

Draft Order laid before Parliament under paragraph 26 of Schedule 2 to the Financial Services and Markets Act 2000 and section 116(1) of the Financial Services Act 2012, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No. [XXX]

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities etc.) (Amendment) Order 2023

Made - - - - *****

Coming into force in accordance with article 1

The Treasury, in exercise of the powers conferred by sections 21(9) and (15), 22(1) and (5) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000^(a) (“the Act”) and section 107(6), having had regard to the matters in subsection (7), of the Financial Services Act 2012^(b), make the following Order.

In the opinion of the Treasury, one of the effects of the following Order is that an activity which is not a regulated activity (within the meaning given in section 22 of the Act) will become a regulated activity.

Accordingly, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament pursuant to paragraph 26(1) and (2) of Schedule 2 to the Act and section 116(1) and (2)(c) of the Financial Services Act 2012.

PART 1

Introduction

Citation, commencement, extent

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities etc.) (Amendment) Order 2023.

(2) This Order comes into force on the initial commencement day for the following purposes—

- (a) enabling the FCA^(c)—
 - (i) to make or approve rules,

^(a) 2000 c.8. Paragraph 25 of Schedule 2 was amended by section 8 of the Financial Services Act 2012 (c.21) and section 27 of the Financial Guidance and Claims Act 2018 (c.10).

^(b) 2012 c.21.

^(c) “the FCA” is defined in section 417 of the Financial Services and Markets Act 2000. Other definitions used in this Part and that are also defined in section 417 are “rule” and “the scheme operator”.

- (ii) to give guidance,
 - (iii) to give directions, and
 - (iv) to carry out any other preparatory steps in relation to their functions by virtue of this Order.
- (b) enabling the scheme operator—
- (i) to make rules under Part 16 of the Financial Services and Markets Act 2000, and
 - (ii) to give guidance.
- (3) This Order comes into force for all other purposes on the first day following the expiry of a period of [X calendar months] beginning on the day after the initial commencement day.
- (4) This Order extends to England and Wales, Scotland and Northern Ireland.
- (5) In this article, “initial commencement day” means the day after the day on which this Order is made.

PART 2

Amendments to primary legislation

Amendments to Consumer Credit Act 1974

- 2.—(1) The Consumer Credit Act 1974(a) is amended as follows.
- (2) For section 17(1)(a) (small agreements), substitute—
- “(a) a regulated consumer credit agreement for credit not exceeding £50, other than—
 - (i) a hire-purchase agreement,
 - (ii) a conditional sale agreement, or
 - (iii) an agreement to which paragraph (7A) of article 60F of the Regulated Activities Order applies; or”.
- (3) In section 55 (disclosure of information), at the end insert—
- “(3) Subsection (1) does not apply to an agreement to which paragraph (7A) of article 60F of the Regulated Activities Order applies.”.

PART 3

Amendments to secondary legislation

Amendments to 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) After article 36FA (activities carried on by registered social landlords), insert—

“Activities in relation to certain regulated credit agreements

36FB.—(1) There are excluded from article 36A activities carried on in relation to a regulated credit agreement to which paragraph (7A) of article 60F applies, unless the person carrying on the activity is a domestic premises supplier.

(a) 1974 c.39; section 17 was amended by S.I. 1983/1878 and S.I. 2010/1010 and section 55 was amended by S.I. 2010/1010.
(b) S.I. 2001/544.

(2) For the purposes of paragraph (1), “domestic premises supplier” means a person (“the supplier”) who—

- (a) sells, offers to sell or agrees to sell goods, or
- (b) offers to supply services or contracts to supply services,

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

(3) A supplier who acts as described in paragraph (2) on an occasional basis only is not 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 paragraph (2)(a) or (b).

(4) In this article, “customer” means a person to whom a supplier sells goods or supplies services or agrees to do so.”.

(3) In article 60F (exempt agreements: exemptions relating to number of repayments to be made)—

- (a) for paragraph (2)(e), substitute—

“(e) neither paragraph (7) nor paragraph (7A) apply to the agreement.”

- (b) after paragraph (7), insert—

“(7A) This paragraph applies to agreements which are not secured on land entered into on or after [insert the date these provisions come into force]—

- (a) where—

- (i) the lender and the supplier are not the same person, and
- (ii) paragraph (7B) does not apply to the agreement, or

- (b) made in the following way—

- (i) a person (“A”) offers to supply goods or services to a consumer (“C”) financed by a credit agreement,
- (ii) a person (“B”), under a pre-existing arrangement with A, purchases the goods or services from A, for supply to C, such that,
- (iii) B is, in relation to the credit agreement with C, both—
 - (aa) the lender, and
 - (bb) the supplier of the goods or services to C.

