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

DRAFT STATUTORY INSTRUMENTS

2014 No. 0000

FINANCIAL SERVICES AND MARKETS

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

Made - - - - 2014

Coming into force in accordance with article 1

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

The Treasury are of the opinion that 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 make the following Order in exercise of the powers conferred by sections 22(1) and (5) and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(**2**) and section 118 of the Financial Services Act 2012(**3**):

PART 1

Introduction

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014.

(2) This article and articles 15, 17 and 29(4) come into force on the day after the day on which this Order is made.

(3) This Order comes into force on the day after the day on which this Order is made for the purposes of the FCA(**4**)—

(**1**) 2000 c.8. Paragraph 26 of Schedule 2 was substituted by the Financial Services Act 2012 (c.21), section 8.
(**2**) Section 22 amended by the Financial Services Act 2012, section 7. Paragraph 25 of Schedule 2 amendment by the Financial Services Act 2012, section 7
(**3**) 2012 c.21.
(**4**) Section 417 of the Financial Services and Markets Act 2000, as amended by the Financial Services Act 2012, section 48, defines the "FCA" as meaning the Financial Conduct Authority.

(a) making rules;

(b) giving guidance;

(c) issuing information sheets under the Consumer Credit Act 1974(**5**);

(d) imposing requirements or giving directions.

(4) This Order comes into force on 1st April 2014, to the extent it is not already in force, immediately after—

(a) the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (citation, commencement and interpretation)(**6**) comes into force, to the extent that it is not already in force, in accordance with article 1(6) of that Order, and

(b) the Financial Services Act 2012 (Consumer Credit) Order 2013 (citation, commencement and interpretation)(**7**) comes into force, to the extent that it is not already in force, in accordance with article 1(1)(b) of that Order.

PART 2

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

2.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**8**) is amended as follows.

(2) In article 3(1) (interpretation)—

(a) after the definition of "the Act", insert—

> ""acting as an insolvency practitioner" is to be read with section 388 of the Insolvency Act 1986(**9**) or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989(**10**) and, in any provision of this Order which provides for activities to be excluded from a specified activity, references to things done by a person acting—
>
> (a) as an insolvency practitioner, or
>
> (b) in reasonable contemplation of that person's appointment as an insolvency practitioner,
>
> include anything done by the person's firm in connection with that person so acting;;";

(b) after the definition of "pension fund management contract"(**11**), insert—

> ""the person's firm", in relation to a person acting as an insolvency practitioner or in reasonable contemplation of that person's appointment as an insolvency practitioner, means—
>
> (a) the person's employer;

(**5**) 1974 c.39.
(**6**) S.I. 2013/1881. Article 1(6) of that Order brings that Order into force on 1st April 2014 to the extent that it is not already in force.
(**7**) S.I. 2013/1882. Article 1(1)(b) of that Order brings that Order into force on 1st April 2014 to the extent that it is not already in force.
(**8**) S.I. 2001/544, as amended by S.I. 2013/1881. Other relevant amending instruments are noted below.
(**9**) Amended by the Bankruptcy (Scotland) Act 1993 (c.6), section 11, the Insolvency Act 2000 (c.39), section 4, and S.I. 1994/2421, S.I. 2002/1240, S.I. 2002/2708 and S.I. 2009/1941.
(**10**) S.I. 1989/2405 (N.I.19). Amended by S.R. 1995/225, S.R. 2002/334, S.I. 2002/3152 (N.I.6), S.R. 2003/660, S.R. 2004/307.
(**11**) There are amending instruments but none is relevant.

(b) where the person is a partner in a partnership other than a limited liability partnership, that partnership;

(c) where the person is a member of a limited liability partnership, that partnership;".

(3) After article 9AB (funds received for payment services)(**12**), insert—

"**Local authorities**

9AC. Article 5 is subject to the exclusion in article 72G (local authorities).".

(4) In article 20 (dealing in investments as principal: other exclusions)(**13**), for "and 72AA (managers of UCITS and AIFs)" substitute ", 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)".

(5) In article 24 (dealing in investments as agent: other exclusions)(**14**) for "and 72D (large risks contracts where risk situated outside the EEA)" substitute ", 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)".

(6) In article 36 (arranging deals in investments: other exclusions)(**15**)—

(a) in paragraph (1), for "and 72D (large risks contracts where risk situated outside the EEA)" substitute ", 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)";

(b) in paragraph (2), for "and 72AA (managers of UCITS and AIFs)", substitute ", 72AA (managers of UCITS and AIFs) and 72G (local authorities)";

(c) in paragraph (3), for "and 72AA (managers of UCITS and AIFs)" substitute ", 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)".

(7) For the heading to article 36G (information society services), substitute "Other exclusions".

(8) In that article 36G, after "article 72A (information society services)" insert "and the exclusion in article 72G (local authorities)".

(9) In article 36H (operating an electronic system in relation to lending)—

(a) in paragraph (1), for "condition in paragraph (2) is" substitute "conditions in paragraphs (2), (2A) and (2C) are";

(b) in paragraph (2), after "condition" insert "in this paragraph".

(c) after paragraph (2), insert—

"(2A) The condition in this 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 article 36H agreement from C, and

(b) make payments in respect of interest and capital due under the article 36H agreement to B.

(2B) For the purposes of 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 paragraph;

(b) it is immaterial that—

(**12**) Inserted by S.I. 2009/209 and amended by S.I. 2011/99.
(**13**) Amended by S.I. 2002/1776 and S.I. 2013/1773.
(**14**) Amended by S.I. 2002/1776, S.I. 2003/1476 and S.I. 2013/1773.
(**15**) Amended by S.I. 2002/1776, S.I. 2003/1475, S.I. 2003/1476, S.I. 2006/2383, S.I. 2006/3384, S.I. 2009/1342, and SI 2013/1773.

