
STATUTORY INSTRUMENTS

2014 No. 366

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) Order 2014**

PART 4

Amendments of secondary legislation

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

10.—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(1) (controlled activities) is amended as follows.

(2) After article 15(1) (introductions), insert—

“(1A) But paragraph (1) does not apply to any communication made with a view to or for the purpose of an introduction to a person who carries on an activity of the kind specified by—

- (a) paragraph 4B of Schedule 1;
- (b) paragraph 4C of that Schedule;
- (c) paragraph 11 of that Schedule, to the extent that it relates to that paragraph 4B or that paragraph 4C.”.

(3) After article 16(1) (exempt persons), insert—

“(1A) The financial promotion restriction also does not apply to any communication which is—

- (a) a non-real time communication or a solicited real time communication;
- (b) made by a person who is an appointed representative (within the meaning of section 39(2) of the Act) and is carrying on an activity to which sections 20(1) and (1A) and 23(1A) of the Act do not apply by virtue of section 39(1D); and
- (c) made for the purposes of that person’s business of carrying on a controlled activity which is also a regulated activity to which sections 20(1) and (1A) and 23(1A) of the Act do not apply by virtue of section 39(1D).”.

(4) In article 28B (real time communications: introductions)(2)—

- (a) in paragraph (1)(b)(ii), after “the general prohibition” insert “or in relation to which sections 20(1) and (1A) and 23(1A) of the Act do not apply by virtue of section 39(1D)”;
- (b) in paragraph (4)—
 - (i) after “paragraph” insert “4B, 4C, 5A, 5B,”;
 - (ii) for “or 10B” substitute “10B, 10BA or 10BB”.

(5) In article 29(2) (communications required or authorised by enactments)—

(1) [S.I. 2005/1529](#).
(2) Amended by [S.I. 2006/2383](#), [S.I. 2009/1342](#) and [S.I. 2013/1881](#).

- (a) after “paragraph”, in the first place, insert “4B.”;
 - (b) for “or 10B” substitute “, 10B, 10BA or 10BB”.
- (6) In article 55A(2) and (3) (non-real time communication by members of professions), after “investment” in each place, insert “and consumer credit-related”.
- (7) In article 61 (sale of goods and supply of services)—
- (a) in paragraph (1), in the definition of “supplier”, after “3 to 7” insert “, 10BA and 10BB”;
 - (b) in paragraph (3)—
 - (i) at the end of sub-paragraph (a), omit “or”;
 - (ii) after sub-paragraph (b), insert—
 - “(c) a relevant credit agreement (within the meaning of paragraph 28 of Schedule 1)(3); or
 - (d) a consumer hire agreement (within the meaning of paragraph 28 of Schedule 1)(4).”;
 - (c) after paragraph (3), insert—
 - “(4) The exemption in paragraph (2) also does not apply if the communication is made by a person carrying on, or in relation to, an activity of a kind specified in paragraph 4B of Schedule 1 (credit broking).”.
- (8) In Schedule 1(5) (controlled activities)—
- (a) after paragraph 4B(1) (credit broking), insert—
 - “(1A) But an activity is not a controlled activity falling within sub-paragraph (1) to the extent that it is a controlled activity falling within paragraph 10A (arranging qualifying credit etc.).”;
 - (b) in paragraph 4C (operating an electronic system in relation to lending)—
 - (i) in sub-paragraph (1), for “condition in paragraph (2) is” substitute “conditions in sub-paragraphs (2), (2A) and (2C) are”;
 - (ii) in sub-paragraph (2), after “The condition” insert “in this sub-paragraph”;
 - (iii) after sub-paragraph (2), insert—
 - “(2A) The condition in this sub-paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to—
 - (a) receive payments in respect of interest and capital due under the agreement from C, and
 - (b) make payments in respect of interest and capital due under the agreement to B.
 - (2B) For the purposes of sub-paragraph (2A)—
 - (a) an agreement by A to appoint X to perform the activities in that paragraph is to be treated as an undertaking by A within the meaning of that sub-paragraph;
 - (b) it is immaterial that—
 - (i) payments may be subject to conditions;
 - (ii) A, or X, may be entitled to retain a portion or the entirety of any payment received from C.

(3) Definition inserted by [S.I. 2013/1881](#).

(4) Definition inserted by [S.I. 2013/1881](#).

(5) Amended by [S.I. 2013/1881](#). There are other amending instruments but none is relevant.

(2C) The condition in this sub-paragraph is that A, or another person (“X”) acting under an arrangement with A or at A’s direction, undertakes to perform, or A undertakes to appoint or direct another person to perform, either or both of the following—

- (a) to take steps to procure the payment of a debt under the agreement;
- (b) to exercise or enforce rights under the agreement on behalf of B.”.
- (iv) in sub-paragraph (3), after “specified by”, for “paragraph” substitute “sub-paragraph”;
- (v) in sub-paragraph (4), after “the condition in”, for “paragraph” substitute “sub-paragraph”;
- (vi) in sub-paragraph (5), for “paragraph” substitute “sub-paragraph”;
- (vii) in sub-paragraph (6), for “paragraph” substitute “sub-paragraph”;
- (viii) after sub-paragraph (9), insert—

“(10) For the purposes of the application of section 21(9) and (10) of the Act (restrictions on financial promotion) to an activity of a kind specified by this paragraph, paragraph 26D of this Schedule (relevant credit agreements), and article 4 (definition of controlled activities and controlled investments) in so far as it relates to that paragraph, has effect as if the reference to a relevant credit agreement in paragraph 26D includes a reference to a paragraph 4C agreement.”;
- (c) in paragraph 10BA (providing relevant consumer credit), after “relevant credit agreement” insert “, other than an agreement under which qualifying credit within the meaning of paragraph 10 is provided,”;
- (d) in paragraph 10BB (providing consumer hire), after “regulated consumer hire agreement” insert “, or an agreement that would be such an agreement but for article 60O (exempt agreements: exemptions relating to nature of agreement) or 60Q (exempt agreements: exemptions relating to nature of hirer) of the Regulated Activities Order,”;
- (e) in paragraph 11 (agreeing to carry on specified kinds of activity), for “10B” substitute “10BB”;
- (f) in paragraph 28 (interpretation), in the definition of “relevant credit agreement”, after “regulated mortgage contract” insert “or a regulated home purchase plan”.