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## STATUTORY INSTRUMENTS

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# 2013 No. 1881

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

### PART 2

#### Amendments of the Regulated Activities Order

##### Entering into etc. a regulated credit agreement

6. After article 60A (information society services) <sup>F1</sup>, 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

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- (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)—

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- (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 <sup>F2</sup>);
- (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 <sup>F3</sup>);
- (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.

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(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 <sup>F4</sup>);
- (b) in Scotland, the Scottish Ministers or a registered social landlord (within the meaning of the Housing (Scotland) Act 2010 <sup>F5</sup>;
- (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 <sup>F6</sup>,
- (b) section 156(4) of that Act as it has effect by virtue of section 17 of the Housing Act 1996 <sup>F7</sup> (the right to acquire), or
- (c) article 154(1)(a) of the Housing (Northern Ireland) Order 1981 <sup>F8</sup>.

(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,

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- (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—
  - (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,

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- (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

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- (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,

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- (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—



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- (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—

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- (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 <sup>F9</sup>;
- (b) the Credit Unions (Northern Ireland) Order 1985 <sup>F10</sup>;

“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,

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- (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;

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“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;

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- (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,

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- (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).”.

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- F1** Inserted by [S.I. 2002/1776](#).
- F2** [1899 c.46](#). Section 7 has been repealed in relation to Scotland by the [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), [Schedule 13](#), Part 1.
- F3** [1986 c.53](#).
- F4** [2008 c.17](#).
- F5** [2010 asp 17](#).
- F6** Section 156(4) amended by the [Government of Wales Act 1998 \(c.38\)](#), [Schedule 16](#), paragraph 5, the [Housing and Regeneration Act 2008 \(c.17\)](#), [section 307](#), and [S.I. 2001/369](#) and [2010/866](#).
- F7** [1996 c.52](#). Amended by the Housing and Regeneration Act 2008, sections 62 and 63.
- F8** [S.R. 1981/156 \(N.I. 3\)](#).
- F9** [1979 c.34](#).
- F10** [S.I. 1985/1205 \(N.I. 12\)](#).

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

- Order power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 2](#)
- Order revoked by [2023 c. 29 Sch. 1 Pt. 2](#)