
DRAFT STATUTORY INSTRUMENTS

2013 No.

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

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)(**1**)—

(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)(**2**) are omitted.

(5) Section 226A (consumer credit jurisdiction)(**3**) is omitted.

(6) In section 227 (voluntary jurisdiction)(**4**), in subsection (2)(e), omit “or the consumer credit jurisdiction”.

(7) In section 228 (determination under the compulsory jurisdiction)(**5**), in subsection (1), omit “and to the consumer credit jurisdiction”.

(8) In section 229 (awards)(**6**)—

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

(b) omit subsection (4A);

(c) in subsection (8)(b), omit “or (as the case may be) Part 3A of that Schedule(**7**)”;

(d) for subsection (11), substitute—

“(11) “Specified” means specified in compulsory jurisdiction rules.”;

(e) omit subsection (12).

(9) In section 230 (costs)(**8**)—

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

(2) 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.

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

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

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

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

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

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

- (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)(9) is omitted.
- (11) In section 234D (reference by scheme operator or regulated person)(10), in subsection (6)(c)(i), omit “or the consumer credit jurisdiction”.
- (12) In section 328 (directions in relation to the general prohibition)(11), 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](#)(12)”.
- (13) In section 353 (removal of other restrictions on disclosure)(13), in subsection (1), omit paragraph (c).
- (14) In section 401 (proceedings for offences)(14), omit subsection (4).
- (15) In section 404E (meaning of “consumers”)(15)—
- (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)(16)—
- (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(17)—
- (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(18), omit sub-paragraphs (3) and (4);
 - (b) omit paragraph 23(19).
- (19) In Schedule 6 (threshold conditions)(20)—
- (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.”;

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

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

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

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

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

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

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

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

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

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

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

(20) Amended by [S.I. 2013/555](#).

- (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,
 - (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⁽²¹⁾;

“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;

(21) 2011 c.16.

“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)(**22**) is omitted.

(21) In Schedule 17 (the ombudsman scheme)(**23**)—

- (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—

- (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

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

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

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)(**24**).

(9) Sections 165 (regulator’s power to require information: authorised persons etc.)(**25**) and 167 (appointment of persons to carry out general investigations)(**26**) apply as if each reference to an 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).

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

(25) 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](#).

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