
STATUTORY INSTRUMENTS

2014 No. 206

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Appointed Representatives) (Amendment) Regulations 2014

<i>Made</i>	- - - -	<i>3rd February 2014</i>
<i>Laid before Parliament</i>		<i>5th February 2014</i>
<i>Coming into force</i>	- -	<i>1st April 2014</i>

The Treasury make the following Regulations in exercise of the powers conferred by section 39(1), (1C) and (1E) of the Financial Services and Markets Act 2000(1):

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Appointed Representatives) (Amendment) Regulations 2014 and come into force on 1st April 2014.

Amendment of the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001

2. (1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(2) are amended as follows.

(2) After regulation 2(1)(abc)(3) (descriptions of business for which appointed representatives are exempt), insert—

“(abd) “(abd) an activity of the kind specified by article 36H (operating an electronic system in relation to lending) of that Order(4);”.

(3) After regulation 3(3C)(5) (requirements applying to contracts between authorised persons and appointed representatives), insert—

-
- (1) 2000 c.8. Section 39(1C) and (1E) was inserted by section 10 of the Financial Services Act 2012 (c.21). See the definition of “prescribed” in section 417 of the Financial Services and Markets Act 2000.
- (2) S.I. 2001/1217.
- (3) Regulation 2 amended by S.I. 2001/2508, S.I. 2003/1475, S.I. 2003/1476, S.I. 2004/453, S.I. 2004/2737, S.I. 2006/2383, S.I. 2006/3414, S.I. 2012/1906 and S.I. 2013/1881.
- (4) The reference to “the Order” is a reference to the “Regulated Activities Order” which is defined in S.I. 2001/1217 as meaning the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544). That Order was amended by S.I. 2013/1881; there are there are other amending instruments but none is relevant.
- (5) Regulation 3 amended by S.I. 2003/1475, S.I. 2006/2383 and S.I. 2013/1881; there are other amending instruments but none is relevant.

“(3CA) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative—

- (a) facilitates persons becoming the lender and borrower under an article 36H agreement (within the meaning of article 36H(4) of the Regulated Activities Order) on behalf of other counterparties;
- (b) carries on any of the other activities specified in article 36H(3) of that Order on behalf of other counterparties in the course of, or in connection with, facilitation as mentioned in sub-paragraph (a).”.

(4) After regulation 4 (transitional provision in relation to contracts)(6) insert—

“Credit related activities: prescribed businesses etc.

5. (1) Any business which comprises an activity of the kind prescribed by regulation 2 is prescribed for the purposes of section 39(1C)(b)(i) of the Act (prescribed business) except to the extent that the person carrying on that activity (“P”) has Part 4A permission to carry it on.

(2) Subject to paragraph (3), the following kinds of regulated activities are prescribed for the purposes of section 39(1E)(a) of the Act—

- (a) an activity of the kind specified by article 36A of the Regulated Activities Order (credit broking) when carried on in a case specified in paragraph (4), (5) or (6);
- (b) an activity of the kind specified by article 39D of that Order (debt adjusting) when carried on—
 - (i) in the case specified in paragraph (4), by a person who also carries on an activity of the kind specified by sub-paragraph (a),
 - (ii) by a person in connection with an activity of the kind specified by paragraph (d) or (e) which the person also carries on, or
 - (iii) by a not-for-profit body;
- (c) an activity of the kind specified by article 39E of that Order (debt-counselling) when carried on—
 - (i) in the case specified in paragraph (4), by a person who also carries on an activity of the kind specified by sub-paragraph (a),
 - (ii) by a person in connection with an activity of the kind specified by paragraph (d) or (e) which the person also carries on, or
 - (iii) by a not-for-profit body;
- (d) an activity of the kind specified by article 60B of that Order (regulated credit agreements) if—
 - (i) it is carried on by a supplier,
 - (ii) no charge (by way of interest or otherwise) is payable by the borrower in connection with the provision of credit under the regulated credit agreement, and
 - (iii) the regulated credit agreement is not a hire-purchase agreement or a conditional sale agreement;
- (e) an activity of the kind specified by article 60N of that Order (regulated consumer hire agreements);

- (f) an activity of the kind specified by article 89A of that Order (providing credit information services) when carried on by a person in connection with an activity of the kind specified by paragraph (a) to (e) which the person also carries on;
- (g) an activity of the kind specified by article 64 of that Order (agreeing to carry on specified kinds of activity) so far as relevant to any of the activities specified in sub-paragraphs (a) to (f).

