

Chapter 2

Authorisation and regulated activities

2.11 Persons who are exempt for credit-related regulated activities

2.11.1 G Various persons are exempted by Order made by the Treasury under section 38 of the *Act* from the need to obtain *authorisation* for certain *credit-related regulated activities* in the circumstances specified in the Order (for example, in some cases, a *person* is exempt only when acting in a particular capacity or for particular purposes). *Persons* exempt under the Order cannot be exempt in relation to some *regulated activities* and *authorised* in relation to others (except where the *person* is an *authorised person* with only *interim permission*).

Official receivers

2.11.2 G A *person* acting as:

- (1) an official receiver; or
- (2) a judicial factor;

is exempt in respect of *debt adjusting*, *debt counselling*, *debt collecting*, *debt administration* or *providing credit information services*.

Cycle to work

2.11.3 G This exemption applies to a scheme under which an employer provides or makes available to their employees a cycle or cyclist's safety equipment up to the value of £1,000 (which is designed to allow employees to take advantage of section 244 of the Income Tax (Earnings and Pensions) Act 2003). An employer does not require *authorisation* for the *regulated activities* relating to *regulated consumer hire agreements* just because it operates such a scheme.

Tracing agents

2.11.4 G A *person* who takes steps to ascertain the identity or location (or the means of ascertaining the identity or location) of a *borrower* or *hirer* is exempt from *debt-collecting* as long as the *person* is not the *lender* or *owner* under the agreement concerned, takes no other steps to collect debts due under the agreement and carries on no other activity which requires *authorisation*.

Enterprise schemes

2.11.5 G There are also exemptions from *credit broking*, *debt adjusting*, *debt-counselling* and *providing credit information services* for an enterprise

scheme as long as it does not carry on the activity for, or with the prospect of, direct or indirect pecuniary gain. Sums reasonably regarded as necessary to meet the costs of carrying on the activity do not constitute a pecuniary gain for this purpose.

Charities

2.11.6 **G** The exemption from *operating an electronic system in relation to lending* in paragraph 44(A1) of the Schedule to the *Exemption Order* applies to a charity (as defined in article 3 to the *Exemption Order*) which carries on that activity in relation to an article 36H agreement (see ■ PERG 2.7.7HG(4)). For the exemption to apply, the only amount payable to the *lender* under, or in connection with, the agreement must be the amount of *credit* provided; no interest or other charges may be added.

Process servers

2.11.7 **G**

- (1) Under paragraph 54A(1) of the Schedule to the *Exemption Order*, a *person* who serves, or takes steps to serve, a document on a *borrower* or a *hirer* for the purposes of legal proceedings, including arbitration and insolvency proceedings, brought or to be brought for the payment of a debt due under a *credit agreement*, a *P2P agreement* or a *consumer hire agreement* is exempted from *debt collecting*, as long as the *person*:
 - (a) is not the *lender* or *owner* under the agreement; and
 - (b) does not take any other steps to procure the payment of the debt or any other debt due from the *borrower* or the *hirer* under the agreement.
- (2) Under paragraph 54A(2) of the Schedule to the *Exemption Order*, a *person* who serves, or takes steps to serve, a document on a *borrower* or a *hirer* for the purposes of legal proceedings, including arbitration and insolvency proceedings, brought or to be brought for the exercise or enforcement of rights under a *credit agreement*, a *P2P agreement* or a *consumer hire agreement* is exempted from *debt administration*, as long as the *person*:
 - (a) is not the *lender* or *owner* under the agreement;
 - (b) does not take any other steps to exercise or enforce rights under the agreement; and
 - (c) does not take any steps in the performance of any duties under the agreement.

Persons exercising, or having the right to exercise, the rights of the person who provided credit under a regulated credit agreement: special purpose vehicles

2.11.8 **G** (1) The exemption in paragraph 55 of the Schedule to the *Exemption Order* covers special purpose vehicles and other entities which are part of a structured finance transaction and which meet the specified conditions. It confers exemption from the *general prohibition* on a *person* ("P") for the *regulated activity* of *exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement* (and associated *regulated activities*) where there is an arrangement for an *authorised person* who holds a relevant

permission to service the loans, or such an arrangement has ended in the previous 30 days.

- (2) The exemption is available to a *person* ("P") who:
 - (a) is not the original *lender*;
 - (b) does not grant or promise to grant, and is not required to grant, *credit* under any *regulated credit agreement*;
 - (c) has entered into a servicing arrangement with an *authorised person* who has permission to carry on the *regulated activities* of *debt collecting, debt administration or consumer credit lending* ("the servicer"), under which the servicer is to exercise on P's behalf P's rights under a *regulated credit agreement* (other than P's right to dispose of those rights); and
 - (d) does not undertake the regulated activities of *debt counselling, debt adjusting or debt collecting* in relation to a *regulated credit agreement* other than during an "exempt period". An "exempt period" is the period of 30 days beginning on the day after the day on which a servicing arrangement came to an end. Where, for example, a servicing agreement comes to an end suddenly or unexpectedly, P has a grace period of 30 days to find a new servicer and enter into a new servicing arrangement, and may service its own loans in that period without being authorised.

- (3) In addition, P must have arranged for the servicer to comply with:
 - (a) any provision of, or made under, the *Act* applicable to *authorised persons* that relates to the exercise of the right of the *lender* under a *regulated credit agreement* to vary terms and conditions of the agreement; and
 - (b) the requirements of, or made under, section 82 of the *CCA* (variation of agreements).

Where P varies the agreement itself, P must comply with those provisions and requirements.

- (4) Where P is exempt (as set out above), the exemption also extends to the *regulated activities* of *debt counselling and debt collecting* carried on in an exempt period in relation a *regulated credit agreement* under which P exercises, or has the right to exercise, the rights of the original *lender*.

- (5) For the purposes of this exemption, activities carried on by P under, or for the purposes of, a servicing arrangement are excluded from the *regulated activities* of *debt counselling and debt collecting* in relation to a *regulated credit agreement*.

Persons exercising, or having the right to exercise, the rights of the person who provided credit under a regulated consumer hire agreement: special purpose vehicles

2.11.9

G

Paragraph 56 of the Schedule to the *Exemption Order* confers an exemption analogous to that in paragraph 55 of the Schedule to the *Exemption Order* and described in ■ PERG 2.11.8G. It applies to the *regulated activity* of *exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement*.