

2015 No. 910**FINANCIAL SERVICES AND MARKETS****The Mortgage Credit Directive Order 2015**

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*Made**25th March 2015**Coming into force in accordance with article 1*

The Treasury are a government department designated¹ for the purposes of section 2(2) of the European Communities Act 1972² in relation to financial services.

In the opinion of the Treasury, one of the effects of this Order is that an activity which is not a regulated activity, within the meaning of the Financial Services and Markets Act 2000, will become a regulated activity.

This Order contains a provision restricting an exemption provided by an earlier Order³ made under section 38 of the Financial Services and Markets Act 2000.

A draft of this Order has been laid before and approved by a resolution of each House of Parliament in accordance with paragraphs 2 and 2A of Schedule 2 to the European Communities Act 1972⁴ and section 429(3) of and paragraph 26(2) of Schedule 2 to the Financial Services and Markets Act 2000⁵.

The Treasury make this Order in exercise of the powers conferred on them by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁶ and sections 21(9) and (15), 22(1) and (5), 38, 409 and 428(3) of the Financial Services and Markets Act 2000⁷.

Notes

¹ S.I. 2012/1759.

² Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and the European Union (Amendment) Act 2008 (c. 7), Schedule, Part 1. By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51) legislation may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1992 (Cm 2183).

³ S.I. 2001/1201, amended by S.I. 2003/1675, 2005/592, 2006/2383, 2008/2831, 2009/1342, 2010/671, 2011/1626 and 2012/641 and 700; there are other amending instruments but none is relevant to this Order.

⁴ Paragraph 2 was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and paragraph 2A was inserted by section 29 of that Act.

⁵ Paragraph 26 of Schedule 2 was substituted by section 8 of the Financial Services Act 2012 (c. 21).

⁶ Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.

⁷ Section 14A of the Interpretation Act 1978 (c. 30) (inserted by section 59 of the Enterprise and Regulatory Reform Act 2013 (c. 24)) provides that, where an Act provides a power to make subordinate legislation, that subordinate legislation may include a requirement to review the effectiveness of the legislation.

Extent

Preamble: (extent not available)

PART 1

Introductory Provisions

 Not Yet In Force

1.— Citation and commencement

- (1) This Order may be cited as the Mortgage Credit Directive Order 2015.
- (2) Articles 2 (interpretation) and 32 (FCA power to direct timing of applications for permission and registration) come into force on 6th April 2015.
- (3) Article 3 (amendments to legislation) comes into force on 20th April 2015 in so far as it gives effect to paragraph 15 of Schedule 1 (amendments to the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013).
- (4) The following provisions come into force on 21st September 2015—
 - (a) article 3 in so far as it gives effect to paragraph 1(4) of Schedule 1 (amendments to section 137R of the Act); and
 - (b) article 31 (transitional provision: person subject to the Consumer Credit Act 1974 who chooses to adopt new rules before 21st March 2016).
- (5) The other provisions of this Order come into force—
 - (a) on 20th April 2015 for the purposes of enabling the making and determination of applications for —
 - (i) a Part 4A permission, or a variation of a Part 4A permission, in relation to an activity of the kind specified by article 36A¹ (credit broking), 53A² (advising on regulated mortgage contracts) or 60B (regulated credit agreements) of the Regulated Activities Order, article 25A (arranging regulated mortgage contracts) or 61³ (entering into and administering regulated mortgage contracts) of the Regulated Activities Order as amended by this Order, or article 53DA (advising on regulated credit agreements for the acquisition of land) of the Regulated Activities Order as inserted by this Order; or
 - (ii) entry on the register of consumer buy-to-let mortgage firms under article 8 of this Order (register of consumer buy-to-let mortgage firms);
 - (b) on 21st December 2015 for the purposes of—
 - (i) enabling the appropriate regulator to treat a consent notice referred to in paragraph 13(1)(a) or a regulator's notice referred to in paragraph 14(1)(b) of Schedule 3 to the Act (as amended by this Order) given on or after that date by an EEA firm falling

within paragraph 5(i) of Schedule 3 to the Act (as amended by this Order) as effective for the purposes of paragraph 13(1) or 14(1) (as the case may be)⁴; and
(ii) enabling the appropriate regulator to treat a notice of intention referred to in paragraph 19(2)⁵ or 20(1)⁶ of Schedule 3 to the Act (as amended by this Order) given on or after that date by a UK firm wishing to exercise an EEA right under the mortgages directive as effective for the purposes of paragraph 19(2) or 20(1) (as the case may be); and

(c) for all other purposes, on 21st March 2016.

(6) Nothing in paragraph (5)(b) gives a person an EEA right to carry on, before 21st March 2016, any of the activities set out in sub-paragraphs (a) to (c) of Article 4(5) of the mortgages directive or to provide advisory services (as defined in Article 4(21) of that directive).

Notes

¹ Articles 36A and 60B were inserted by S.I. 2003/1881.

² Articles 25A and 53A were inserted by S.I. 2003/1475.

³ Article 61 was amended by S.I. 2001/3544, 2005/2114, 2006/3283 and 2010/2960.

⁴ Paragraphs 13(1) and 14(1) were previously amended by paragraph 2 of Schedule 4 to the Financial Services Act 2012 (c. 21) and by S.I. 2003/1473 and 2066, 2007/126 and 2013/1773.

⁵ Paragraph 19(2) was previously amended by paragraph 10 of Schedule 4 to the Financial Services Act 2012.


⁶ Paragraph 20(1) was previously amended by paragraph 11 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2007/3253 and 2013/1773.

