Draft Order laid before Parliament under section 429(1) and (4) of, and paragraph 26(2) of Schedule 2 to, the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2015

Made - - - -	***
Coming into force - -	***

In accordance with section 429(1) and (4)(d)(**a**) of, and paragraph 26(2) of Schedule 2(**b**) to, the Financial Services and Markets Act 2000 a draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament.

In the opinion of the Treasury, one of the effects of the proposed Order would be that an activity which is not a regulated activity would become a regulated activity.

The Treasury, in exercise of the powers conferred by sections 21(5), 22(1) and (5) and 55C of the Financial Services and Markets Act 2000(**c**), make the following Order.

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2015.

(2) It comes into force on the day after the day on which it is made.

Amendments of the Financial Services and Markets Act 2000

2.—(1) Paragraph 2G of Schedule 6 to the Financial Services and Markets Act 2000 (threshold conditions)(**d**) is amended as follows.

(2) After sub-paragraph (3) insert—

"(3A) For the purposes of sub-paragraph (3), "domestic premises supplier" means a supplier who—

(a) sells, offers to sell or agrees to sell goods, or

(b) offers to supply services or contracts to supply services,

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(**a**) Section 429 was amended by section 49(1) and (2) of the Financial Services Act 2012. There are other amendments to section 429, but none are relevant.
(**b**) Paragraph 26 was substituted by section 8, Financial Services Act 2012.
(**c**) 2000 c. 8. Section 55C was inserted by section 11(2) of the Financial Services Act 2012 (c. 21).
(**d**) Paragraph 2G was inserted in Schedule 6 by S.I. 2013/1881 and amended by S.I. 2014/366.

to customers who are individuals while the supplier, or the supplier's representative, is physically present at the dwelling of the individual (but see sub-paragraph (3B)).

(3B) A supplier who acts as described in sub-paragraph (3A) on an occasional basis only will not be a domestic premises supplier unless the supplier indicates to the public at large, or any section of the public, the supplier's willingness to attend (in person or through a representative) the dwelling of potential customers in order to carry on any of the activities mentioned in sub-paragraph (3A)(a) or (b).".

(3) For sub-paragraph (5) substitute—

"(5) The case specified in this sub-paragraph is where the activity relates to a consumer hire agreement or a hire-purchase agreement.".

(4) In sub-paragraph (6)—

(a) insert the following definition in the appropriate place—

""consumer hire agreement" has the meaning given by article 60N(3) of the Regulated Activities Order(**a**);", and

(b) omit the definition of "domestic premises supplier".

Amendment of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001

3.—(1) The Financial Services and Markets Act 2000 (Regulated Activities Order) 2001(**b**) is amended as follows.

(2) For article 36F (activities carried on by members of the legal profession etc)(**c**) substitute—

"**Activities carried on by members of the legal profession etc**

36F.—(1) There are excluded from article 36A (credit broking) activities carried on by—

(a) a barrister or advocate acting in that capacity;

(b) a solicitor (within the meaning of the Solicitors Act 1974(**d**)) in the course of providing advocacy services or litigation services;

(c) a solicitor (within the meaning of the Solicitors (Scotland) Act 1980(**e**)) in the course of providing advocacy services or litigation services;

(d) a solicitor (within the meaning of the Solicitors (Northern Ireland) Order 1976(**f**)) in the course of providing advocacy services or litigation services;

(e) a relevant person (other than a person falling within sub-paragraph (a) to (d)) in the course of providing advocacy services or litigation services.

(2) In paragraph (1)—

"advocacy services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings;

"litigation services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings;

(**a**) Article 60N was inserted (with articles 60O to 60R) by S.I. 2013/1881.
(**b**) S.I. 2001/544.
(**c**) Articles 36A to 36G were inserted by S.I. 2013/1881.
(**d**) 1974 c. 47.
(**e**) 1980 c. 46.
(**f**) S.I. 1976/582 (N.I. 12).

"relevant person" means a person who, for the purposes of the Legal Services Act 2007(**a**), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).".