(7B) This paragraph applies to—

- (a) agreements to finance premiums under contracts of insurance,
- (b) agreements where—
 - (i) the borrowers are employees, and
 - (ii) the agreements result from an arrangement between their employer and the lender or supplier,
- (c) agreements offered by a registered social landlord (as defined by article 36FA(4)) to its tenants or leaseholders to finance the provision of goods or services.”.

Amendment to Financial Services (Distance Marketing) Regulations 2004

4. In the Financial Services (Distance Marketing) Regulations 2004(a), after regulation 6 (financial services marketed by an intermediary) insert—

(a) S.I. 2004/2095.

“Intermediaries in relation to certain agreements

- 6A.** Regulation 7 or 8 (as applicable) do not apply to an intermediary where—
- (a) the distance contract is an agreement to which paragraph (7A) of article 60F of the Regulated Activities Order applies,
 - (b) but for the operation of article 36FB (activities in relation to certain regulated credit agreements) of the Regulated Activities Order, the activity undertaken by the intermediary would be within the scope of article 36A (credit broking) of that Order, and
 - (c) the supplier has complied with rules made by the Authority on distance marketing.

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

5. In article 15(1A) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(a) (introductions), after sub-paragraph (b) insert—

- “(ba) paragraph 10BA of that Schedule, in relation to an agreement to which paragraph (7A) of article 60F of the Regulated Activities Order applies.”.

PART 4

Transitional provisions

Interpretation of Part 4

6. In this Part—

“the 2000 Act” means the Financial Services and Market Act 2000,

“the 2001 Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001,

“credit agreement” has the meaning given by article 60B of the 2001 Order,

“relevant agreement” means a credit agreement which, if entered into—

- (a) before the relevant date would be an exempt agreement under article 60F(2) of the 2001 Order, and
- (b) on or after the relevant date would not be an exempt agreement under article 60F(2) of the 2001 Order by virtue of the amendments made by this Order,

“relevant date” means the date articles 2 to 5 of this Order have effect.

Temporary permission

7.—(1) In this article “relevant person” means a person who—

- (a) immediately before the relevant date is carrying on an activity in relation to a relevant agreement which, if carried on or after the relevant date, would be a regulated activity(b) under any of the following articles of the 2001 Order—
 - (i) 36A (credit broking),
 - (ii) 60B(1) (entering into a regulated credit agreement as lender), or
 - (iii) 60B(2) (exercising, or having the right to exercise, the lender’s rights and duties under a regulated credit agreement),

(a) S.I. 2005/1529, amended by S.I. 2014/366.

(b) “regulated activity” is defined in section 417 of the Financial Services and Markets Act 2000. Other definitions used in this Part and that are also defined in section 417 are “authorised person”, “FCA”, Part 4A permission” and “rule”.

- by virtue of the amendments made by this Order (the “relevant activity”), and
- (b) during the period beginning with the date specified by the FCA in a direction given under article 8 and ending with the date specified in that direction—
 - (i) registers for temporary permission under this article to carry on the relevant activity in accordance with any direction given by the FCA under article 8, and
 - (ii) pays to the FCA any fee payable under its rules in relation to the registration.
- (2) On and after the relevant date the relevant person has a temporary permission to carry on the relevant activity in relation to a relevant agreement.
- (3) Subject to article 10, a temporary permission has effect as if it is a Part 4A permission to carry on the relevant activity.

Procedure for applying for temporary permission

- 8.**—(1) The FCA may give a direction specifying—
- (a) the manner in which a registration for temporary permission under article 7 is required to be made to the FCA,
 - (b) the date on or after which a registration may be made,
 - (c) the last date on which a registration may be made,
 - (d) the amount of any fee payable under its rules in relation to the registration, and
 - (e) such information as the FCA may reasonably require to be contained in, or supplied with, a registration.
- (2) A direction under this article may impose different requirements for different circumstances or different categories of registration.
- (3) At any time after receiving a registration under this article, the FCA may require the person registering to provide the FCA with such further information as it reasonably considers necessary to enable it to discharge its functions under this Part.
- (4) The FCA may require information to be provided in such form, or verified in such manner, as the FCA may direct.
- (5) A direction given under this article may be amended, substituted or revoked by further direction.

