
STATUTORY INSTRUMENTS

2001 No. 3649

The Financial Services and Markets Act 2000
(Consequential Amendments and Repeals) Order 2001

PART 5

AMENDMENTS TO THE CONSUMER CREDIT ACT 1974 (c. 39)

Exempt agreements

165.—(1) Section 16 (exempt agreements) of the Consumer Credit Act 1974 is amended as follows.

(2) In subsection (1)—

(a) for paragraph (a) substitute—

“(a) an insurer;” and

(b) for paragraph (h) substitute—

“(h) a deposit-taker.”

(3) For subsection (3), substitute—

“(3) Before he makes, varies or revokes an order under subsection (1), the Secretary of State must undertake the necessary consultation.

(3A) The necessary consultation means consultation with the bodies mentioned in the following table in relation to the provision under which the order is to be made, varied or revoked:

TABLE

| <i>Provision of subsection (1)</i> | <i>Consultee</i> |
|------------------------------------|---|
| Paragraph (a) or (b) | The Financial Services Authority |
| Paragraph (d) | The Charity Commissioners |
| Paragraph (e), (f) or (ff) | Any Minister of the Crown with responsibilities in relation to the body in question |
| Paragraph (g) or (h) | The Treasury and the Financial Services Authority”. |

(4) For subsection (8) substitute—

“(8) In the application of this section to Scotland, subsection (3A) shall have effect as if the reference to the Charity Commissioners were a reference to the Lord Advocate.”

(5) In subsection (9)—

(a) for “subsection (3)” substitute “subsection (3A)”;

- (b) the words “any reference to the Chief Registrar of Friendly Societies were a reference to the Registrar of Friendly Societies for Northern Ireland,” are repealed.
- (6) After that subsection insert—
- “(10) In this section—
- (a) “deposit-taker” means—
- (i) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits,
 - (ii) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits,
 - (iii) any wholly owned subsidiary (within the meaning of the Companies Act 1985) of a person mentioned in sub-paragraph (i), or
 - (iv) any undertaking which, in relation to a person mentioned in sub-paragraph (ii), is a subsidiary undertaking within the meaning of any rule of law in force in the EEA State in question for purposes connected with the implementation of the European Council Seventh Company Law Directive of 13 June 1983 on consolidated accounts (No. 83/349/EEC), and which has no members other than that person;
- (b) “insurer” means—
- (i) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance, or
 - (ii) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance,
- but does not include a friendly society or an organisation of workers or of employers.
- (11) Subsection (10) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.”.

Standard licences

166. In section 22 of the Consumer Credit Act 1974 (standard licences), after subsection (8) insert—

“(9) Subsection (10) applies if a standard licence is issued to an EEA consumer credit firm.

(10) The activities described in the licence are not to include an activity for which the firm has, or could obtain, permission under paragraph 15 of Schedule 3 to the Financial Services and Markets Act 2000.”.

Fitness of licensees

167.—(1) Section 25 of the Consumer Credit Act 1974 (licensees to be fit persons) is amended as follows.

(2) After subsection (1), insert—

“(1A) The Director shall refuse an application for the grant of standard licence made by a consumer credit EEA firm if all of the activities described in the licence are activities for which the firm has permission, or could obtain permission, under paragraph 15 of Schedule 3 to the Financial Services and Markets Act 2000.

(1B) If an application for the grant of a standard licence—

(a) is made by a person with permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, and

(b) relates to a listed activity,

the Financial Services Authority may, if it considers that the Director ought to refuse the application, notify him of that fact.

(1C) In subsection (1B) “listed activity” means an activity listed in Annex 1 to the banking consolidation directive (2000/12/EC) or in the Annex to the investment services directive (93/22/EEC) and references to deposits and to their acceptance must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.”.

(3) In subsection (2), after paragraph (b) insert—

“(bb) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);”.

Conduct of Consumer Credit Act business

168. For section 26 of the Consumer Credit Act 1974 (regulations as to the conduct of business) substitute—

“26 Conduct of business

(1) Regulations may be made as to—

(a) the conduct by a licensee of his business; and

(b) the conduct by a consumer credit EEA firm of its business in the United Kingdom.