(3) Except where the activity is carried on by a not-for-profit body, an activity is not prescribed for the purposes of section 39(1E)(a) of the Act if it is an activity of the kind specified by—

- (a) sub-paragraphs (a) to (e) of paragraph (2), or
- (b) sub-paragraph (g) of that paragraph so far as it relates to activities of the kind specified by any of those sub-paragraphs,

and it relates to an agreement under which the obligation of the borrower to repay, or the hirer to pay is secured, or is to be secured, by a legal mortgage on land.

(4) The case specified in this paragraph is where a supplier (other than a domestic premises supplier) carries on the activity for the purposes of, or in connection with, the sale of goods or supply of services by the supplier to a customer (who need not be the borrower under the credit agreement or the hirer under the consumer hire agreement).

(5) The case specified in this paragraph is where the activity relates to a green deal plan.

(6) The case specified in this paragraph is where the activity relates to a consumer hire agreement (within the meaning given by article 60N of the Regulated Activities Order) where the goods being hired are a vehicle.

(7) For the purposes of this regulation—

“borrower” includes—

- (a) any person providing a guarantee or indemnity under an agreement, and
- (b) a person to whom the rights and duties of the borrower under an agreement or a person falling within sub-paragraph (a) have passed by assignment or operation of law;

“conditional sale agreement” has the meaning given by article 60L of the Regulated Activities Order;

“customer” means a person to whom a supplier sells goods or supplies services or agrees to do so;

“domestic premises supplier” means a supplier who sells goods or supplies services to customers who are individuals while physically present in the dwelling of the customer or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer (but a supplier who does so on an occasional basis is not to be treated as a “domestic premises supplier”);

“green deal plan” has the meaning given by section 1 of the Energy Act 2011(7);

“hire-purchase agreement” has the meaning given by article 60L of the Regulated Activities Order;

“not-for-profit body” means a body who, by virtue of its constitution or any enactment—

- (a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes);

“regulated credit agreement” has the meaning given by article 60B of the Regulated Activities Order;

“supplier” means a person whose main business is to sell goods or supply services and not to carry on a regulated activity, other than an activity of the kind specified by article 60N of the Regulated Activities Order (regulated consumer hire agreements).

(8) The requirements in regulation 3 are prescribed for the purposes of section 39(1C)(b)(ii) of the Act with the modification that references to the representative in that regulation are to be treated as if they were references to P.”

3rd February 2014

Sam Gyimah
Mark Lancaster
Two of the Lords Commissioners of Her
Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (S.I. 2001/1217) (“the Appointed Representatives Regulations”).

The effect of the amendment made by regulation 2(2) is to permit a person with permission to carry on the regulated activity of operating an electronic system in relation to lending to appoint a representative without the representative requiring authorisation under the Financial Services and Markets Act 2000 (c.8) (“the Act”) to undertake that activity. The effect of the amendment made by regulation 2(3) is to specify circumstances in which a person is to be treated as representing other operators of electronic systems.

Regulation 2(4) amends the Appointed Representatives Regulations so as to prescribe descriptions of business and kinds of regulated activities which are related to consumer credit for the purposes of section 39(1C) to (1E) of the Act. Generally, an authorised person may not make use of the exemption from authorisation available to appointed representatives. The effect of the amendments in regulation 2(4) is that an authorised person who has permission under the Act only in relation to certain consumer credit-related regulated activities may act as an appointed representative in respect of any of the activities which appointed representatives may undertake without permission.

A full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.gov.uk and is published alongside the Regulations on www.legislation.gov.uk.