

2014 No. 208

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014

Made - - - - *3rd February 2014*

Laid before Parliament *5th February 2014*

Coming into force in accordance with article 1

The Treasury are a government department designated for the purpose of section 2(2) of the European Communities Act 1972(a) in relation to financial services(b).

The Treasury make the following Order in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 426(1) of the Financial Services and Markets Act 2000(c).

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014.

(2) This article and articles 6 and 8 come into force on 26th February 2014.

(3) This Order comes into force on 26th February 2014 for the purposes of the FCA(d)—

- (a) making rules;
- (b) giving guidance;
- (c) imposing requirements or giving directions.

(4) This Order comes into force on 1st April 2014, to the extent it is not already in force, immediately after—

- (a) the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013(e) comes into force, to the extent that it is not already in force, in accordance with article 1(6) (citation, commencement and interpretation) of that Order, and

(a) 1972 c. 68. Amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27, and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1.

(b) S.I. 2012/1759.

(c) Section 22 and paragraph 25 of Schedule 2 amended by the Financial Services Act 2012 (c.21), sections 7 and 8.

(d) Section 417 of the Financial Services and Markets Act 2000, as amended by the Financial Services Act 2012, section 48, defines the “FCA” as meaning the Financial Conduct Authority.

(e) S.I. 2013/1881. Article 1(6) of that Order brings that Order into force on 1st April 2014 to the extent that it is not already in force.

- (b) the Financial Services Act 2012 (Consumer Credit) Order 2013^(a) comes into force, to the extent that it is not already in force, in accordance with article 1(1)(b) (citation, commencement and interpretation) of that Order.

Applications under section 28A of the Financial Services and Markets Act 2000

2.—(1) Section 55U(4), (5), (7) and (8) of the Financial Services and Markets Act 2000 (applications under this Part)^(b) apply to an application made under section 28A of that Act (credit-related agreements made unenforceable by section 26, 26A or 27)^(c) as if the application were an application made to the FCA under Part 4A of that Act (permission to carry on regulated activities)^(d).

(2) Where a person (“A”) has the right to exercise rights under an agreement entered into by another person (“B”), section 28A of the Financial Services and Markets Act 2000 applies as if the references to the relevant firm in subsections (3) and (7) of that section include a reference to A.

The Financial Services (Distance Marketing) Regulations 2004

3.—(1) The Financial Services (Distance Marketing) Regulations 2004^(e) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) after the definition of “business” insert—

““the CMA” means the Competition and Markets Authority;”;

(b) omit the definition of “the OFT”;

(c) after the definition of “regulated consume credit agreement”, insert—

““the relevant regulator” means—

(a) in relation to a specified contract (within the meaning given in regulation 17) or any alleged breach concerning such a contract, the Authority; and

(b) in relation to any other contract or any alleged breach concerning such a contract, the CMA;”.

(3) In regulation 17 (enforcement authorities)—

(a) in paragraph (1)—

(i) in sub-paragraph (a), for “, the Authority is an enforcement authority” substitute—

“—

(i) the Authority, and

(ii) where the contract is a consumer credit contract—

(aa) in Great Britain, every local weights and measures authority, and

(bb) in Northern Ireland, the Department of Enterprise, Trade and Investment,

is an enforcement authority”;

(ii) in sub-paragraph (b), for “OFT” substitute “CMA”;

(iii) in sub-paragraph (c)(i), for “OFT” substitute “CMA”;

(b) in paragraph (2)—

(a) S.I. 2013/1882. Article 1(1)(b) of that Order brings that Order into force on 1st April 2014 to the extent that it is not already in force.

(b) Section 55U substituted by the Financial Services Act 2012 (c.21), section 11.

(c) Section 28A inserted by Financial Services Act 2012, Schedule 9, Part 2, paragraph 8

(d) Part 4A substituted by the Financial Services Act 2012, section 11.

(e) S.I. 2004/2095; amended by S.I. 2013/472, S.I. 2011/99 and S.I. 2013/1881. There are other amending instruments but none is relevant