Commencement

Pt 1 art. 1(1)-(6): Date to be appointed

Extent

Pt 1 art. 1(1)-(6): (extent not available)

 Not Yet In Force

2.— Interpretation

(1) In this Order—

“the Act” means the Financial Services and Markets Act 2000;

“appropriate regulator” means—

- (a) in relation to a firm which is a PRA-authorised person, the PRA;
- (b) in any other case, the FCA;

“borrower” has the meaning given by article 61(3)(a)(i) of the Regulated Activities Order;

“consumer credit back book mortgage contract” means a contract which—

- (a)
 - (i) is entered into before 21st March 2016,
 - (ii) immediately before 21st March 2016 is a regulated credit agreement within the meaning of article 60B(3) of the Regulated Activities Order, and
 - (iii) but for article 28(1), would be a regulated mortgage contract if it were entered into on or after 21st March 2016; or

(b)

- (i) relates to the granting of credit in the circumstances described in article 28(1),
- (ii) is entered into on or after 21st March 2016,
- (iii) would be a regulated credit agreement within the meaning of article 60B(3) of the Regulated Activities Order if it had been entered into immediately before 21st March 2016, and
- (iv) but for article 28(1), would be a regulated mortgage contract at the time that it is entered into;

“the mortgages directive” means Directive 2014/17/EU of the European Parliament and of the Council of 4th February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010¹;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

(2) Unless otherwise defined—

- (a) any expression used in this Order which is used in the mortgages directive has the same meaning as in that directive; and
- (b) any other expression used in this Order which is defined for the purposes of the Act has the meaning given by the Act.

Notes

¹ OJ L 60, 28.2.2014, p.34.

Commencement

Pt 1 art. 2(1)-(2)(b): Date to be appointed

Extent

Pt 1 art. 2(1)-(2)(b): (extent not available)

PART 2

Amendments to legislation

 Not Yet In Force

3. Amendments to legislation

Schedule 1, which contains amendments to primary and secondary legislation, has effect.

Commencement

Pt 2 art. 3: Date to be appointed

Extent

Pt 2 art. 3: (extent not available)

PART 3**Consumer buy-to-let mortgages**

N Not Yet In Force

4.— Interpretation of this Part**(1) In this Part—**

“advisory services” has the meaning given by article 6;

“annual percentage rate of charge” has the meaning given by paragraph 9(6) of Schedule 2;

“buy-to-let mortgage contract” means a contract that—

(a) at the time it is entered into—

(i) meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) of the Regulated Activities Order (regulated mortgage contracts); and

(ii) provides that the land subject to the mortgage cannot at any time be occupied as a dwelling by the borrower or by a related person, and is to be occupied as a dwelling on the basis of a rental agreement; or

(b) is a regulated credit agreement within the meaning of article 60B of the Regulated Activities Order which—

(i) falls within Article 3(1)(b) of the mortgages directive; and

(ii) provides that the land, or existing or projected building, to which it relates cannot at any time be occupied as a dwelling by the borrower or by a related person, and is to be occupied as a dwelling on the basis of a rental agreement;

“consumer” means a person acting for purposes which are outside that person's trade, business or profession;

“consumer buy-to-let mortgage business” means one or more of the following activities—

(a) acting as a creditor;

(b) acting as a credit intermediary; or

(c) providing advisory services;

“consumer buy-to-let mortgage contract” means a buy-to-let mortgage contract which is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower;

“consumer buy-to-let mortgage firm” means a person carrying on consumer buy-to-let mortgage business;

“credit intermediary” has the meaning given by article 5;

“creditor” means a person who, in the course of a trade, business or profession—

(a) enters into, or promises to enter into, a consumer buy-to-let mortgage contract under which the person is to provide credit, or

(b) administers a consumer buy-to-let mortgage contract,

and for the purposes of paragraph (b) a person administers a consumer buy-to-let mortgage contract if the person carries on the regulated activity specified by article 61(2) of the Regulated Activities Order (regulated mortgage contracts)¹ in respect of the contract, or would carry on that regulated activity in respect of the contract but for the exclusion in article 72I of that Order (registered consumer buy-to-let mortgage firms)²;

“decision notice” means a notice that complies with the requirements of section 388 of the Act (decision notices)³;

“foreign currency loan” means a consumer buy-to-let mortgage contract where the credit is denominated in a currency other than that in which the borrower receives the income or holds the assets from which the credit is to be repaid;

“register” means the register kept by the FCA under article 8(1);

“registered consumer buy-to-let mortgage firm” means a person who is included in the register;

“related person” has the meaning set out in article 61A of the Regulated Activities Order (mortgage contracts which are not regulated mortgage contracts)⁴; and

“warning notice” means a notice that complies with the requirements of section 387 of the Act (warning notices)⁵.

(2) For the purposes of this Part, if an agreement includes a declaration which—

(a) is made by the borrower, and

(b) includes—

(i) a statement that the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower;

(ii) a statement that the borrower understands that the borrower will not have the benefit of the protection and remedies that would be available to the borrower under this Order if the agreement were a consumer buy-to-let mortgage contract under this Order; and

(iii) a statement that the borrower is aware that if the borrower is in any doubt as to the consequences of the agreement not being regulated by this Order, then the borrower should seek independent legal advice,

the agreement is to be presumed to have been entered into by the borrower wholly or predominantly for the purposes specified in sub-paragraph (b)(i), unless paragraph (3) applies.

(3) This paragraph applies if, when the agreement is entered into—

(a) the creditor (or, if there is more than one creditor, any of the creditors), or

(b) any person who has acted on behalf of the creditor (or, if there is more than one creditor, any of the creditors) in connection with the entering into of the agreement,

knows or has reasonable cause to suspect that the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(4) For the purposes of this Part, a borrower is to be regarded as entering into an agreement for the purposes of a business carried on, or intended to be carried on, by the borrower if the agreement is a buy-to-let mortgage contract and—

- (a)
- (i) the borrower previously purchased, or is entering into the contract in order to finance the purchase by the borrower of, the land to which the agreement relates;
 - (ii) at the time of the purchase the borrower intended that the land would be occupied as a dwelling on the basis of a rental agreement and would not at any time be occupied as a dwelling by the borrower or by a related person, or where the borrower has not yet purchased the land the borrower has such an intention at the time of entering into the contract; and
 - (iii) where the borrower has purchased the land, since the time of the purchase the land has not at any time been occupied as a dwelling by the borrower or by a related person; or
- (b) the borrower is the owner of land, other than the land to which the agreement relates, which is—
- (i) occupied as a dwelling on the basis of a rental agreement and is not occupied as a dwelling by the borrower or by a related person; or
 - (ii) subject to a mortgage under a buy-to-let mortgage contract.

