
EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under Part 2 (regulated and prohibited activities) of the Financial Services and Markets Act 2000 (c. 8) (“the Act”).

Article 2 amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the Regulated Activities Order”), which specifies kinds of activities and investments for the purposes of regulation under the Act. An activity of a specified kind which is carried on by way of business in relation to an investment of a specified kind is a “regulated activity”.

Entering into a credit agreement as lender and exercising, or having the right to exercise, the lender’s rights and duties under a credit agreement are specified kinds of activity unless the agreement is an exempt agreement under articles 60C to 60H of the Regulated Activities Order. Article 2(a) amends article 60F(2) of that Order to increase from four to twelve the maximum number of repayments which may be due from a borrower under a credit agreement which is to be an exempt agreement under that article.

Article 2(b) amends article 60G(5) to vary one of the conditions that must be met by a credit agreement which is to be an exempt agreement under article 60G(4). An agreement may be exempt under article 60G(4) if (among other things) the borrower is an employee of the lender. The effect of the amendment is that an agreement may be exempt if the borrower is employed by an undertaking in the same group as the lender.

Article 3(2)(a) corrects a minor error in the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201).

Article 3(2)(b) amends that Order, which specifies persons for exemption from the prohibition in section 19 of the Act on carrying on a regulated activity without authorisation. The amendment provides an exemption in relation to the activities of debt collecting and debt administration for persons who serve documents in connection with legal proceedings under credit and consumer hire agreements or agreements of the kind defined in article 36H(4) of the Regulated Activities Order.

Article 4 amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529), which sets out exemptions from the restriction on financial promotion in section 21(1) of the Act. The amendment extends the exemption for a communication accompanied by a directors’ report to a communication accompanied by a report prepared and approved under sections 414A and 414D of the Companies Act 2006 (c. 46) (strategic reports).

An impact assessment of the effect of the transfer of consumer credit regulation from the Office of Fair Trading to the Financial Conduct Authority on the costs of business and the voluntary sector has been prepared and is available on HM Treasury’s website (www.gov.uk/treasury) or from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum for this Order.