(3) For article 39K (activities carried on by members of the legal profession etc)(**b**) substitute—

"**Activities carried on by members of the legal profession etc**

39K.—(1) There are excluded from articles 39D, 39E, 39F and 39G activities carried on by—

(a) a barrister or advocate acting in that capacity;

(b) a solicitor (within the meaning of the Solicitors Act 1974) in the course of providing advocacy services or litigation services;

(c) a solicitor (within the meaning of the Solicitors (Scotland) Act 1980) in the course of providing advocacy services or litigation services;

(d) a solicitor (within the meaning of the Solicitors (Northern Ireland) Order 1976) in the course of providing advocacy services or litigation services;

(e) a relevant person (other than a person falling within sub-paragraph (a) to (d)) in the course of providing advocacy services or litigation services.

(2) In paragraph (1)—

"advocacy services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings;

"litigation services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings;

"relevant person" means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).".

(4) In article 60B(3) (regulated credit agreements)(**c**) for the definition of "exempt agreement" substitute—

""exempt agreement" means a credit agreement which is an exempt agreement under articles 60C to 60H, but where only part of a credit agreement falls within a provision of articles 60C to 60H, only that part is an exempt agreement under those articles;".

(5) In article 60F (exempt agreements: exemptions relating to number of repayments to be made) for paragraph (8) substitute—

"(8) In this article, "payment" means any payment which comprises or includes—

(a) the repayment of capital, or

(b) the payment of interest or any other charge which forms part of the total charge for credit.".

(6) In article 60L (interpretation of Chapter 14A etc) at the end add—

"(10) For the purposes of this Chapter, where a provision specifies an amount of credit, running-account credit shall be taken not to exceed the amount specified in that provision ("the specified amount") if—

(a) the credit limit does not exceed the specified amount; or

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(**a**) 2007 c. 29.
(**b**) Articles 39D to 39M were inserted by S.I. 2013/1881.
(**c**) Articles 60B to 60M were inserted by S.I. 2013/1881.

(b) the credit limit exceeds the specified amount, or there is no credit limit, and—

(i) the borrower is not enabled to draw at any one time an amount which, so far as it represents credit, exceeds the specified amount; or

(ii) the agreement provides that, if the debit balance rises above a given amount (not exceeding the specified amount), the rate of the total charge for credit increases or any other condition favouring the lender or the lender's associate comes into operation; or

(iii) at the time the agreement is made it is probable, having regard to the terms of the agreement and any other relevant considerations, that the debit balance will not at any time rise above the specified amount.

(11) For the purposes of this Chapter, an item entering into the total charge for credit is not to be treated as credit even though time is allowed for its payment.".

(7) For article 89C (activities carried on by members of the legal profession etc)(**a**) substitute—

"**Activities carried on by members of the legal profession, etc**

89C.—(1) There are excluded from articles 89A and 89B activities carried on by—

(a) a barrister or advocate acting in that capacity;

(b) a solicitor (within the meaning of the Solicitors Act 1974) in the course of providing advocacy services or litigation services;

(c) a solicitor (within the meaning of the Solicitors (Scotland) Act 1980) in the course of providing advocacy services or litigation services;

(d) a solicitor (within the meaning of the Solicitors (Northern Ireland) Order 1976) in the course of providing advocacy services or litigation services;

(e) a relevant person (other than a person falling within sub-paragraph (a) to (d)) in the course of providing advocacy services or litigation services.

(2) In paragraph (1)—

"advocacy services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings;

"litigation services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings;

"relevant person" means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).".

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

4.—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(**b**) is amended as follows.

(2) In article 55B (insolvency practitioners)(**c**), for "who carries on" substitute "in the course of carrying on".

(**a**) Articles 89A to 89E were inserted by S.I. 2013/1881.
(**b**) S.I. 2005/1529.
(**c**) Article 55B inserted by S.I. 2014/506.

(3) In article 72F (credit agreements offered to employees by employers)(**a**), for paragraph (2)(a) substitute—

"(a) offered by a lender to a borrower as an incident of employment with the lender, or with an undertaking in the same group as the lender; and".