Notes


- ¹ Article 61(2) was amended by S.I. 2001/3544.
- ² Article 72I is inserted by paragraph 4 of the Schedule to this Order.
- ³ Section 388 was amended by paragraphs 1 and 27 of Schedule 9 to the Financial Services Act 2012 (c. 21) and by paragraph 13 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c. 33).
- ⁴ Article 61A is inserted by paragraph 4 of the Schedule to this Order.
- ⁵ Section 387 was amended by paragraphs 1 and 26 of Schedule 9 to the Financial Services Act 2012 and paragraph 12 of Schedule 3 to the Financial Services (Banking Reform) Act 2013.

Commencement

Pt 3 art. 4(1)-(4)(b)(ii): Date to be appointed

Extent

Pt 3 art. 4(1)-(4)(b)(ii): (extent not available)

 Not Yet In Force

5.— Meaning of credit intermediary

- (1) A person acts as a credit intermediary if the person—
- (a) is not a creditor;
 - (b) is not merely introducing, either directly or indirectly, a consumer to a creditor or credit intermediary;
 - (c) is acting in the course of the person's trade, business or profession, for remuneration, which may take a pecuniary form or any other agreed form of financial consideration; and
 - (d) meets one or more of conditions A to C.
- (2) Condition A is that the person presents or offers consumer buy-to-let mortgage contracts to consumers.

(3) Condition B is that the person assists consumers by undertaking preparatory work or other pre-contractual administration in respect of consumer buy-to-let mortgage contracts other than as referred to in Condition A.

(4) Condition C is that the person concludes consumer buy-to-let mortgage contracts with consumers on behalf of the creditor.

Commencement

Pt 3 art. 5(1)-(4): Date to be appointed

Extent

Pt 3 art. 5(1)-(4): (extent not available)

N Not Yet In Force

6.— Meaning of advisory services

(1) A person provides advisory services if, in the course of that person's trade, business or profession, the person provides personal recommendations to a consumer in respect of one or more transactions relating to consumer buy-to-let mortgage contracts.

(2) A person who provides personal recommendations to a consumer in respect of one or more transactions relating to consumer buy-to-let mortgage contracts is not providing advisory services if the recommendations are provided—

(a) in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the making of those recommendations; or

(b) in the context of managing existing debt as an insolvency practitioner where that activity is regulated by legal or regulatory provisions or as part of public or voluntary debt advisory services which do not operate on a commercial basis.

Commencement

Pt 3 art. 6(1)-(2)(b): Date to be appointed

Extent

Pt 3 art. 6(1)-(2)(b): (extent not available)

N Not Yet In Force

7. Limitation on permission to carry on regulated activities

If a person has a Part 4A permission to carry on an activity of the kind specified by article 25A, 36A, 53A, 53DA, 60B or 61 of the Regulated Activities Order, that person's Part 4A permission is subject to a requirement that the person does not carry on any activity that would constitute consumer buy-to-let mortgage business unless the person is a registered consumer buy-to-let mortgage firm.

Commencement

Pt 3 art. 7: Date to be appointed

Extent

Pt 3 art. 7: (extent not available)

N Not Yet In Force

8.— Register of consumer buy-to-let mortgage firms

(1) The FCA must keep a register of consumer buy-to-let mortgage firms and must enter a person on the register if the conditions in paragraph (2) or (3) are met.

(2) The conditions in this paragraph are that—

- (a) the person carries on, or is seeking to carry on, consumer buy-to-let mortgage business;
- (b) the person—
 - (i) has a Part 4A permission to carry on one or more regulated activities; or
 - (ii) is treated as having an interim permission to carry on one or more regulated activities under article 56 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013¹;
- (c) the person applies to the FCA in a manner that complies with the requirements of, and any requirements imposed under, article 9 for entry on the register; and
- (d) the FCA has not previously revoked the registration of the person under article 13.

(3) The conditions in this paragraph are that—

- (a) the person carries on, or is seeking to carry on, consumer buy-to-let mortgage business;
- (b) the person's head office, registered office or place of residence, as the case may be, is in the United Kingdom;
- (c) none of the individuals responsible for the management or operation of the person's consumer buy-to-let mortgage business—
 - (i) has been convicted of any offence involving fraud or dishonesty, or any indictable offence, and for this purpose “offence” includes any act or omission which would have been an offence if it had taken place in the United Kingdom; or
 - (ii) is subject to a prohibition order;
- (d) if the registration is to be of a partnership, an unincorporated association or a body corporate, the FCA is satisfied that any persons having a controlling interest over the partnership, unincorporated association or body corporate are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of a consumer buy-to-let mortgage firm;
- (e) the FCA is satisfied that—
 - (i) where the registration is to be of a body corporate, the directors;
 - (ii) the persons responsible for the management of the firm; and
 - (iii) the persons responsible for consumer buy-to-let mortgage business,
 are of good repute;
- (f) if the person is not a creditor but is a credit intermediary or provides advisory services for the purposes of this Part, the person holds professional indemnity insurance covering