Duration of temporary permission

- 9.**—(1) In this article, a reference to a numbered section or Part is a reference to the section or Part so numbered in the 2000 Act.
- (2) In this article—
- “last application date” means the last date on which a person (“A”) who has a temporary permission to carry on the relevant activity by virtue of this Order may make a relevant application,
- “relevant application” means—
- (a) where, immediately before [the relevant date], A is an authorised person, an application by A under section 55H (variation by FCA at request of authorised person) to vary A’s Part 4A permission by adding the relevant activity to the activity to which the permission relates,
 - (b) where, immediately before [the relevant date], A is not an authorised person, an application by A under section 55A (application for permission) for permission to carry on the relevant activity.
- (3) The FCA must give a direction specifying the last application date.
- (4) Subject to paragraph (7), A’s temporary permission ceases to have effect—

- (a) where A makes a relevant application on or before the last application date, on the date on which that application is determined,
- (b) where A does not make a relevant application on or before the last application date, on the day after the last application date,
- (c) where A gives written notice to the FCA that A no longer wants to have a temporary permission in relation to a relevant activity, the day after the date on which the notice is given.

(5) Paragraphs (4) and (7) do not affect the exercise by the FCA, in relation to A's temporary permission, of the powers conferred on it by the 2000 Act to vary, cancel or suspend a Part 4A permission.

(6) For the purposes of paragraph (4)(a), the date on which a relevant application is determined is—

- (a) where A withdraws the application by written notice under section 55V(4) (determination of applications), the day after the date on which the notice is given,
- (b) where the FCA grants the application, the date stated in its written notice under section 55V(5) as the date from which the permission has effect,
- (c) where the FCA decides to—
 - (i) give or vary a Part 4A permission under section 55X(4)(a), (b), (c) or (d) (determination of applications: warning notices and decision notices), or
 - (ii) refuse the application under section 55X(4)(f),
 the date on which the FCA gives the decision notice under that section.

(7) Unless paragraphs (6)(b) and (c)(i) apply, where A, under a temporary permission, has entered into a relevant agreement on or after the relevant date under article 60B(1) of the 2001 Order—

- (a) A's temporary permission ceases to have effect under paragraph (4) only for the purposes of carrying on an activity under article 60B(1) of the 2001 Order, and
- (b) A will retain a temporary permission to carry on an activity under article 60B(2) of the 2001 Order in relation to that agreement until—
 - (i) the end of a period of 2 years beginning with the day after paragraph (a) takes effect,
 - (ii) where A gives written notice to the FCA that A no longer wants to have a temporary permission under this paragraph, the date on which the period of 30 days beginning with the date on which the notice is given expires, or
 - (iii) A has recovered all sums due under the agreement or otherwise discharged it, whichever is earlier.

(8) During the period of 2 years or less, where relevant, referred to in paragraph (7), A may not enter into any new relevant agreement.

(9) The prohibition in paragraph (8) has the same effect as a requirement imposed by the FCA under section 55L (imposition of requirements by FCA).

(10) A direction given under paragraph (3) may—

- (a) specify different dates for different persons or classes of person or for different descriptions of activities,
- (b) specify a date before which a relevant application may not be made ("the opening date"), provided that the opening date is not less than two months before the last application date,
- (c) be amended, substituted or revoked by further direction.

(11) Subject to article 10(6) and (7), a relevant application made before the opening date is to be treated as if it had not been made.

(12) Paragraphs (13) and (14) apply where—

- (a) A's temporary permission ceases to have effect by virtue of paragraph (4) or (7) or the exercise of the FCA of the powers conferred on it by the 2000 Act to cancel a Part 4A permission, and
- (b) A consequently ceases, on the date on which A's temporary permission ceases ("the cessation date"), to be a person with a Part 4A permission to carry on the relevant activity.

(13) Paragraph (14) applies in relation to—

- (a) any act or omission by A during the period of temporary permission which occurred before the cessation date, or
- (b) the contravention by A of any requirement imposed on A under section 55L or 404F(7) (a requirement to establish and operate a scheme which is similar to a consumer redress scheme) which—
 - (i) is in effect immediately before the cessation date, and
 - (ii) which continues to have effect in accordance with paragraph (15).

(14) Part 11 (information gathering and investigations), Part 14 (disciplinary measures) and section 384 (power of the FCA to require restitution) are to be read as if a reference to an authorised person included a reference to A.

(15) The requirement referred to in paragraph (13)(b)—

- (a) continues to have effect after the cessation date until such time as it is cancelled by the FCA, and
- (b) must be cancelled by the FCA when it is satisfied that it is no longer necessary for that requirement to continue to have effect.

Application of the 2000 Act to persons with a temporary permission

10.—(1) In this article, a reference to a numbered section, Part or Schedule is a reference to the section, Part or Schedule so numbered in the 2000 Act.

(2) This article applies in relation to a person ("A") who has a temporary permission to carry on a relevant activity referred to in article 7(2) ("temporary permission").

