
STATUTORY INSTRUMENTS

2016 No. 392

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016

PART 3

Amendment of other legislation

Amendment of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

6.—(1) In Schedule 1 to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 ^{F1}, Part 1 (controlled activities) is amended as follows.

(2) In paragraph 4C (operating an electronic system in relation to lending)—

(a) in sub-paragraph (2A) for “interest and capital” in paragraphs (a) and (b) substitute “ either interest or capital or both ”;

(b) after sub-paragraph (2C) insert—

“(2D) Where A carries on the activity specified by sub-paragraph (1), it is a controlled activity for A to operate an electronic system where—

(a) that system enables A to facilitate a person (“B”) assuming the rights of the lender under a paragraph 4C agreement by assignment or operation of law, and

(b) the conditions in sub-paragraphs (2), (2A) and (2C) are satisfied where C is the borrower under the agreement in paragraph (a).”;

(c) in sub-paragraph (3)—

(i) after “sub-paragraph (1)” insert “ or (2D) ”,

(ii) in paragraph (a)—

(aa) for “B and C” substitute “ either B or C ”,

(bb) after “B becoming the lender under the paragraph 4C agreement” for “and” substitute “ or ”,

(iii) in paragraph (d), for “performing duties, or exercising or enforcing” substitute “ taking steps to perform duties, or exercise or enforce ”,

(iv) at the beginning of paragraphs (e), (f), (g) and (h), insert “ taking steps with a view to ”,

(v) delete “or” at the end of paragraph (g), and

(vi) in paragraph (h)(ii) after “person” insert—
“, or

(i) giving advice in relation to the taking of any of the steps in sub-paragraphs (e) to (h)”;

(d) for sub-paragraph (4) substitute—

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“(4) A “paragraph 4C agreement” is an agreement by which one person provides another person with credit and in relation to which—

- (a) the condition in sub-paragraph (4A) is satisfied, and
- (b) the condition in either sub-paragraph (5) or (6) is satisfied, or was satisfied at the time the agreement was entered into.

(4A) The condition in this sub-paragraph is that A does not provide credit, assume the rights (by assignment or operation of law) of a person who provided credit, or receive credit under the agreement.”;

(e) for sub-paragraph (9) substitute—

“(9) In this paragraph—

“assignment”, in relation to Scotland, means assignation;

“borrower” means a person who receives credit under a paragraph 4C agreement or a person to whom the rights and duties of a borrower under such an agreement have passed by assignment or operation of law;

“credit” has the meaning given by article 60L of the Regulated Activities Order;

“lender” means—

- (a) a person providing credit under a paragraph 4C agreement, or
- (b) a person who by assignment or operation of law has assumed the rights of a person who provided credit under such an agreement;

“relevant person” 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.”; and

(f) in sub-paragraph (10), for “has” substitute “ have ”.

(3) In paragraph 7 (advising on investments)—

- (a) the existing text becomes sub-paragraph (1); and
- (b) after sub-paragraph (1), insert—

“(2) Advising a person is a controlled activity if the advice is—

(a) given to the person in that person's capacity as a lender or potential lender under a relevant paragraph 4C agreement, or in that person's capacity as an agent for a lender or potential lender under such an agreement; and

(b) advice on the merits of the person doing any of the following (whether as principal or agent)—

(i) entering into a relevant paragraph 4C agreement as a lender or assuming the rights of a lender under such an agreement,

(ii) providing instructions to an operator with a view to entering into a relevant paragraph 4C agreement as a lender or to assuming the rights of a lender under such an agreement by assignment or operation of law, where the instructions involve—

(aa) accepting particular parameters for the terms of the agreement presented by an operator,

(bb) choosing between options governing the parameters of the terms of the agreement presented by an operator, or

- (cc) specifying the parameters of the terms of the agreement by other means,
 - (iii) enforcing or exercising the lender's rights under a relevant paragraph 4C agreement, or
 - (iv) assigning rights under a relevant paragraph 4C agreement.
- (3) In sub-paragraph (2)—
 - “operator” means a person carrying on a controlled activity of the kind specified by paragraph 4C(1) or (2D), and
 - “relevant paragraph 4C agreement” means a paragraph 4C agreement (within the meaning of that paragraph) which has been, or is to be, entered into with the facilitation of a person carrying on a controlled activity of the kind specified by paragraph 4C(1) or (2D) not in contravention of the general prohibition.
- (4) 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 sub-paragraph (2), 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, have effect as if the reference to a relevant credit agreement in paragraph 26D includes a reference to a paragraph 4C agreement.”.
- (4) In paragraph 10A (arranging qualifying credit etc.)—
 - (a) the existing text becomes sub-paragraph (1);
 - (b) in sub-paragraph (1)(b) for “, within the meaning of article 61(3) of the Regulated Activities Order, entered into after the coming into force of that article,” substitute “ falling within sub-paragraph (2) ”;
 - (c) after sub-paragraph (1) insert—
 - “(2) A regulated mortgage contract falls within this sub-paragraph if—
 - (a) the contract was entered into on or after 31st October 2004; or
 - (b) the contract—
 - (i) was entered into before 31st October 2004; and
 - (ii) was a regulated credit agreement immediately before 21st March 2016.
 - (3) In this paragraph “regulated mortgage contract” has the meaning given by article 61(3) of the Regulated Activities Order.”.
- (5) In paragraph 10B (advising on qualifying credit etc.)—
 - (a) in sub-paragraph (1) for “entered into by him after the coming into force of article 61 of the Regulated Activities Order” substitute “ falling within sub-paragraph (1A) ”;
 - (b) after sub-paragraph (1) insert—
 - “(1A) A regulated mortgage contract falls within this sub-paragraph if—
 - (a) the contract was entered into on or after 31st October 2004; or
 - (b) the contract—
 - (i) was entered into before 31st October 2004; and
 - (ii) was a regulated credit agreement immediately before 21st March 2016.”.

F1 [S.I. 2005/1529](#). Paragraph 4C was inserted by [S.I. 2013/1881](#) and amended by [S.I. 2014/366](#). There are other amendments, but none is relevant here. Paragraphs 10A & 10B to Schedule 1 were numbered as such in the Order when originally made.

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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](#)