(4) In paragraph 4B (credit broking)(**b**) of Schedule 1—

(a) in sub-paragraph (1)(a), after "relevant credit agreements", insert "(other than credit agreements which are exempt agreements under the relevant provisions)";

(b) for sub-paragraph (1)(b), substitute—

"(b) effecting an introduction of an individual or relevant recipient of credit to a person who, by way of business, enters into as owner regulated consumer hire agreements or agreements which would be regulated consumer hire agreements but for article 60O (exempt agreements: exemptions relating to nature of agreement)(**c**) or article 60Q (exempt agreements: exemptions relating to the nature of the hirer)(**d**) of the Regulated Activities Order;"

(c) in sub-paragraph (1)(d), (e) and (f), after "a relevant credit agreement", insert "(other than a credit agreement which is an exempt agreement under the relevant provisions)";

(d) for sub-paragraph (2), substitute—

"(2) For the purposes of paragraph (1)—

(a) "relevant provisions" are article 60E(5) (exempt agreements: exemptions relating to the nature of the lender)(**e**) and article 60F(exempt agreements: exemptions relating to number of repayments to be made) of the Regulated Activities Order;

(b) it is immaterial whether the relevant credit agreement or the consumer hire agreement is subject to the law of a country other than the United Kingdom.".

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends provisions of the Financial Services and Markets Act 2000 (c. 8) ("the Act"), the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) ("the Regulated Activities Order") and the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) ("the Financial Promotion Order") relating to consumer credit.

Article 2 amends paragraph 2G of Schedule 6 to the Act. It amends the definition of "domestic premises supplier", a category of suppliers which require authorisation under the Act in order to carry out certain activities relating to the supply of credit. It also ensures that credit broking in relation to a hire purchase agreement is a "relevant credit activity", which is relevant to determine which threshold conditions the suppliers have to satisfy for authorisation.

Articles 3 amends the Regulated Activities Order.

(**a**) Article 72F was inserted by S.I. 2014/208.
(**b**) Paragraph 4B was inserted by S.I. 2013/1881 and amended by S.I. 2014/366.
(**c**) Article 60O was inserted by S.I. 2013/1881 and amended by S.I. 2014/366.
(**d**) Article 60Q was inserted by S.I. 2013/1881.
(**e**) Article 60E and article 60F were inserted (with articles 60B to 60M) by S.I. 2013/1881. Article 60E was amended by S.I. 2014/366.

Paragraphs (2), (3) and (8) amend the exemptions given to solicitors and other qualified legal practitioners by articles 36F, 39K and 89C in relation to credit broking, other credit related activities and credit information and reference services. The amendment provides for these exemptions by reference to all advocacy and litigation services provided by solicitors and legal practitioners.

Paragraph (4) amends article 60B of the Regulated Activities Order to clarify that where only part of a credit agreement satisfies the conditions for an exemption, the exemption will only apply in relation to that part.

Paragraph (5) amends the definition of "payment" for the purposes of article 60F of the Regulated Activities Order to clarify that it includes any repayment of capital, or payments of interest and other payments made as part of the total charge for credit.

Paragraph (6) amends article 60L of the Regulated Activities Order to provide, in relation to running account credit, when it is to be treated as exceeding a limit set in the agreement under which it is provided.

Article 4 amends the Financial Promotion Order. Article 4(2) amends article 55B to limit the scope of the exemption given to insolvency practitioners from the prohibition on financial promotion. Article 4(3) amends article 72F to extend the exemption given to communications to an employee in relation to a staff loans, so that it covers cases where a loan is made to an employee by a company in the same group as the employer. Article 4(4) amends paragraph 4B of Schedule 1 to the Financial Promotion Order to ensure that the provisions on credit broking in the Order are aligned with the provisions on credit broking in article 36A of the Regulated Activities Order.

An Impact Assessment of the effect of the transfer of consumer credit regulation from the OFT to the FCA 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.

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£6.00

UK2015012316 01/2015 19585

http://www.legislation.gov.uk/id/ukdsi/2015/9780111127827

ISBN 978-0-11-112782-7

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