
STATUTORY INSTRUMENTS

2013 No. 1881

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

PART 5

Amendments of the Consumer Credit Act 1974 etc.

Amendments of the 1974 Act

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

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

(3) In section 8 (consumer credit agreements)(2), for subsection (3) substitute—

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

(4) In section 15 (consumer hire agreements)(3) for subsection (2) substitute—

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

(5) Section 16 (exempt agreements)(4) is omitted.

(6) Section 16A (exemption relating to high net worth debtors and hirers)(5) is omitted.

(7) Section 16B (exemption relating to businesses)(6) is omitted.

(8) Section 16C (exemption relating to investment properties)(7) is omitted.

(9) For section 20 (total charge for credit), substitute—

“Total charge for credit

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

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- (1) Part 1 was amended by the Enterprise Act 2002 (c.40), Schedule 25, paragraph 6(1) to (5) and Schedule 26, the Tribunals and Inquiries Act 1992, Schedule 4, and sections 27, 44, 51, 58, 61, 62 and 70 of, and Schedule 4 to, the Consumer Credit Act 2006 (c.14) and S.I. 2009/1835.
- (2) Amended by sections 2 and 5 of, and Schedule 4 to, the Consumer Credit Act 2006 and S.I. 2008/2826.
- (3) Repealed in part by Schedule 4 to the Consumer Credit Act 2006.
- (4) Amended by the Telecommunications Act 1984 (c.12), Schedule 4, paragraph 60, the Building Societies Act 1986 (c.53), Schedule 18, Part 1, paragraph 10(2) and Schedule 19, Part 1, the Housing and Planning Act 1986 (c.63), section 22, the Banking Act 1987 (c.22), section 88, the Housing Act 1996 (c.52), Schedule 19, Part 14, the Communications Act 2003 (c.21), Schedule 17, paragraph 47, the Charities Act 2006 (c.50), Schedule 8, paragraph 56, the Consumer Credit Act 2006 (c.14), section 22 and Schedule 4, the Financial Services Act 2012, Schedule 18, Part 2, paragraph 37(1) and (2), and S.I. 1997/627, 2001/544, 2001/3649, 2006/2383, 2009/1941 and 2010/866.
- (5) Inserted by of the Consumer Credit Act 2006, section 3.
- (6) Inserted by of the Consumer Credit Act 2006, section 4 and amended by the Energy Act 2011 (c.16), section 25.
- (7) Inserted by S.I. 2008/2826.

- (10) Part 3 (sections 21 to 41ZB) (licensing of credit and hire business)(8) is omitted(9).
- (11) Section 43 (advertisements to which Part IV applies)(10) and the heading immediately before it are omitted.
- (12) Section 44 (form and content of advertisements) is omitted.
- (13) Section 45 (prohibition of advertisement where goods etc. not sold for cash) is omitted.
- (14) Section 47 (advertising infringements)(11) is omitted.
- (15) Section 51 (prohibition of unsolicited credit-tokens) is omitted.
- (16) Section 51A (restrictions on provision of credit card cheques)(12) is omitted.
- (17) Section 51B (section 51A: exemption for business) is omitted.
- (18) Section 52 (quotations)(13) and the heading immediately before it are omitted.
- (19) Section 53 (duty to display information)(14) is omitted.
- (20) Section 54 (conduct of business regulations)(15) is omitted.
- (21) Section 55A (pre-contractual explanations etc.)(16) is omitted.
- (22) Section 55B (assessment of creditworthiness) is omitted.
- (23) In section 55C (copy of draft consumer credit agreement), for subsection (5) substitute—
“(5) Article 60C(5) and (6) of the Regulated Activities Order applies for the purposes of subsection (4)(d).”.
- (24) In section 60 (form and content of agreements)(17), for subsection (6) substitute—
“(6) Article 60C(5) and (6) of the Regulated Activities Order applies for the purposes of subsection (5)(d).”.
- (25) In section 61A (duty to supply copy of executed consumer credit agreement)(18), for subsection (7) substitute—
“(7) Article 60C(5) and (6) of the Regulated Activities Order applies for the purposes of subsection (6)(b)(iii).
- (8) In this section, “credit intermediary” means a person who in the course of business—
- (a) carries on any of the activities specified in article 36A(1)(d) to (f) of the Regulated Activities Order for a consideration that is or includes a financial consideration, and
 - (b) does not do so as a creditor.”.
- (26) In section 74 (exclusion of certain agreements from Part V)(19)—