- its consumer buy-to-let mortgage business in the United Kingdom, or some other comparable guarantee against liability arising from professional negligence, of at least the minimum monetary amount specified in Commission Delegated Regulation (EU) No. 1125/2014 of 19th September 2014 of the European Parliament and of the Council with regard to regulatory technical standards on the minimum monetary amount of the professional indemnity insurance or comparable guarantee to be held by credit intermediaries², as such Regulation may be amended from time to time;
- (g) the individuals responsible for the management or operation of the person's consumer buy-to-let mortgage business possess an appropriate level of knowledge and competence in relation to consumer buy-to-let mortgage contracts; and
- (h) the person applies to the FCA in a manner that complies with the requirements of, and any requirements imposed under, article 9 for entry on the register.
- (4) For the purposes of sub-paragraph (3)(d), a person (“C”) has a controlling interest over the firm (“F”) if—
- (a) C holds 10% or more of the shares in F or in a parent undertaking of F (“P”);
 - (b) C holds 10% or more of the voting power in F or P; or
 - (c) C holds shares or voting power in F or P as a result of which C is able to exercise significant influence over the management of F.
- (5) The FCA may—
- (a) keep the register in any form it thinks fit;
 - (b) include on the register such information as the FCA considers appropriate;
 - (c) publish the register, or any part of it; and
 - (d) exploit commercially the information contained in the register, or any part of that information.
- (6) The FCA must—
- (a) make the register available for inspection by members of the public in a legible form at such times and in such place or places as the FCA may determine; and
 - (b) provide a certified copy of the register, or any part of it, to any person who asks for it—
 - (i) on payment of the fee (if any) fixed by the FCA; and
 - (ii) in a form (either written or electronic) in which it is legible to the person asking for it.
- (7) If a partnership or unincorporated association is entered on the register, its registration—
- (a) has effect for activities carried on in the name of the partnership or unincorporated association;
 - (b) is not affected by any change in the membership of the partnership or unincorporated association; and
 - (c) if the partnership or unincorporated association is dissolved, continues to have effect in relation to any individual, partnership or unincorporated association which succeeds to the whole or substantially the whole of the business of the former partnership or unincorporated association.
- (8) In paragraph (7) “partnership” does not include a partnership which is constituted under the law of any place other than the United Kingdom and is a body corporate.

Notes

- ¹ Article 56 was amended by S.I. 2014/366 and 376.
² OJ L 305, 24.10.2014, p.1

Commencement

Pt 3 art. 8(1)-(8): Date to be appointed

Extent

Pt 3 art. 8(1)-(8): (extent not available)

N Not Yet In Force

9.— Applications for entry on the register or variation of an existing entry on the register

- (1) An application for entry on the register may be made by an individual, a body corporate, a partnership or an unincorporated association.
- (2) An application for entry on the register or variation of an existing entry on the register must—
- (a) be made in such manner as the FCA may direct; and
 - (b) contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it, the FCA may require the applicant to provide it with such further information as it considers necessary to enable it to determine the application.
- (4) Different directions may be given, and different requirements imposed, in relation to different applications or categories of applications.
- (5) The FCA may require an applicant to provide information which the applicant is required to give under this article in such form, or to verify it in such manner, as the FCA may specify.

Commencement

Pt 3 art. 9(1)-(5): Date to be appointed

Extent

Pt 3 art. 9(1)-(5): (extent not available)

N Not Yet In Force

10.— Determination of applications

- (1) The FCA must determine an application for entry on the register before the end of the period of six months beginning with the date on which it receives the completed application.
- (2) The FCA may determine an incomplete application, and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.

(3) If the FCA enters a person on the register, it must give written notice of its determination to that person.

Commencement

Pt 3 art. 10(1)-(3): Date to be appointed

Extent

Pt 3 art. 10(1)-(3): (extent not available)

N Not Yet In Force

11.— Procedure when refusing an application

(1) If the FCA proposes to refuse an application made under article 9(1) it must give the applicant a warning notice.

(2) If the FCA refuses an application—

- (a) it must give the applicant a decision notice; and
- (b) the applicant may refer the matter to the Tribunal.

Commencement

Pt 3 art. 11(1)-(2)(b): Date to be appointed

Extent

Pt 3 art. 11(1)-(2)(b): (extent not available)

N Not Yet In Force

12. Registered consumer buy-to-let mortgage firm ceasing to meet the requirements for registration

If a registered consumer buy-to-let mortgage firm ceases to meet a condition in article 8(2) or (3) that applies to it, the firm must inform the FCA immediately.

Commencement

Pt 3 art. 12: Date to be appointed

Extent

Pt 3 art. 12: (extent not available)

N Not Yet In Force

13. Revocation of registration

The FCA may revoke the registration of a registered consumer buy-to-let mortgage firm if—

- (a) the firm does not meet a condition in article 8(2) or (3) that applies to it;
 - (b) the firm has contravened a requirement in Schedule 2 that applies to it;
 - (c) the firm applies for or consents to the revocation of the registration;
 - (d) the firm has ceased to engage in consumer buy-to-let mortgage business for more than twelve months;
 - (e) a fee due in respect of the registration has not been paid; or
 - (f) the revocation is desirable in order to protect the interests of consumers.
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Commencement

Pt 3 art. 13(a)-(f): Date to be appointed

Extent

Pt 3 art. 13(a)-(f): (extent not available)

N Not Yet In Force

14.— Procedure on revocation

- (1) If the FCA proposes to revoke the registration of a registered consumer buy-to-let mortgage firm other than at the firm's request or with the firm's consent, the FCA must give that firm a warning notice.
 - (2) If the FCA decides to revoke the registration of a registered consumer buy-to-let mortgage firm other than at the firm's request or with the firm's consent—
 - (a) the FCA must give that firm a decision notice, and
 - (b) that firm may refer the matter to the Tribunal.
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Commencement

Pt 3 art. 14(1)-(2)(b): Date to be appointed

Extent

Pt 3 art. 14(1)-(2)(b): (extent not available)

N Not Yet In Force

15.— Suspension of registration

- (1) If it appears to the FCA that a registered consumer buy-to-let mortgage firm does not meet a condition in article 8(2) or (3) that applies to it, the FCA may suspend the registration of that firm for a specified period, until the occurrence of a specified event, or until specified conditions are complied with.
- (2) In this article “specified” means specified by the FCA in a notice given under article 16.

Commencement

Pt 3 art. 15(1)-(2): Date to be appointed

Extent

Pt 3 art. 15(1)-(2): (extent not available)

N Not Yet In Force

16.— Procedure on suspension

(1) The suspension of the registration of a registered consumer buy-to-let mortgage firm takes effect—

- (a) immediately, if the notice given under paragraph (4) states that that is the case;
- (b) on such date as may be specified in the notice; or
- (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A suspension may take effect immediately or on a specified date only if the FCA, having regard to the ground on which it is exercising its power under article 15, considers that it is necessary for the suspension to take effect immediately or on that date.

