Draft Order laid before Parliament under paragraph 26 of Schedule 2 to the Financial Services and Markets Act 2000 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013

Made - - - - ***

Coming into force in accordance with article 1

The Treasury are a government department designated for the purpose of section 2(2) of the European Communities Act 1972 in relation to financial services(**1**).

In accordance with paragraph 26 of Schedule 2 to the Financial Services and Markets Act 2000(**2**) and paragraph 2(2) of Schedule 2 to the European Communities Act 1972, 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, in exercise of the powers conferred by sections 22(1), (1A) and (5) and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(**3**) and section 2(2) of the European Communities Act 1972(**4**), make the following Order:

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013.

(**1**) S.I. 2012/1759.
(**2**) 2000 c.8. Paragraph 26 of Schedule 2 was substituted by section 8 of the Financial Services Act 2012 (c.21)
(**3**) Section 22 was amended by section 7 of the Financial Services Act 2012.
(**4**) 1972 c. 68. Amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and the Schedule to the European Union (Amendment) Act 2008 (c.7).

(2) This Order comes into force on the day after the day on which this Order is made for the purpose of—

(a) the FCA, PRA and the scheme operator making rules,

(b) the FCA designating relevant instruments under Part 8 of this Order,

(c) the FCA giving guidance, and

(d) the FCA and PRA imposing requirements or giving directions.

(3) Article 28 (consequential amendments to other legislation etc.) and paragraph 17 of the Schedule come into force on the day after the day on which this Order is made for the purpose of making orders.

(4) Articles 61, 62 (rules etc.) and 66 (information sharing) come into force on the day after the day on which this Order is made.

(5) Chapter 4 of Part 8 (transitional provisions in relation to permission etc.) comes into force on 2nd September 2013 to the extent it is not already in force.

(6) This Order comes into force on 1st April 2014 to the extent it is not already in force.

(7) In this Order—

"the Act" means the Financial Services and Markets Act 2000;

"the 1974 Act" means the Consumer Credit Act 1974(**5**);

"the OFT" means the Office of Fair Trading;

"the Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**6**).

PART 2

Amendments of the Regulated Activities Order

Amendments of the Regulated Activities Order

2. Articles 3 to 9 amend the Regulated Activities Order.

Definitions etc.

3.—(1) In article 3(1) (interpretation)(**7**), insert in the appropriate places the following definitions —

"assignment", in relation to a credit agreement, has the meaning given by article 60L;

"borrower"—

(a) in relation to a credit agreement other than a regulated mortgage contract or an article 36H agreement (within the meaning given by article 36H), has the meaning given by article 60L;

(b) in relation to an article 36H agreement (within the meaning given by that article) other than a regulated mortgage contract, is to be read with article 36H(4);

"consumer hire agreement" has the meaning given by article 60N;

"credit agreement" has the meaning given by article 60B;

(**5**) 1974 c.39.
(**6**) S.I. 2001/544.
(**7**) There are amending instruments but none is relevant to this Order.

"hire-purchase agreement" has the meaning given by article 60L;

"hirer" is to be read with the definition of "consumer hire agreement" in article 60N;

"lender"—

(c) in relation to a credit agreement other than a regulated mortgage contract or an article 36H agreement (within the meaning given by article 36H), has the meaning given by article 60L;

(d) in relation to an article 36H agreement (within the meaning given by that article) other than a regulated mortgage contract, is to be read with article 36H(4);

"owner", in relation to a hire purchase agreement, has the meaning given by article 60N;

"regulated consumer hire agreement" has the meaning given by article 60N;

"regulated credit agreement" has the meaning given by article 60B;

"relevant recipient of credit" has the meaning given by article 60L;

"restricted-use credit agreement" has the meaning given in article 60L.

(2) In article 3, at the end of the definition of "deposit", insert "except where the definition given in article 60L applies".

(3) In article 4 (specified activities: general)(**8**)—

(a) in paragraph (1), for "section 22" substitute "section 22(1)";

(b) after paragraph (2), insert—

"(2A) The kinds of activity specified by Part 3A are specified for the purposes of section 22(1A)(a) of the Act((**9**) (and accordingly any activity of one of those kinds, when carried on by way of business, is a regulated activity).".

Credit broking etc.