(3) A's temporary permission does not have effect as a Part 4A permission for the purposes of—

- (a) section 21(2)(b) (restrictions on financial promotion),
- (b) section 38(2) (exemption orders),
- (c) section 39(1C)(a) (exemption of appointed representatives),
- (d) section 55A(3) (application for permission),
- (e) section 59 (approval for particular arrangements).

(4) For the purposes of section 327(7) and (9) (exemption from the general prohibition), A is not to be treated as carrying on a regulated activity where A carries on that activity pursuant to A's temporary permission.

(5) For the purposes of section 39 (exemption of appointed representatives), A may be an appointed representative in relation to an activity which A does not have temporary permission to carry on.

(6) Where A applies to the FCA—

- (a) under section 55A for permission to carry on a regulated activity which is not a relevant activity, or
- (b) under section 55H to vary A's Part 4A permission by adding to the activities to which the permission relates a regulated activity which is not a relevant activity,

the application may be treated by the FCA as relating also to some or all of the regulated activities for which A has temporary permission.

(7) If the FCA treats the application as relating also to some or all of the regulated activities for which A has a temporary permission, article 9(11) does not apply in relation to the application.

(8) The duty imposed by section 55B(3) (satisfaction of threshold conditions) does not apply where the FCA exercises its power in relation to A under—

- (a) section 55J (variation or cancellation on initiative of regulator),
- (b) section 55H (variation by FCA at request of authorised person) to remove a regulated activity from those for which A has temporary permission,
- (c) section 55L (imposition of requirements by FCA).

(9) Where, immediately before the [relevant date], A is not an authorised person, A is not to be treated, by virtue of article 7(3), as an authorised person for the purposes of Part 12 (control of authorised persons).

(10) For the purposes of the compensation scheme established under section 213, a claim made against A in connection with any activity which A's temporary permission permits A to carry on is to be treated as if it were not made in connection with regulated activities carried on by A.

(11) The activity to which A's temporary permission permits A to carry on is to be treated as if it were not a regulated activity for the purposes of—

- (a) construing the reference to the only regulated activities that a person carries on, or seeks to carry on, which is contained in paragraphs 2C(1A), 2D(3A) and 2F(3) of Schedule 6 (threshold conditions), and
- (b) article 6A(1)(b) of the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009(a).

PART 5

Review

Review

11.—(1) The Treasury must from time to time—

- (a) carry out a review of this Order, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before the end of the period of five years beginning with the day on which this Order comes into force for any purpose.

(3) Subsequent reports must be published at intervals not exceeding five years.

[insert date]

Name
Name

Two of the Lords Commissioners of His Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends article 60F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the Regulated Activities Order”) so that certain agreements which currently fall within article 60F(2) (and are exempt agreements for the purposes of regulation) will be regulated credit agreements within the meaning of article 60B(3) of that Order and the Financial Services and Markets Act 2000 (“FSMA”) regulatory framework (referred to as “relevant agreements” in this note). This Order also amends other provisions of the Regulated Activities Order and other legislation in relation to such agreements.

Part 1 of the Order sets out preliminary matters. It makes provision for the Order to come into force ahead of the date that the relevant agreements will be regulated credit agreements to enable the Financial Conduct Authority (the “FCA”) and the Financial Ombudsman Service to make rules and carry out other steps prior to regulation.

Part 2 of the Order amends the Consumer Credit Act 1974 (c.39) so that small agreements within the meaning of that Act will not include, and regulations made under section 55 (disclosure of information) of that Act will not apply to, relevant agreements.

Part 3 of the Order amends secondary legislation. Article 3 amends the Regulated Activities Order to provide that specified types of agreements which fall within article 60F(2) of that Order cannot rely on the exemption and will be regulated credit agreements. Article 3 also inserts a new article 36FB into the Regulated Activities Order to provide that activities in relation to relevant agreements which fall within article 36A of that Order will be excluded from regulation unless the person carrying out the activity is a domestic premises supplier.

Article 4 amends the Financial Services (Distance Marketing) Regulations 2004 (S.I. 2004/2095) to disapply the effect of regulations 7 and 8 of those Regulations for intermediaries of distance contracts (where they are relevant agreements) where information has been provided by a supplier under rules on distance marketing made by the FCA.

Article 5 amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) to provide for financial promotions communicated by unauthorised persons in relation to relevant agreements to be approved by an authorised person.

Part 4 of the Order contains transitional provisions and provides for a temporary permission regime to be established (to allow certain persons to carry on certain regulated activities in relation to relevant agreements for a limited time as if they had a Part 4A permission under FSMA).

Part 5 of the Order requires the Treasury to review the regulatory provision contained in the Order within 5 years of the Order coming into force and thereafter at intervals not exceeding 5 years.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from His 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.