(3) If the FCA proposes to suspend the registration of a registered consumer buy-to-let mortgage firm other than at the firm's request or with the firm's consent, the FCA must give that firm a warning notice.

(4) If the FCA decides to suspend the registration of a registered consumer buy-to-let mortgage firm other than at the firm's request or with the firm's consent—

- (a) the FCA must give that firm a decision notice, and
 - (b) that firm may refer the matter to the Tribunal.
-

Commencement

Pt 3 art. 16(1)-(4)(b): Date to be appointed

Extent

Pt 3 art. 16(1)-(4)(b): (extent not available)

N Not Yet In Force

17. Appointed representatives

Section 39 of the Act (exemption of appointed representatives)¹ applies in respect of consumer buy-to-let mortgage business as if in subsection (4), the reference to provisions contained in the Act included reference to provisions contained in this Order.

Notes

- ¹ Section 39 was amended by section 10 of, and paragraph 5 of Schedule 18 to, the Financial Services Act 2012 (c. 21) and by S.I. 2007/126 and 2013/3115.

Commencement

Pt 3 art. 17: Date to be appointed

Extent

Pt 3 art. 17: (extent not available)

N Not Yet In Force

18.— Obligations of registered consumer buy-to-let mortgage firms

(1) A registered consumer buy-to-let mortgage firm must, in respect of its consumer buy-to-let mortgage business—

- (a) comply with the requirements set out in Schedule 2;
- (b) retain information relevant to demonstrating the firm's compliance or non-compliance with the requirements of that Schedule—
 - (i) in retrievable and legible form; and
 - (ii) so long as any sum remains outstanding, or any mortgage or charge remains in place, under the consumer buy-to-let mortgage contract to which the information relates;
- (c) provide the FCA with such information in relation to the firm's consumer buy-to-let mortgage business and its compliance with the requirements of that Schedule as the FCA may direct, in order to enable the FCA to discharge its functions under this Part; and
- (d) deal with the FCA in an open and co-operative manner.

(2) Information provided under paragraph (1)(c) must be given at such times and in such manner, and verified in such manner, as the FCA may direct.

(3) Sections 348¹, 349² and 352³ of the Act (confidential information) and regulations made under section 349 of the Act apply in relation to information provided to the FCA under paragraph (1)(c) as they apply in relation to information received by the FCA in the discharge of its functions under the Act.

Notes

- ¹ Section 348 was amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c. 28), paragraph 18 of Schedule 12 to the Financial Services Act 2012 (c. 21) and paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c. 33).
- ² Section 349 was amended by section 964 of the Companies Act 2006 (c. 46), paragraph 19 of Schedule 12 to the Financial Services Act 2012 and S.I. 2006/1183.
- ³ Section 352 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c. 44).

Commencement

Pt 3 art. 18(1)-(3): Date to be appointed

Extent

Pt 3 art. 18(1)-(3): (extent not available)

N Not Yet In Force

19.— Power to direct registered consumer buy-to-let mortgage firms to take appropriate action

(1) The FCA may direct a registered consumer buy-to-let mortgage firm to take such steps as are necessary for the purposes of securing compliance with the requirements of Schedule 2 in respect of the firm's consumer buy-to-let mortgage business.

(2) A direction under paragraph (1) may, in particular, require the firm to—

- (a) take specified action,
- (b) refrain from taking specified action,
- (c) review or take remedial action in respect of past conduct.

(3) A direction under paragraph (1) may also be given to or apply to a person who was a registered consumer buy-to-let mortgage firm, in relation to conduct that occurred while the person was registered.

(4) The FCA may direct registered consumer buy-to-let mortgage firms as to the steps to be taken where the FCA requires such a firm to appoint a person to make a report pursuant to section 166 of the Act¹ (as applied by article 23(2)).

(5) A person to whom a direction under paragraph (1) or (4) is given or to whom such a direction applies must comply with the direction.

(6) Section 55Y (exercise of own-initiative power: procedure) and 55Z3(2) (right to refer matters to the Tribunal) of the Act apply to a direction to a person under paragraph (1) as they apply to a requirement imposed on an authorised person under section 55L(3) of the Act (imposition of requirements by the FCA)².

Notes

¹ Section 166 was substituted by paragraph 5 of Schedule 12 to the Financial Services Act 2012.

² Sections 55L, 55Y and 55Z3 were substituted, together with the rest of Part 4A of the Act, by section 11(2) of the Financial Services Act 2012.

Commencement

Pt 3 art. 19(1)-(6): Date to be appointed

Extent

Pt 3 art. 19(1)-(6): (extent not available)

N Not Yet In Force

20.— Functions of the FCA in relation to this Part

- (1) The FCA is to have the functions conferred on it by this Part.
- (2) In discharging its function of determining the general policy and principles by reference to which it performs particular functions under this Part, the FCA must have regard to—
 - (a) the need to use its resources in the most efficient and economic way;
 - (b) the responsibilities of those who manage the affairs of consumer buy-to-let mortgage firms;
 - (c) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
 - (d) the desirability of facilitating innovation in connection with consumer buy-to-let mortgage business;
 - (e) the need to minimise the adverse effects on competition that may arise from anything done in the discharging of those functions; and
 - (f) the desirability of facilitating competition in relation to consumer buy-to-let mortgage business.

Commencement

Pt 3 art. 20(1)-(2)(f): Date to be appointed

Extent

Pt 3 art. 20(1)-(2)(f): (extent not available)

N Not Yet In Force

21.— Monitoring and enforcement

- (1) The FCA must maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under this Part are complying with them.
- (2) The arrangements referred to in paragraph (1) may provide for functions to be performed on behalf of the FCA by any body or person who is, in the FCA's opinion, competent to perform them.
- (3) The FCA must also maintain arrangements for enforcing the provisions of this Part.
- (4) Paragraph (2) does not affect the FCA's duty under paragraph (1).