4. After article 36 (other exclusions in relation to arranging deals in investments), insert—

"CHAPTER 6A

CREDIT BROKING

The activity

Credit broking

36A.—(1) Each of the following is a specified kind of activity—

(a) effecting an introduction of an individual or relevant recipient of credit who wishes to enter into a credit agreement to a person ("P") with a view to P entering into by way of business as lender a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions);

(b) effecting an introduction of an individual or relevant recipient of credit who wishes to enter into a consumer hire agreement to a person ("P") with a view to P entering into by way of business as owner a regulated consumer hire agreement or an agreement which would be a regulated consumer hire agreement but for article

(**8**) Amended by S.I. 2003/1476, S.I. 2006/3384 and S.I. 2009/1389.
(**9**) Inserted by section 7 of the Financial Services Act 2012.

60O (exempt agreements: exemptions relating to the nature of the agreement) or 60Q (exempt agreements: exemptions relating to the nature of the hirer);

(c) effecting an introduction of an individual or relevant recipient of credit who wishes to enter into a credit agreement or consumer hire agreement (as the case may be) to a person who carries on an activity of the kind specified in sub-paragraph (a) or (b) by way of business;

(d) presenting or offering an agreement which would (if entered into) be a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions);

(e) assisting an individual or relevant recipient of credit by undertaking preparatory work with a view to that person entering into a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions);

(f) entering into a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions) on behalf of a lender.

(2) Paragraph (1) does not apply in so far as the activity is an activity of the kind specified by article 36H (operating an electronic system in relation to lending).

(3) For the purposes of paragraph (1) it is immaterial whether the credit agreement or consumer hire agreement is subject to the law of a country outside the United Kingdom.

(4) For the purposes of this article, the "relevant provisions" are the following provisions —

(a) article 60C (exempt agreements: exemptions relating to the nature of the agreement);

(b) article 60D (exempt agreements: exemptions relating to the purchase of land for non-residential purposes);

(c) article 60E (exempt agreements: exemptions relating to the nature of the lender);

(d) article 60G (exempt agreements: exemptions relating to the total charge for credit);

(e) article 60H (exempt agreements: exemptions relating to the nature of the borrower).

Exclusions

Introducing by individuals in the course of canvassing off trade premises

36B.—(1) There are excluded from article 36A activities carried on by an individual by canvassing off trade premises—

(a) a restricted-use credit agreement used to finance a transaction between the lender or a member of the lender's group and the borrower whether forming part of that agreement or not, or

(b) a regulated consumer hire agreement.

(2) But paragraph (1) does not apply if A carries on any other activity of a kind specified by article 36A(1)(a) to (c).

(3) A canvasses a restricted-use credit agreement or a regulated consumer hire agreement off trade premises for the purposes of this article if—

(a) A solicits the entry of an individual or relevant recipient of credit ("B") into such an agreement by making oral representations to B during a visit by A to any place (not excluded by paragraph (4)) where B is, and

(b) that visit is made by A for the purpose of making such oral representations.

(4) A place is excluded from paragraph (3) if it is a place where a business is carried on (whether on a permanent or temporary basis) by—

(a) the lender or owner,

(b) the supplier under the restricted-use credit agreement,

(c) A,

(d) a person who employs A or has appointed A as an agent, or

(e) B.

Activities for which no fee is paid

36C.—(1) There are excluded from sub-paragraphs (d), (e) and (f) of article 36A(1) activities carried on by a person for which that person does not receive a fee.

(2) For the purposes of this article, "fee" includes pecuniary consideration or any other form of financial consideration.

Transaction to which the broker is a party

36D. There are excluded from article 36A activities in relation to a regulated credit agreement (or an agreement which would be a regulated credit agreement but for the exclusions in articles 60C to 60H) or a regulated consumer hire agreement (or an agreement which would be a regulated consumer hire agreement but for the exclusions in articles 60O to 60Q) into which the person carrying on the activity enters or is to enter as lender or owner.

Activities in relation to certain agreements relating to land

36E.—(1) There are excluded from article 36A activities carried on with a view to an individual or relevant recipient of credit entering into a regulated mortgage contract if the person carrying on the activity is an authorised person who has permission to—

(a) enter into such a contract as lender, or

(b) make an introduction to an authorised person who has permission to enter into such a contract as lender.

(2) There are excluded from article 36A activities carried on with a view to an individual or relevant recipient of credit entering into a regulated home purchase plan if the person carrying on the activity is an authorised person who has permission to—

(a) enter into such a plan as home purchase provider, or

(b) make arrangements for another person ("the client") to enter into such a plan by introducing the client to an authorised person who has permission to enter into such a plan as home purchase provider.

Activities carried on by members of the legal profession etc.

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

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