- (i) in sub-paragraph (a), at the end, insert “or an activity which would constitute a regulated activity carried on by the supplier but for any of articles 60C to 60H of the Regulated Activities Order^(a)”;
 - (ii) in sub-paragraph (c), omit “or a supplier to whom the Authority has given a certificate under article 9C of the Regulated Activities Order (persons certified as small issuers etc)”;
- (c) after paragraph (2), insert—
- “(2A) For the purposes of paragraph (1) and regulation 22(6), a “consumer credit contract” means a contract the making or performance of which constitutes or is part of a regulated activity of the kind specified by a provision of the Regulated Activities Order listed in paragraph (2B) carried on by the supplier.
- (2B) The provisions are—
- (a) article 36A (credit broking);
 - (b) article 36H (operating an electronic system in relation to lending);
 - (c) article 39D (debt adjusting);
 - (d) article 39E (debt-counselling);
 - (e) article 39F (debt-collecting);
 - (f) article 39G (debt administration);
 - (g) article 60B (regulated credit agreements);
 - (h) article 60N (regulated consumer hire agreements);
 - (i) article 89A (providing credit information services);
 - (j) article 89B (providing credit references);
 - (k) article 64 (agreeing to carry on specified kinds of activity) in so far as it relates to an activity of the kind specified by a provision listed in sub-paragraphs (a) to (j).”.
- (4) In regulation 18 (consideration of complaints)—
- (a) in paragraph (1)(b), for “has notified the OFT that it agrees” substitute “has agreed, by notifying that authority or the relevant regulator,”;
 - (b) in paragraph (2), for “the OFT” substitute “another enforcement authority or the relevant regulator”.
- (5) In regulation 19(2) (injunctions to secure compliance)—
- (a) for “OFT”, in each place, substitute “relevant regulator”;
 - (b) omit “or the Authority”.
- (6) In the heading to regulation 20 (notification of undertakings and orders to the OFT), for “OFT” substitute “relevant regulator”.
- (7) In regulation 20—
- (a) for “OFT”, in each place, substitute “relevant regulator”;
 - (b) omit “and the Authority”.
- (8) In regulation 21 (publication, information and advice)—
- (a) in paragraph (1), for “OFT” substitute “relevant regulator”;
 - (b) in paragraphs (2) and (3), for “OFT and the Authority” substitute “relevant regulator”.
- (9) In regulation 22(6) (offences)—
- (a) after sub-paragraph (a), insert—

(a) Regulation 2 of S.I. 2004/2095 defines “the Regulated Activities Order” as meaning the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, S.I. 2001/544; articles 60C to 60H of that Order inserted by S.I. 2013/1881; article 9C inserted by S.I. 2002/682 and amended by S.I. 2006/3221 and S.I. 2013/472.

“(aa) in Great Britain, every local weights and measures authority and, in Northern Ireland, the Department of Enterprise, Trade and Investment may institute proceedings for an offence under these Regulations which relates to a consumer credit contract;”;

(b) in sub-paragraph (b), for “OFT” substitute “CMA”.

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

4. After article 72E (staff mortgage offers communicated to employees by third parties) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(a), insert—

“Credit agreements offered to employees by employers

72F.—(1) The financial promotion restriction does not apply to any communication which is made to an employee by or on behalf of a person in relation to an exempt staff loan.

(2) In this article, “an exempt staff loan” means a credit agreement within the meaning of article 60B (regulated credit agreements) of the Regulated Activities Order which is—

- (a) entered into by the employee as borrower and the employer, or an undertaking in the same group as the employer, as lender; and
- (b) an exempt agreement for the purposes of Chapter 14A (regulated credit agreements) of the Regulated Activities Order by virtue of a provision of article 60G (exempt agreements: exemptions relating to the total charge for credit) of that Order other than paragraph (2) of that article.”.

The Consumer Credit (Disclosure of Information) Regulations 2010

5. In the Consumer Credit (Disclosure of Information) Regulations 2010(b), in—

- (a) the entry in the second column of table 5 in Schedule 1 opposite the entry “If applicable Registration number”, and
- (b) the entry in the second column of table 5 in Schedule 3 opposite the entry “If applicable Registration number”,

for “[Consumer credit licence number and any other relevant registration number of the creditor.]” substitute “[The Firm Reference Number (FRN) (if any) or Interim Permission Number (if any), and any other relevant registration number of the creditor.]”.

Transitional provision relating to the Consumer Credit (Disclosure of Information) Regulations 2010

6.—(1) Pre-contract credit information (within the meaning given by regulation 1(2) of the Consumer Credit (Disclosure of Information) Regulations 2010(c)) disclosed to a debtor in the period specified in paragraph (2) which contains the information specified in paragraph (3) is to be treated as if it contained the information required by—

- (a) the entry in the second column of table 5 in Schedule 1 to the Consumer Credit (Disclosure of Information) Regulations 2010 opposite the entry “If applicable Registration number”;
- (b) the entry in the second column of table 5 in Schedule 3 to those Regulations opposite the entry “If applicable Registration number”.

(a) S.I. 2005/1529; article 72E inserted by S.I. 2010/905.

(b) S.I. 2010/1013; table 5 of Schedule 1 and table 5 of Schedule 3 amended by S.I. 2013/1881.

(c) S.I. 2010/1013. Table 5 of Schedule 1 and table 5 of Schedule 3 amended by S.I. 2013/1881.

(2) The period is the period of five months beginning on the day on which this article comes into force.