Commencement

Pt 3 art. 21(1)-(4): Date to be appointed

Extent

Pt 3 art. 21(1)-(4): (extent not available)

N Not Yet In Force

22.— Guidance

(1) The FCA may give guidance consisting of such information and advice as it considers appropriate with respect to—

- (a) the operation of this Part;
- (b) any matters relating to the functions of the FCA under this Part;
- (c) any other matters about which it appears to the FCA to be desirable to give information or advice in connection with this Part.

(2) The FCA may—

- (a) publish its guidance;
- (b) offer copies of its published guidance for sale at a reasonable price;
- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

Commencement

Pt 3 art. 22(1)-(2)(c): Date to be appointed

Extent

Pt 3 art. 22(1)-(2)(c): (extent not available)

N Not Yet In Force

23.— Application of provisions of the Act to registered consumer-buy-to-let mortgage firms

(1) For the purposes of the following provisions of the Act, a requirement imposed by or under this Part on a consumer buy-to-let mortgage firm in respect of its consumer buy-to-let mortgage business is to be treated as if it were a requirement imposed on an authorised person by or under the Act—

- (a) section 204A¹ (meaning of “relevant requirements”);
- (b) section 380² (injunctions);
- (c) section 382³ (restitution orders);
- (d) section 384 (power of FCA or PRA to require restitution); and
- (e) section 398⁴ (misleading FCA or PRA: residual cases).

(2) The following provisions of the Act apply in respect of the exercise by the FCA of its functions under this Part in relation to a registered consumer buy-to-let mortgage firm as they apply in respect of the exercise by the FCA of its functions under the Act in relation to an authorised person—

- (a) section 165⁵ (regulators' power to require information: authorised persons etc.);
- (b) section 166⁶ (reports by skilled persons);
- (c) section 167⁷ (appointment of persons to carry out general investigations);
- (d) section 168(4) to (6)⁸ (appointment of persons to carry out investigations in particular cases);
- (e) section 169⁹ (investigations etc. in support of overseas regulator);
- (f) section 170¹⁰ (investigations: general);
- (g) section 171¹¹ (powers of persons appointed under section 167);
- (h) section 172 (additional power of persons appointed as a result of section 168(1) or (4));
- (i) section 173 (powers of persons appointed as a result of section 168(2));

- (j) section 174¹² (admissibility of statements made to investigators);
- (k) section 175¹³ (information and documents: supplemental provisions);
- (l) section 176¹⁴ (entry of premises under warrant);
- (m) section 176A¹⁵ (retention of documents taken under section 176);
- (n) section 177¹⁶ (offences);
- (o) section 205¹⁷ (public censure); and
- (p) section 206¹⁸ (financial penalties).

(3) Section 168 of the Act is to be read as if subsection (4) included a reference to circumstances suggesting that a person may have failed to comply with the obligations imposed by this Part.

(4) Sections 207 to 211 (disciplinary measures: procedure and policy) of, and paragraph 20 (penalties) of Schedule 1ZA to, the Act¹⁹ apply in relation to the exercise of the FCA's powers under section 205 or 206 of the Act as applied by paragraph (2)(o) and (p) as they apply in relation to the exercise of such powers under section 205 or 206 of the Act in respect of authorised persons.

(5) Registered consumer buy-to-let mortgage firms are to be treated as regulated persons for the purposes of paragraph 21 of Schedule 1ZA to the Act (financial penalty scheme)²⁰.

Notes

- ¹ Section 204A was inserted by paragraphs 1 and 10 of Schedule 9 to the Financial Services Act 2012 (c. 21).
- ² Section 380 was amended by paragraph 19 of Schedule 9 to the Financial Services Act 2012 (c. 21), paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 (c. 33) and S.I. 2013/1773.
- ³ Section 382 was amended by paragraph 21 of Schedule 9 to the Financial Services Act 2012, paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and S.I. 2013/1773.
- ⁴ Section 398 was amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012 and by S.I. 2013/1773.
- ⁵ Section 165 was amended by paragraph 15 of Schedule 2 to the Financial Services Act 2010 (c. 28), paragraph 1 of Schedule 12 to the Financial Services Act 2012 and S.I. 2013/1773.
- ⁶ Section 166 was substituted by paragraph 5 of Schedule 12 to the Financial Services Act 2012.
- ⁷ Section 167 was amended by paragraph 7 of Schedule 12 to the Financial Services Act 2012 and S.I. 2007/126.
- ⁸ Section 168 was amended by paragraph 33 of Schedule 7 to the Counter-Terrorism Act 2008 (c. 28), paragraph 16 of Schedule 2 to the Financial Services Act 2010, paragraph 8 of Schedule 12 to the Financial Services Act 2012 and S.I. 2007/126, 2012/2554 and 2013/1773.
- ⁹ Section 169 was amended by paragraph 9 of Schedule 12 to the Financial Services Act 2012.
- ¹⁰ Section 170 was amended by paragraph 10 of Schedule 12 to the Financial Services Act 2012.
- ¹¹ Section 171 was amended by S.I. 2007/126.
- ¹² Section 174 was amended by paragraph 12 of Schedule 12 to the Financial Services Act 2012.
- ¹³ Section 175 was amended by paragraph 13 of Schedule 12 to the Financial Services Act 2012.
- ¹⁴ Section 176 was amended by paragraph 17 of Schedule 2 to the Financial Services Act 2010, paragraph 14 of Schedule 12 to the Financial Services Act 2012 and S.I. 2005/1433.
- ¹⁵ Section 176A was inserted by paragraph 15 of Schedule 12 to the Financial Services Act 2012.
- ¹⁶ Section 177 was amended by paragraph 8 of Schedule 8 to the Financial Services Act 2012 and S.I. 2001/1090.
- ¹⁷ Section 205 was amended by paragraph 11 of Schedule 9 to the Financial Services Act 2012.
- ¹⁸ Section 206 was amended by section 10 of the Financial Services Act 2010 and by paragraph 12 of Schedule 9 to the Financial Services Act 2012.
- ¹⁹ Sections 207 to 211 were amended by paragraphs 18, 19 and 20 of Schedule 2 to the Financial Services Act 2010 (c. 28) and by paragraphs 14, 15, 16, 17 and 18 of Schedule 9 to the Financial Services Act 2012 (c. 21).
- ²⁰ Schedule 1ZA was substituted by Schedule 3 to the Financial Services Act 2012.

