Consumer credit background information

Updated 25 November 2019

Since 1 April 2014, responsibility for the regulation of consumer credit activities transferred from the Office of Fair Trading (OFT) to the Financial Conduct Authority (FCA). The Financial Services and Markets Act 2000 (FSMA) replaced the provisions of the Consumer Credit Act 1974 that cover licensing and other aspects of the regulatory framework for consumer credit regulation. Therefore, consumer credit activities that were licensable under the old act have become regulated activities under the FSMA.

SRA-regulated firms, up until 1 April 2014, carried on consumer credit activities under an OFT group consumer credit licence which was held by the Law Society and managed by the SRA.

Firms could undertake consumer credit activities set out in the group licence. These activities included:

- consumer credit
- credit brokerage
- debt adjusting and debt counselling
- debt collecting
- debt administration
- the provision of credit information services.

The group licensing system therefore enabled firms to operate without having an individual licence, if they were overseen by their professional body.

After April 2014, HM Treasury and the FCA confirmed that there would be no equivalent group authorisation to OFT's group licensing regime under the new rules. Therefore firms carrying on regulated consumer credit activities must now:

- be authorised by the FCA with the appropriate permission
- have been granted interim permission by the FCA
- be exempt under the SRA's arrangements made under Part 20 of the FSMA or
- have ceased to carry on consumer credit activities.

Law firms will need to consider whether they meet the criteria set out in Part 20 of the FSMA [http://www.legislation.gov.uk/ukpga/2000/8/part/XX] (see sections 327 and 332(4)) in order to be able to carry on regulated consumer credit activities.

Firms may already be familiar with the Part 20 regime in relation to regulated financial services, but it is also relevant to consumer credit

activities.

Under Part 20 of the FSMA, the carrying on of FSMA-regulated activities by members of a Designated Professional Body (DPB), such as the SRA (), is exempt from the general prohibition. So SRA-regulated firms carrying on regulated activities under the Part 20 regime do not have to be authorised by the FCA. These firms are referred to as exempt professional firms (EPFs).

Part 20 has two key provisions relevant to SRA-authorised firms:

- FSMA-regulated activities may be carried on by a member of a DPB who is not authorised by the FCA where the regulated activity "...arises out of, or is complementary to, the provision of a particular professional service to a particular client... " (s332(4) of the FSMA).
- the regulated activity "...must be incidental to the provision by them of professional services..." (s327(4) of the FSMA).

As a DPB, we are required to have rules that govern the carrying on of exempt regulated activities; these are the SRA Financial Services (Scope) Rules (Scope Rules) and the SRA Financial Services (Conduct of Business) Rules (COB Rules).

If firms can demonstrate that they fall within Part 20 in relation to consumer credit activities, then they must comply with the Scope and the COB Rules.

Transitional arrangements were put in place for the period 1 April 2014 to 31 March 2016 and changes to the Scope Rules and the SRA Handbook Glossary 2012 were made in order to facilitate the transfer of the regulation of consumer credit activities to the FCA.

Rule 5.11 was inserted into the Scope Rules which required firms that carry on a "credit-related regulated activity" or a connected activity to comply with the relevant provisions and guidance set out in the FCA's consumer credit sourcebook as they were in force immediately before 1 April 2014.

The "credit-related regulated activities" are set out in out in the FSMA (Regulated Activities) Order 2001 (RAO 2001).

These arrangements apply to SRA-authorised firms that fall within the Part 20 exemption and continue to carry on credit activities as EPFs.

During the transitional period, firms carrying on credit-related regulated activities were required to comply with the guidance and other provisions listed in the transitional provisions in the FCA's consumer credit source book.

These provisions did not impose any new obligations on firms which should already have been complying with them. Firms needed to adopt a

common sense approach in interpreting the provisions. For example, references to the OFT were to be read as if they referred to the FCA and references to the relevant supervisory authority meant the SRA.

Following consultation, our rules relating to consumer credit were approved by the FCA and the Legal Services Board. The final rules came into force on 1 April 2016.

HM Treasury changes to consumer credit activities

Contentious business and consumer credit

Our 2014 consultation on consumer credit explained that we were making representations to HM Treasury and the FCA about the need to extend some of the existing "contentious business" exclusions in the FSMA Regulated Activities Order (RAO). These exclusions appeared, on the face of it, to be available only where proceedings had been issued and did not cover pre-issue work.

We suggested widening the exclusions to exclude some consumer credit activities carried out by firms we regulate during pre-issue work and for the exclusions to be available to firms irrespective of whether proceedings were commenced.

We worked closely with HM Treasury and the FCA in this matter and this resulted in the FSMA (Miscellaneous Provisions) Order 2015 (SI 2015/853) which came into force on 24 March 2015. This order does exactly what we were hoping for and we believe that it will be of great benefit to firms without any reduction in consumer protection as these activities will still be regulated by us.

What do these changes mean?

Certain consumer credit activities, such as debt collecting, will be excluded from regulation where these activities are undertaken by solicitors (or other persons authorised under the Legal Services Act 2007) while providing advocacy services or litigation services.

The definition of these services is wider than the previous definition of "contentious business" and therefore would include pre-issue work. This will be particularly beneficial to law firms that were concerned that they may not be able to rely on the Part 20 exemption in relation to such pre-issue work. Where an activity is excluded under the RAO then it is not regulated under the FSMA.

Consequently, such firms will not need to be authorised by the FCA or even rely on the Part 20 exemption in order to undertake these excluded

activities. This is because Part 20 is not relevant unless the activities in question are regulated activities under the RAO.

Payment by instalments

HM Treasury considered amending the exemption in article 60F of the FSMA RAO by increasing the number of instalments over which repayments could be made under the exemption. This amendment was made by the FSMA (Miscellaneous Provisions) (No 2) Order 2015 (SI 2015/352).

With effect from 18 March 2015, the number of instalments that fall within the exemption increased from four to twelve.

The above exemption will not, however, be available if the agreement to accept payment by instalments is entered into after the debt has been incurred. This is because the exemption only applies to borrower-lender-supplier agreements (these relate to financing of a transaction) and not to the re-financing of an existing debt.