
DRAFT STATUTORY INSTRUMENTS

2013 No.

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

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)(1), 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.

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

(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)(2)—

(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(**3**) (and accordingly any activity of one of those kinds, when carried on by way of business, is a regulated activity).”.

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);

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

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

- (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⁽⁴⁾) acting in the course of contentious business (as defined in section 87(1) of that Act⁽⁵⁾);
- (c) a solicitor within the meaning of the Solicitors (Scotland) Act 1980⁽⁶⁾ 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⁽⁷⁾;
- (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)—

(4) 1974 c.47.

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

(6) 1980 c.46.

(7) S.I. 1976/582 (N.I. 12).

“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⁽⁸⁾);

“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)⁽⁹⁾.

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

⁽⁸⁾ 1981 c.54.

⁽⁹⁾ Inserted by S.I. 2002/1776 and amended by S.I. 2004/3379.

- (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”)(**10**), 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

(10) 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](#).

- (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);
 - “relevant person” has the meaning given in article 36H.”.

Activities relating to debt

- 5. After article 39C(11) (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(12);
 - (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(13));

“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)(14), 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⁽¹⁵⁾);
- (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⁽¹⁶⁾);
- (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⁽¹⁷⁾);

⁽¹⁵⁾ 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).

⁽¹⁶⁾ 1986 c.53.

⁽¹⁷⁾ 2008 c.17.

(b) in Scotland, the Scottish Ministers or a registered social landlord (within the meaning of the Housing (Scotland) Act 2010⁽¹⁸⁾);

(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,

(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⁽¹⁹⁾,

(b) section 156(4) of that Act as it has effect by virtue of section 17 of the Housing Act 1996⁽²⁰⁾ (the right to acquire), or

(c) article 154(1)(a) of the Housing (Northern Ireland) Order 1981⁽²¹⁾.

(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

⁽¹⁸⁾ 2010 asp17.

⁽¹⁹⁾ 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.

⁽²⁰⁾ 1996 c.52. Amended by sections 62 and 63 of the Housing and Regeneration Act 2008.

⁽²¹⁾ S.R. 1981/156 (N.I. 3).

- (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—
- (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⁽²²⁾;
- (b) the Credit Unions (Northern Ireland) Order 1985⁽²³⁾;

“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;

⁽²²⁾ 1979 c.34.

⁽²³⁾ S.I. 1985/1205 (N.I. 12).

“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;

“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(24), 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)(25), 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—

(24) Inserted by S.I. 2009/1342.

(25) Amended by S.I. 2002/682, S.I. 2006/3384 and S.I. 2009/1389.

- (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(26));

“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)(**27**), 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).