Commencement

Pt 3 art. 23(1)-(5): Date to be appointed

Extent

Pt 3 art. 23(1)-(5): (extent not available)

N Not Yet In Force

24.— Application of procedural provisions of the Act

(1) Part 9 of the Act (hearings and appeals) applies in the case of a matter referred to the Tribunal under this Part as it applies in the case of a matter referred to the Tribunal under the Act.

(2) Part 26 of the Act (notices) applies to warning notices and decision notices given under this Part as it applies to such notices given under the Act.

Commencement

Pt 3 art. 24(1)-(2): Date to be appointed

Extent

Pt 3 art. 24(1)-(2): (extent not available)

N Not Yet In Force

25. Application of provisions of the Act to the FCA in respect of its supervision of consumer buy-to-let mortgage firms

The functions of the FCA under this Order are to be treated as functions conferred on the FCA under the Act for the purposes of—

- (a) paragraph 23 (fees) of Schedule 1ZA to the Act¹, and
 - (b) paragraph 25 (exemption from liability in damages) of Schedule 1ZA to the Act².
-

Notes

¹ Paragraph 23 was amended by paragraph 7 of Schedule 8 and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 (c. 33) and by S.I. 2013/1773.

² Paragraph 25 was amended by section 109 of the Financial Services (Banking Reform) Act 2013.

Commencement

Pt 3 art. 25(a)-(b): Date to be appointed

Extent

Pt 3 art. 25(a)-(b): (extent not available)

N Not Yet In Force

26.— Extension of the compulsory jurisdiction of the Financial Ombudsman Scheme to registered consumer buy-to-let mortgage firms

(1) Part 16 (the Ombudsman Scheme) of the 2000 Act applies in respect of a complaint relating to the act or omission of a registered consumer buy-to-let mortgage firm as if—

(a) in section 226(2)(b) of that Act (compulsory jurisdiction)¹, after “Payment Services Regulations 2009,” there were inserted “a registered consumer buy-to-let mortgage firm within the meaning of Part 3 of the Mortgage Credit Directive Order 2015,”;

(b) in section 232A of that Act (scheme operator's duty to provide information to FCA)², after “FCA's operational objectives” there were inserted “, or which might otherwise be of assistance to the FCA for the purposes of discharging any of the FCA's functions under Part 3 of the Mortgage Credit Directive Order 2015,”;

(c) in section 234 of that Act (industry funding)³, after “any electronic money issuer within the meaning of the Electronic Money Regulations 2011” there were inserted “, any registered consumer buy-to-let mortgage firm within the meaning of Part 3 of the Mortgage Credit Directive Order 2015”;

(d) in paragraph 13(4) of Schedule 17 to that Act (FCA's procedural rules)⁴, after “an electronic money issuer within the meaning of the Electronic Money Regulations 2011,” there were inserted “a registered consumer buy-to-let mortgage firm within the meaning of the Mortgage Credit Directive Order 2015,”.

Notes

¹ Section 226 was amended by paragraph 1 of Schedule 11 to the Financial Services Act 2012 and by S.I. 2009/209 and 2011/99.

² Section 232A was inserted by paragraph 9 of Schedule 11 to the Financial Services Act 2012.

³ Section 234 was amended by paragraph 10 of Schedule 11 to the Financial Services Act 2012 and by S.I. 2009/209 and 2011/99.

⁴ Paragraph 13 was amended by paragraphs 13 and 24 of Schedule 11 to the Financial Services Act 2012 and by S.I. 2009/209 and 2011/99.

Commencement

Pt 3 art. 26(1)-(1)(d): Date to be appointed

Extent

Pt 3 art. 26(1)-(1)(d): (extent not available)

PART 4

Transitional Provisions

N Not Yet In Force

27.— Transitional provision: person with Part 4A permission to carry on an activity in relation to a regulated mortgage contract before 21st March 2016

(1) Any person who immediately before 21st March 2016 had permission under Part 4A of the Act to carry on an activity of the kind specified by article 25A, 36A, 60B or 61 of the Regulated Activities Order is, from 21st March 2016, to be treated as having a Part 4A permission to carry on an activity of the kind specified by that article of the Regulated Activities Order as amended by this Order.

(2) Paragraph (1) does not affect the ability of the FCA or the PRA to vary or cancel a Part 4A permission under the Act.

Commencement

Pt 4 art. 27(1)-(2): Date to be appointed

Extent

Pt 4 art. 27(1)-(2): (extent not available)

N Not Yet In Force

28.— Transitional provision: agreements before 21st March 2016

(1) Subject to paragraph (2), this Order does not apply to the granting of credit pursuant to an agreement existing before 21st March 2016.

(2) Paragraph (1) does not prevent this Order from applying to a consumer credit back book mortgage contract from the later of—

- (a) 21st March 2016, if the consumer credit back book mortgage contract was entered into before that date; or
- (b) the time at which the consumer credit back book mortgage contract is entered into.

Commencement

Pt 4 art. 28(1)-(2)(b): Date to be appointed

Extent

Pt 4 art. 28(1)-(2)(b): (extent not available)

N Not Yet In Force

29.— Transitional provision: consumer credit back book mortgage contracts

(1) This article applies to a consumer credit back book mortgage contract.

(2) If the contract would be enforceable against the borrower only on an order of the court as a result of the application of any provision of the Consumer Credit Act 1974 specified in paragraph (3), but for the amendments to legislation made by this Order, the contract is enforceable against

the borrower only on an order of the court, and section 127 of the Consumer Credit Act 1974 (enforcement orders in cases of infringement)¹ applies in respect of the contract.