(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.

(2C) The condition in this 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 activities—

(a) taking steps to procure the payment of a debt under the article 36H agreement;

(b) exercising or enforcing rights under the article 36H agreement on behalf of B.";

(d) after paragraph (9), insert—

"(10) For the purposes of the application of section 22(1) of the Act (regulated activities) to an activity of a kind specified by this article, article 88D (credit agreement), and article 73 (investments: general) in so far as it relates to that article, has effect as if the reference to a credit agreement in article 88D includes a reference to an article 36H agreement.".

(10) After article 36I (information society services), insert—

"**Activities in relation to debentures and bonds**

36IA. There is excluded from article 36H (operating an electronic system in relation to lending) any activity of a kind specified by article 14 (dealing in investments as principal), 25 (arranging deals in investments), 37 (managing investments) or 53 (advising on investments).".

(11) In article 39 (managing investments: other exclusions)(**16**), for "and 72C (provision of information about contracts of insurance on an incidental basis)" substitute ", 72C (provision of information about contracts of insurance on an incidental basis) and 72H (insolvency practitioners)".

(12) In article 39C (assisting in the administration and performance of a contract of insurance: other exclusions)(**17**), for "and 72D (large risks contracts where risk situated outside the EEA)" substitute ", 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)".

(13) In article 39H(3) and (4) (activities where a person has a connection to the agreement), for "on behalf of" substitute "by".

(14) In article 39J (activities carried on in relation to a relevant agreement in relation to land)—

(a) for "are" substitute "is";

(b) for "activities that relate" substitute "any activity that relates";

(c) after "regulated home purchase plan" insert "to the extent that the activity constitutes an activity of the kind specified by a provision of Part 2 of this Order other than articles 39D, 39E, 39F and 39G, where entering into that contract as lender constitutes an activity of the kind specified by article 61 or entering into that plan as home purchase provider constitutes an activity of the kind under article 63F".

(15) For the heading to article 39L (information society services), substitute "Other exclusions".

(16) In that article 39L—

(a) for "exclusion" substitute "exclusions";

(b) after "article 72A (information society services)" insert ", article 72G (local authorities) and article 72H (insolvency practitioners)".

(**16**) Amended by S.I. 2002/1776 and S.I. 2003/1476.
(**17**) Inserted by S.I. 2003/1476; amended by S.I. 2013/1773.

(17) In article 44 (safeguarding and administering investments: other exclusions)(**18**), for "and 72C (provisions of information about contracts of insurance on an incidental basis)" substitute ", 72C (provisions of information about contracts of insurance on an incidental basis) and 72H (insolvency practitioners)".

(18) In article 50 (sending dematerialised instructions)(**19**), for "and 72AA (managers of UCITS and AIFs)" substitute ", 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)".

(19) For the heading to article 51A (collective investment: information society services and managers of UCITS and AIFs)(**20**), substitute "Other exclusions".

(20) In that article 51A, for "and 72AA (managers of UCITS and AIFs)" substitute ", 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)".

(21) For the heading to article 52A (establishing a pension scheme: information society services and managers of UCITS and AIFs)(**21**), substitute "Other exclusions".

(22) In that article 52A, for "and 72AA (managers of UCITS and AIFs)" substitute ", 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)".

(23) In article 55 (advising: other exclusions)(**22**)—

(a) in paragraph (1), for "and 72D (large risks contracts where risk situated outside the EEA)" substitute ", 72D (large risks contracts where risk situated outside the EEA), 72G (local authorities) and 72H (insolvency practitioners)";

(b) in paragraph (2), for "and 72AA (managers of UCITS and AIFs)" substitute ", 72AA (managers of UCITS and AIFs) and 72G (local authorities)".

(24) In article 60C(8)(b) (exempt agreements: exemptions relating to the nature of the agreement), after "country" insert "outside the United Kingdom".

(25) In article 60D(1) (exempt agreements: exemption relating to the purchase of land for non-residential purposes), after "legal" insert "or equitable".

(26) In article 60E (exempt agreements: exemptions relating to the nature of the lender), in paragraph (5)(a) and in the definition of "relevant credit agreement relating to the purchase of land" in paragraph (7), after "legal", in each place, insert "or equitable".

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

(a) in paragraph (2), omit "significant";

(b) in paragraphs (5)(c) and (6)(b), after "legal" insert "or equitable".

(28) For article 60G(5)(b) (exempt agreements: exemptions relating to the total charge for credit), substitute—

"(b) the agreement—

(i) is not—

(aa) secured on land, or

(bb) offered by a lender to a borrower as an incident of employment with the lender; and

(ii) does not meet the general interest test.".

(29) After article 60J (administration pursuant to agreement with authorised person), insert—

(**18**) Amended by S.I. 2002/1776, S.I. 2003/1476 and S.I. 2013/1773.
(**19**) Amended by S.I. 2002/1776 and S.I. 2013/1773.
(**20**) Inserted by S.I. 2002/1776; amended by S.I. 2013/1773.
(**21**) Inserted by S.I. 2002/1776; amended by S.I. 2013/1773.
(**22**) Amended by S.I. 2002/1776, S.I. 2003/1475, S.I. 2003/1476, S.I. 2006/2383, S.I. 2009/1342 and S.I. 2013/1773.