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- (8) Part 3 is amended by the Enterprise Act 2002, Schedule 25, paragraph 6(1) and (7) to (21), the Consumer Credit Act 2006, sections 28 to 55, the Energy Act 2006, section 26, the Financial Services Act 2010, section 24 and Schedule 2, Part 2, paragraph 36, the Financial Services Act 2012, section 108 and Schedule 18, Part 2, paragraph 37(1) and (3) and (4), and [S.I. 2001/3649](#), [2007/126](#), [2009/1835](#) and [2011/99](#).
- (9) One consequence of this repeal is that any licences issued by the OFT under the 1974 Act will cease to have effect on 1st April 2014. Article 56 of this Order makes transitional provision in connection with licences which have effect immediately before that date.
- (10) Amended by the Contracts (Applicable Law) Act 1990 (c.36), section 5 and Schedule 4, paragraph 2, the Consumer Credit Act 2006, Schedule 4, and [S.I. 2001/544](#).
- (11) Amended by [S.I.2008/1277](#).
- (12) Sections 51A and 51B were inserted by the Financial Services Act 2010, section 15.
- (13) Amended by [S.I. 2001/544](#).
- (14) Amended by [S.I. 2001/544](#) and [S.I. 2006/2383](#).
- (15) Amended by [S.I. 2001/3649](#).
- (16) Sections 55A to 55C were inserted by [S.I. 2010/1010](#).
- (17) Amended by the Enterprise Act 2002, Schedule 25, paragraph 6(1) and (23), and [S.I. 2010/1010](#).
- (18) Inserted by [S.I. 2010/1010](#).
- (19) Subsections (1A) to (1F) were substituted by [S.I. 2010/1010](#).

- (a) in subsection (1B), omit paragraph (a);
 - (b) in subsection (1C), omit paragraph (b);
 - (c) in subsection (1D), omit paragraphs (b) and (c);
 - (d) in subsection (1F), omit paragraphs (b) and (c).
- (27) Part 5A (sections 74A to 74B) (current account overdrafts)(**20**) is omitted.
- (28) In section 75A (further provision for liability of creditor for breaches by supplier)(**21**), for subsection (7) substitute—
- “(7) Article 60C(5) and (6) of the Regulated Activities Order applies for the purposes of subsection (6)(c).”.
- (29) In section 77B (fixed-sum credit agreement: statement of account to be provided on request)(**22**), for subsection (10) substitute—
- “(10) Article 60C(5) and (6) of the Regulated Activities Order applies for the purposes of subsection (9)(d).”.
- (30) Section 81 (appropriation of payments) is omitted.
- (31) In section 82 (variation of agreements)(**23**)—
- (a) in subsection (2A), omit “as a result of section 16(6C) or 16C”;
 - (b) in subsection (3)(b), omit “as a result of section 16(6C) or 16C”;
 - (c) in subsection (5A), omit “as a result of section 16(6C) or 16C”;
 - (d) after subsection (7) insert—
- “(8) In this section, an “exempt agreement” means an agreement which is an exempt agreement for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) (regulated mortgage contracts and regulated home purchase plans) or article 60D (exemption relating to the purchase of land for non-residential purposes) of that Order.”.
- (32) Section 82A (assignment of rights)(**24**) is omitted.
- (33) In section 93 (interest not to be increased on default), in paragraph (b) for “section 20(2)” substitute “rules made by the FCA under paragraph (2)(d) of article 60M of the Regulated Activities Order”.
- (34) Section 112 (realisation of securities) is omitted.
- (35) In section 113 (Act not to be evaded by use of security)(**25**), in subsection (3)(c), for “40(2), 65(1), 124(1) or 149(2)” substitute “65(1) or 124(1) or a notice under section 28A of the Financial Services and Markets Act 2000(**26**)”.
- (36) In section 114(3) (pawn-receipts)(**27**), for “115” substitute “117”.
- (37) Section 115 (penalty for failure to supply copies of pledge agreement, etc.) is omitted.
- (38) In section 126 (enforcement of land mortgages), after “regulated agreement” insert “or a regulated mortgage contract (within the meaning of the Regulated Activities Order)”.