(2) The regulations may in particular specify—

(a) the books or other records to be kept by any person to whom the regulations apply;

(b) the information to be furnished by such a person to those persons with whom—

(i) that person does business, or

(ii) that person seeks to do business,

and the way in which that information is to be furnished.”.

The register maintained under the Consumer Credit Act 1974

169. In section 35 of the Consumer Credit Act 1974 (the register), after subsection (1) insert—

“(1A) The Director shall also cause to be kept in the register any copy of any notice or other document relating to a consumer credit EEA firm which is given to the Director by the Financial Services Authority for inclusion in the register.”.

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

Enforcement of agreements made by unlicensed trader

170. In section 40 of the Consumer Credit Act 1974 (enforcement of agreements made by unlicensed trader), after subsection (5) insert—

“(6) This section does not apply to a regulated agreement, other than a non-commercial agreement, made by a consumer credit EEA firm unless at the time it was made that firm was precluded from entering into it as a result of—

- (a) a consumer credit prohibition imposed under section 203 of the Financial Services and Markets Act 2000; or
- (b) a restriction imposed on the firm under section 204 of that Act.”.

Appeals to the Secretary of State

171. In the table at the end of section 41 of the Consumer Credit Act 1974 (appeals to the Secretary of State) at the end insert—

| | |
|---|---|
| “Imposition of, or refusal to withdraw, consumer credit prohibition under section 203 of the Financial Services and Markets Act 2000. | The consumer credit EEA firm concerned. |
| Imposition of, or refusal to withdraw, a restriction under section 204 of the Financial Services and Markets Act 2000. | The consumer credit EEA firm concerned.”. |

Conduct of business regulations

172. In section 54 of the Consumer Credit Act 1974 (conduct of business regulations), for “a licensee” substitute “a person to whom the regulations apply”.

Enforcement of agreements made by unlicensed trader

173. In section 148 of the Consumer Credit Act 1974 (enforcement of agreements made by unlicensed trader), after subsection (5) insert—

“(6) This section does not apply to an agreement made by a consumer credit EEA firm unless at the time it was made that firm was precluded from entering into it as a result of—

- (a) a consumer credit prohibition imposed under section 203 of the Financial Services and Markets Act 2000; or
- (b) a restriction imposed on the firm under section 204 of that Act.”.

Regulated agreements made on introductions by unlicensed credit-brokers

174. In section 149 of the Consumer Credit Act 1974 (enforcement of regulated agreements made on introductions by unlicensed credit-brokers), after subsection (5) insert—

“(6) For the purposes of this section, “unlicensed credit-broker” does not include a consumer credit EEA firm unless at the time the introduction was made that firm was precluded from making it as a result of—

- (a) a consumer credit prohibition imposed under section 203 of the Financial Services and Markets Act 2000; or
- (b) a restriction imposed on the firm under section 204 of that Act.”.

Restriction on disclosure of information

175. For subsection (3A) of section 174 of the Consumer Credit Act 1974 (disclosure of information), substitute—

“(3A) Subsections (1) and (2) do not apply to any disclosure of information by the Director to the Financial Services Authority for the purpose of—

- (a) enabling or assisting the Authority to discharge any of its functions;
- (b) enabling or assisting the Director to discharge any of his functions under this Act or the Financial Services and Markets Act 2000.”.

Interpretation

176. In section 189(1) of the Consumer Credit Act 1974 (definitions)—

- (a) the definitions of “authorised institution” and “insurance company” are repealed;
- (b) in the definition of “deposit”, after “means” insert “(except in section 16(10) and 25(1B))”; and
- (c) in the definition of “friendly society” for “under the Friendly Societies Acts 1896 to 1971” substitute “or treated as registered under the Friendly Societies Act 1974 or the Friendly Societies Act 1992”.

Meaning of “consumer credit EEA firm”

177. After section 189 of the Consumer Credit Act 1974 insert—

“Meaning of “consumer credit EEA firm”

189A. In this Act “consumer credit EEA firm” means an EEA firm falling within subparagraph (a), (b) or (c) of paragraph 5 of Schedule 3 to the Financial Services and Markets Act 2000 carrying on, or seeking to carry on, consumer credit business, consumer hire business or ancillary credit business for which a licence would be required under this Act but for paragraph 15(3) of Schedule 3 to the Financial Services and Markets Act 2000.”.