(3) The information is—

- (a) the consumer credit licence number (if any) of the creditor, which is valid before 1st April 2014,
- (b) the Firm Reference Number (FRN) (if any) or Interim Permission Number (if any) of the creditor, which is valid on or after 1st April 2014, and
- (c) any other relevant registration number of the creditor.

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

7.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013(a) is amended as follows.

(2) In article 48 (enforcement of agreements made by unlicensed trader), in paragraph (3)—

- (a) in the opening words of that paragraph, after “of the 1974” insert “Act”;
- (b) in sub-paragraph (c), in the text inserted as subsection (1B) of section 40 of the Consumer Credit Act 1974—
 - (i) in paragraph (a), for “subsection (2)” substitute “subsections (1) and (2)”;
 - (ii) in paragraph (c), for “subsection (1A)” substitute “section 40(1A) of the Consumer Credit Act 1974”.

(3) After article 48, insert—

“Enforcement of agreements for ancillary credit services

48A.—(1) Section 148(1) (agreement for services of unlicensed trader)(b) of the Consumer Credit Act 1974 and section 145 (types of ancillary credit business) of that Act, in so far as that section relates to section 148(1), continue to apply to a relevant agreement and for that purpose section 148 is to be treated as if—

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

(b) after subsection (1), there were inserted—

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

- (a) in section 28A, subsections (1), (2) and (3)(b) do not apply;
- (b) for section 28A(4) to (6), substitute—

“(4) In considering whether to allow the agreement to be enforced the FCA must have regard to whether the relevant firm reasonably believed that a licence under the Consumer Credit Act 1974 was not required by the trader to enter into the agreement.”;

(c) for section 28A(8), substitute—

(a) S.I. 2013/1881.

(b) Amended by the Enterprise Act 2002 (c.40), Schedule 25, paragraph 6(28).

(c) Sections 28A and 28B inserted by the Financial Services Act 2012 (c.21), Schedule 9, paragraph 8.

“(8) “The relevant firm” means the person who, disregarding the effect of section 148(1) of the Consumer Credit Act 1974, would be entitled to enforce the agreement.””.

(2) In paragraph (1), a “relevant agreement” means an agreement entered into before 1st April 2014 to which section 148(1) of the Consumer Credit Act 1974 applies on 31st March 2014.

Enforcement of agreements made on introductions by unlicensed credit-broker

48B.—(1) Section 149(1) (regulated agreements made on introductions by unlicensed credit broker)(a) of the Consumer Credit Act 1974 continues to apply to a relevant agreement and for that purpose section 149 is to be treated as if—

- (a) in subsection (1)—
 - (i) after “the OFT has”, in each place, there were inserted “before 1st April 2014;
 - (ii) after “applies to the agreement”, there were inserted “or the FCA has given a notice under section 28A of the Financial Services and Markets Act 2000(b) by virtue of subsection (1A);
- (b) after subsection (1), there were inserted—

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

- (a) in section 28A, subsections (1), (2) and (3)(b) do not apply;
- (b) for section 28A(4) to (6), substitute—

“(4) In considering whether to allow the agreement to be enforced the FCA must have regard to whether the relevant firm reasonably believed that a licence under the Consumer Credit Act 1974 was not required by the credit-broker when introducing the debtor or hirer to the creditor or owner.”;

- (c) for section 28A(8), substitute—

“(8) “The relevant firm” means the person who, disregarding the effect of section 149(1) of the Consumer Credit Act 1974, would be entitled to enforce the agreement.””.

(2) In paragraph (1), a “relevant agreement” means an agreement entered into before 1st April 2014 to which section 149(1) of the Consumer Credit Act 1974 applies on 31st March 2014.”.

(4) In article 58 (duration of interim permission)—

- (a) in paragraph (4)—
 - (i) in sub-paragraph (a), for “classes of person (including classes of person” substitute “a particular person or class of person (including a class of person”;
 - (ii) after sub-paragraph (c), insert—
 - “(ca) specify a date before which an application may not be made (“the opening date”), provided that the opening date is at least three months before the application date;”
 - ;

(b) after paragraph (4), insert—

“(5) Subject to article 59(5) and (5A), an application made before the opening date is to be treated for the purposes of sections 55A (application for permission) and 55V (determination of applications) of the Act(c) as if it had not been made.”.

(a) Amended by the Enterprise Act 2002 (c.40), Schedule 25, paragraph 6(29) and by S.I. 2001/3649.

(b) Sections 28A and 28B inserted by the Financial Services Act 2012 (c.21), Schedule 9, paragraph 8.

(c) Sections 55A and 55V substituted by the Financial Services Act 2012, section 11.