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

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

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

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

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

(25) Amended by the Minors’ Contracts Act 1987 (c.13), section 4, and the Enterprise Act 2002, Schedule 25, paragraph 6(1) and (27).

(26) Inserted by the Financial Services Act 2012, Schedule 9, Part 2 paragraph 8.

(27) Amended by the Banking Act 1979 (c.37), section 38.

(39) In section 140A(5) (unfair relationships between creditors and debtors)(**28**), for “by virtue of section 16(6C)” substitute “for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)”.

(40) Section 140D (advice and information)(**29**) is omitted.

(41) In section 145 (types of ancillary credit business)(**30**)—

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

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

(b) for subsection (5), substitute—

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

(c) for subsection (6), substitute—

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

(d) for subsection (7), substitute—

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

(e) for subsection (7A), substitute—

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

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

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

(g) for subsection (8) substitute—

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

(42) Sections 146 to 152 (including the heading immediately before section 147) (**31**) are omitted.

(43) In section 155 (right to recover brokerage fees)(**32**)—

(a) in subsection (2)—

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

(29) Inserted by the Consumer Credit Act 2006, section 22.

(30) Amended by the Contracts (Applicable Law) Act 1990, Schedule 4, paragraph 2, the Consumer Credit Act 2006, sections 5, 24 and 25, and [S.I. 2003/1475](#).

(31) Section 146 was amended by the Arbitration Act 1996 ([c.23](#)), Schedule 3, paragraph 26, the Consumer Credit Act 2006, section 24, the Legal Services Act 2007 ([c.29](#)), Schedule 21, paragraph 31, [S.I. 2003/1475](#) and [S.I. 2006/2383](#). Section 147 was repealed in part by the Consumer Credit Act 2006, section 70 and Schedule 4. Section 148 was amended by the Enterprise Act 2002, Schedule 25, paragraph 6(1) and (28), and [S.I. 2001/3649](#). Section 149 was amended by the Enterprise Act 2002, Schedule 25, paragraph 6(1) and (29), and [S.I. 2001/3649](#). Section 150 was repealed by the Consumer Credit Act 2006, Schedule 4. Section 151 was amended by the Consumer Credit Act 2006, section 25, [S.I. 2001/544](#) and [S.I. 2008/1277](#). Section 152 was amended by the Consumer Credit Act 2006, section 25.

(32) Amended by [S.I. 1998/997](#) and [S.I. 2003/1475](#).

