Financial Services Act 2012 (cases in which Treasury may arrange independent inquiries).
- (4) For the purposes of this article—
- (a) where a person provided a service mentioned in paragraph (1) as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service;
 - (b) a person who deals, or dealt, with another person (“A”) in the course of A providing a service mentioned in paragraph (1) is to be treated as using, or having used, the service.

Information sharing

66.—(1) The OFT may disclose to the FCA any information which the OFT considers is necessary or expedient to disclose to the FCA in preparation for the commencement of any provision of this Order or any order made under section 107 of the Financial Services Act 2012 which confers functions on the FCA.

(2) A local weights and measures authority in England, Wales or Scotland and the Department of Enterprise, Trade and Investment in Northern Ireland may disclose to the FCA any information which that person considers is necessary or expedient to disclose to the FCA in preparation for the commencement of any provision of this Order or any order made under section 107 of the Financial Services Act 2012 which confers functions on the FCA.

Date

Name
Name
Two of the Lords Commissioners of Her
Majesty’s Treasury

(237) Section 1G was inserted by section 6 of the Financial Services Act 2012.

(238) Section 391(6) was substituted by Schedule 9 to the Financial Services Act 2012.