- (5) In article 59 (application of the Act to persons with an interim permission)—
- (a) after paragraph (2)(c), insert—
 - “(d) section 327(7) of the Act (exemption from the general prohibition)”;
 - (b) in paragraph (5)(a), after “a regulated activity” insert “other than a regulated activity for which A has interim permission”;
 - (c) after paragraph (5), insert —
 - “(5A) If the appropriate regulator treats the application as relating also to some or all of the regulated activities for which A has interim permission, article 58(5) does not apply in relation to the application.”.
- (6) After article 59, insert—

“Application of article 72B of the Regulated Activities Order to persons with an interim permission

59A.—(1) For the purposes of the definition of “provider” in article 72B (activities carried on by a provider of relevant goods or services) of the Regulated Activities Order^(a), any regulated activity of the kind specified by a provision of the Regulated Activities Order listed in paragraph (2) for which a person has interim permission are to be ignored.

- (2) The provisions are—
- (a) article 36A (credit broking);
 - (b) article 36H (operating an electronic system in relation to lending);
 - (c) article 39D (debt adjusting);
 - (d) article 39E (debt-counselling);
 - (e) article 39F (debt-collecting);
 - (f) article 39G (debt administration);
 - (g) article 60B (regulated credit agreements);
 - (h) article 60N (regulated consumer hire agreements);
 - (i) article 89A (providing credit information services);
 - (j) article 89B (providing credit references);
 - (k) article 64 (agreeing to carry on specified kinds of activity) in so far as it relates to an activity of the kind specified by a provision listed in sub-paragraphs (a) to (j).”.

Legal professional privilege

8.—(1) The FCA is entitled to claim legal professional privilege or, in Scotland, confidentiality of communications in respect of legally privileged information disclosed to the FCA by the Office of Fair Trading (“the OFT”).

(2) In this article, “legally privileged information” means information received or generated by the OFT, before 1st April 2014, in respect of which the OFT would have been able, before that date, to maintain a claim to legal professional privilege or, in Scotland, to confidentiality of communications in legal proceedings.

(3) For the purposes of this article, legally privileged information is to be treated as disclosed to the FCA by the OFT if it is contained in a document transferred by the OFT to the FCA—

- (a) under a transfer scheme made under Part 2 of Schedule 21 to the Financial Services Act 2012^(b) (property, rights and liabilities of Office of Fair Trading); or

(a) Inserted by S.I. 2003/1476; amended by S.I. 2007/3510, S.I. 2011/1265 and S.I. 2013/1881.
 (b) 2012 c.21.

- (b) otherwise in connection with functions of the FCA becoming exercisable in respect of an activity which—
- (i) ceases on 1st April 2014 to be an activity in respect of which a licence under section 21 of the Consumer Credit Act 1974 (businesses needing a licence)(a) is required or would be required but for the exemption conferred by subsection (2), (3) or (4) of that section or paragraph 15(3) in Part 2 of Schedule 3 to the Financial Services and Markets Act 2000 (grant of permission)(b), and
 - (ii) becomes on that date a regulated activity for the purposes of the Financial Services and Markets Act 2000.

*Sam Gyimah
Mark Lancaster*

3rd February 2014

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in relation to the regulation of consumer credit under the Financial Services and Markets Act 2000 (“the Act”).

Article 2, 4, 5, 6 and 7 make various supplemental, consequential and transitional provisions in consequence of provisions made by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 and the Financial Services Act 2012 (Consumer Credit) Order 2013.

Article 3 amends the Financial Services (Distance Marketing) Regulations 2004 (S.I. 2004/2095) (“the Distance Marketing Regulations”) which give effect in the United Kingdom to Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p 16). The Enterprise and Regulatory Reform Act 2013 (c.24) abolishes the Office of Fair Trading and transfers certain of its functions to the Competition and Markets Authority. The functions of the Office of Fair Trading relating to consumer credit are transferred to the Financial Conduct Authority by the Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), and various consumer credit related functions are conferred on the Financial Conduct Authority by virtue the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I 2013/1881). Article 3 exercises the power in section 2(2) of the European Communities Act 1972 (c.68) to amend the Distance Marketing Regulations accordingly.

Article 8 permits the Financial Conduct Authority to claim legal professional privilege where relevant in respect of information transferred to it by the Office of Fair Trading in connection with the transfer of the regulation of consumer credit.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.gov.uk and is published alongside the Order on www.legislation.gov.uk.

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- (a) 1974 c.39. Section 21 amended by the Consumer Credit Act 2006 (c.14), section 33, and the Energy Act 2011 (c.16), section 26.
 - (b) Paragraph 15(3) amended by the Consumer Credit Act 2006, section 33, and the Enterprise Act 2002 (c.40), Schedule 25, paragraph 40(1) and (19)(a).

£5.75

UK201402042 02/2014 19585

<http://www.legislation.gov.uk/id/uksi/2014/208>

ISBN 978-0-11-110921-2



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