- (i) in paragraph (b), for “such as is referred to in section 145(2)(a)(ii)” substitute “desiring to obtain credit to finance the acquisition or provision of a dwelling occupied or to be occupied by that individual or a relative of that individual”;
- (ii) for paragraph (c) and the “or” before it, substitute—
 - “(c) a credit agreement which is an exempt agreement for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order, or
 - (d) an agreement which is not a regulated credit agreement or a regulated consumer hire agreement but which would be such an agreement if the law applicable to the agreement were the law of a part of the United Kingdom.”;
- (b) in subsection (2A)(a), for “section 146(5A)” substitute “article 36E of the Regulated Activities Order (activities in relation to certain agreements relating to land)”.
- (44) Section 156 (entry into agreements)(**33**) and the heading immediately before it are omitted.
- (45) In section 159(5) (correction of wrong information)(**34**), for “the specified fee” substitute “the prescribed fee”.
- (46) In section 160(4)(c) (alternative procedure for business consumers)(**35**), for “the specified fee” substitute “the prescribed fee”.
- (47) Section 160A (credit intermediaries)(**36**) is omitted.
- (48) In section 161 (enforcement authorities)(**37**)—
 - (a) paragraph (a) of subsection (1) is omitted;
 - (b) after subsection (1), insert—
 - “(1A) Subsection (1) does not limit any function of the FCA in relation to the enforcement of this Act or regulations made under it.”.
- (49) In section 162 (powers of entry and inspection)(**38**), subsections (5) and (8) are omitted.
- (50) In section 165 (obstruction of authorised officers)(**39**), subsection (1A) is omitted.
- (51) In section 167 (penalties), subsection (2) is omitted.
- (52) In section 171 (onus of proof in various proceedings), subsection (3) is omitted.
- (53) In section 173(3) (contracting-out forbidden)(**40**), for “OFT” substitute “FCA”.
- (54) In section 174A (powers to require provision of information or documents etc)(**41**), for subsection (5) substitute—
 - “(5) In this section, “relevant authority” means an enforcement authority or an officer of an enforcement authority.”.
- (55) In section 180(2) (power to prescribe form etc. of copies), omit “(except section 35)”.
- (56) In section 181 (power to alter monetary limits etc)(**42**)—

(33) Amended by the Consumer Credit Act 2006, section 25.

(34) Amended by the Data Protection Act 1998 (c.29), section 62.

(35) Amended by the Data Protection Act 1998, section 62, and the Enterprise Act 2002, Schedule 25, paragraph 6(1) and (31).

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

(37) Amended by the Enterprise Act 2002 by Schedule 25, paragraph 6(1) and (32), and S.I. 2001/3649. There are other amending instruments but none is relevant to this Order.

(38) Subsection (5) was amended by the Enterprise Act 2002, Schedule 25, paragraph 6(1) and (33). Subsection (8) was inserted by the Consumer Credit Act 2006, section 51. There are other amending instruments but none is relevant to this Order.

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

(40) Amended by the Enterprise Act 2002, Schedule 25, paragraph 6(1) and (36).

(41) Inserted by the Consumer Credit Act 2006, section 51.

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

- (a) in subsection (1), omit “16B(1),” “39A(3),” and “118(1)(b), 120(1)(a),”;
- (b) in subsection (2), omit “16B(1),” and “39A(3),”.
- (57) In section 182 (regulations and orders)(**43**), in subsection (1), omit “2(1)(a),”.
- (58) In section 183 (determinations etc. by OFT)(**44**), omit subsection (2).
- (59) In section 185 (agreement with more than one debtor or hirer)(**45**), omit subsection (1A).
- (60) In section 189 (definitions)—
- (a) in subsection (1)—
- (i) omit the definitions of “advertiser”, “appeal period”(46), “exempt agreement”(47), “group licence”, “licence”(48), “licensed”, “licensee”, “quotation”, “register”(49), “specified fee”, “standard licence” and “unlicensed”;
- (ii) in the definition of “credit information services”(50), for “has the meaning given by” substitute “is to be read in accordance with”;
- (iii) in the definition of “credit reference agency”, for “has the meaning given by” substitute “is to be read in accordance with”;
- (iv) in the definition of “deposit”(51), omit “(except in section 16(10) and 25(1B))”;
- (v) after the definition of “redemption period” insert—
- ““Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;”;
- (vi) for the definition of “regulated agreement” substitute—
- ““regulated agreement” means a consumer credit agreement which is a regulated agreement (within the meaning of section 8(3)) or a consumer hire agreement which is a regulated agreement (within the meaning of section 15(2));”;
- (vii) for the definition of “total charge for credit” substitute—
- ““total charge for credit” has the meaning given by section 20;”;
- (b) in subsection (1A)(52), omit “36E(3),”;
- (c) in subsection (2A)(53), for the words from “subsections (2) to (5)” to the end, substitute “article 60C(5) and (6) of the Regulated Activities Order applies”;
- (d) in subsection (5)(54), omit “or the OFT” in the first place and “or the OFT (as the case may be)”.
- (61) Section 189A (meaning of “consumer credit EEA firm”)(55) is omitted.
- (62) In section 190 (financial provisions)(56), subsection (2) is omitted.

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

(44) Substituted by the Consumer Credit Act 2006, section 64.

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

(46) Amended by S.I. 2009/1835.

(47) Amended by the Consumer Credit Act 2006, section 5, and S.I. 2007/3300.

(48) Amended by the Consumer Credit Act 2006, Schedule 4.

(49) Amended by the Enterprise Act 2002, Schedule 25, paragraph 6(1) and (38).

(50) Inserted by the Consumer Credit Act 2006, section 25.

(51) The definition of “deposit” was amended by S.I. 2001/3649.

(52) Subsection (1A) was inserted by the Consumer Credit Act 2006, section 27(3), and amended by S.I. 2009/1835.

(53) Subsection (2A) was inserted by S.I. 2010/1010.

(54) Subsection (5) was amended by the Enterprise Act 2002, Schedule 25, paragraph 6(38)(b).

(55) Section 189A was inserted by S.I. 2001/3649.

(56) Section 190(2) was amended by the Enterprise Act 2002, section 2, and the Consumer Credit Act 2006, section 65.

(63) In section 191 (special provisions as to Northern Ireland)(**57**), subsections (1) and (2) are omitted.

(64) In Schedule 1 (prosecution and punishment of offences)(**58**), in the table, omit the entries for sections 7, 39(1), 39(2), 39(3), 45, 47(1), 51(1), 51A(1), 115, 160A, 167(2) and 174(5).

(65) In Schedule 2 (examples of use of new terminology)—

- (a) in Part 1, omit the entry for “advertiser”;
- (b) in example 5, for “, according to regulations made under section 20(1), constitutes the total charge for credit” substitute “constitutes the total charge for credit (within the meaning given by section 20)”.

(66) In Schedule 3 (transitional and commencement provisions)(**59**)—

- (a) omit paragraphs 5 to 7(**60**) and the headings immediately before each of those paragraphs;
- (b) omit paragraph 11(**61**) and the heading immediately before it;
- (c) omit paragraphs 44, 45 and 46(**62**) and the headings immediately before each of those paragraphs.

(57) Section 191(1) and (2) was amended by the Enterprise Act 2002, Schedule 25, paragraph 6(39), and the Consumer Credit Act 2006, section 27(4).

(58) The entry for section 7 was amended by the Magistrates’ Courts Act 1980 (c.43), section 32(2), and by the Enterprise Act 2002, Schedule 25, paragraph 6(40), the entries for sections 39(1), 39(2), 39(3), 45, 47(1), 51(1), 167(2) and 174(5) were amended by section 32(2) of that Act, the entry for section 51A(1) was inserted by the Financial Services Act 2010, section 15(3), the entry for section 115 was amended by the Criminal Justice Act 1982 (c.48), section 46(1), and the entry for section 160A was inserted by S.I. 2010/1010.

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

(60) Paragraph 5 was substituted by S.I. 1989/1128, paragraph 6 was amended by S.I. 1975/2123 and paragraph 7 was substituted by S.I. 1977/325.

(61) Paragraph 11 was amended by S.I. 1977/802.

(62) Paragraphs 44 to 46 were amended by S.I. 1977/2163.