(3) The provisions of the Consumer Credit Act 1974 specified by this paragraph are—

- (a) section 55(2) (disclosure of information)²,
- (b) section 61B(3) (duty to supply copy of overdraft agreement)³,
- (c) section 65(1) (improperly executed agreements),
- (d) section 105(7)(a) or (b) (improperly executed security instruments),
- (e) section 111(2) (failure to serve copy of notice on surety).

(4) If the contract would be void, or part of the contract would be void, as a result of the application of section 56(3) of the Consumer Credit Act 1974 (antecedent negotiations), but for the amendments to legislation made by this Order, the contract, or that part of the contract, is void.

(5) If a creditor would not be entitled to enforce a contract as a result of a failure to comply with a provision of the Consumer Credit Act 1974 specified in paragraph (6) but for the amendments to legislation made by this Order, then for the purposes only of correcting the failure to comply with the relevant provision of the Consumer Credit Act 1974, the contract is treated as if it were a regulated agreement and the creditor may enforce the contract only if the creditor has corrected the failure to comply.

(6) The provisions of the Consumer Credit Act 1974 specified in this paragraph are—

- (a) section 77(1) (duty to give information to debtor under fixed-sum credit agreement)⁴,
- (b) section 77A(1) (statements to be provided in relation to fixed-sum credit agreements)⁵,
- (c) section 78(1) (duty to give information to debtor under running-account credit agreement)⁶,
- (d) section 85(1) (duty on issue of new credit-tokens),
- (e) section 97(1) (duty to give information about early repayment)⁷.

(7) If a creditor would not be entitled to enforce a contract because a period of non-compliance applies to the contract under section 86D of the Consumer Credit Act 1974 (failure to give notice of sums in arrears)⁸, but for the amendments to legislation made by this Order, then for the purposes only of bringing the period of non-compliance to an end, the contract is treated as if it were a regulated agreement and the creditor may enforce the contract only if the period of non-compliance has ended.

(8) If a creditor would not be entitled to enforce a contract because section 86E(5) of the Consumer Credit Act 1974 (notice of default sums)⁹ applies, but for the amendments to legislation made by this Order, then the creditor may enforce the contract only if the creditor has given the notice required by section 86E to the borrower.

(9) If a creditor would not be entitled to enforce the security provided in relation to a contract as a result of a failure to comply with a provision of the Consumer Credit Act 1974 specified in paragraph (10) but for the amendments to legislation made by this Order, then for the purposes only of correcting the failure to comply with the relevant provision of the Consumer Credit Act 1974, the contract is treated as if it were a regulated agreement and the creditor may enforce the security only if the creditor has corrected the failure to comply.

(10) The provisions of the Consumer Credit Act 1974 specified in this paragraph are—

- (a) section 107(1) (duty to give information to surety under fixed-sum credit agreement)¹⁰,
- (b) section 108(1) (duty to give information to surety under running-account credit agreement)¹¹,

(c) section 110(1) (duty to give information to debtor or hirer)¹².

(11) The following provisions of the Consumer Credit Act 1974 and regulations made under those provisions apply in respect of the contract as if the contract were a regulated agreement—

- (a) section 93 (interest not to be increased on default)¹³,
- (b) section 94 (right to complete payments ahead of time)¹⁴,
- (c) section 95 (rebate on early settlement)¹⁵.

(12) Sections 140A to 140C of the Consumer Credit Act 1974 (unfair relationships)¹⁶ apply to the contract as if section 140A(5) were omitted.

(13) In this article “regulated agreement” means a regulated agreement within the meaning of section 8(3) of the Consumer Credit Act 1974¹⁷.

Notes

- ¹ Section 127 was amended by Schedule 4 to the Consumer Credit Act 2006 (c. 14) and by S.I. 2010/1010.
- ² Section 55(2) was substituted by S.I. 2010/1010.
- ³ Section 61B was inserted by S.I. 2010/1010.
- ⁴ Section 77(1) was amended by S.I. 1998/997.
- ⁵ Section 77A(1) was inserted by section 6 of the Consumer Credit Act 2006 (c. 14) and subsequently substituted by S.I. 2008/2826.
- ⁶ Section 78(1) was amended by S.I. 1998/997.
- ⁷ Section 97(1) was amended by S.I. 2010/1010.
- ⁸ Section 86D was inserted by section 11 of the Consumer Credit Act 2006.
- ⁹ Section 86E was inserted by section 12 of the Consumer Credit Act 2006.
- ¹⁰ Section 107 was amended by S.I. 1998/997 and S.I. 2008/1277.
- ¹¹ Section 108 was amended by S.I. 1998/997 and S.I. 2008/1277.
- ¹² Section 110 was amended by S.I. 1998/997 and S.I. 2008/1277.
- ¹³ Section 93 was amended by S.I. 2013/1881.
- ¹⁴ Section 94 was amended by section 29 of the Energy Act 2011 (c. 16) and by S.I. 2010/1010.
- ¹⁵ Section 95 was amended by S.I. 2010/1010.
- ¹⁶ Sections 140A to 140C were inserted by sections 19 to 21 of the Consumer Credit Act 2006 (c. 14) and subsequently amended by S.I. 2013/1881.
- ¹⁷ Section 8(3) was substituted by S.I. 2013/1881.

Commencement

Pt 4 art. 29(1)-(13): Date to be appointed

Extent

Pt 4 art. 29(1)-(13): (extent not available)

N Not Yet In Force

30.— Transitional provision: person engaged in consumer buy-to-let mortgage business before 20th March 2014

(1) A creditor or credit intermediary who is engaged in consumer buy-to-let mortgage business before 20th March 2014 is not required to comply with paragraph 3 of Schedule 2 (knowledge and competence requirements for staff) until 21st March 2017.

(2) In this article, the terms “creditor”, “credit intermediary” and “consumer buy-to-let mortgage business” have the meanings set out in article 4.

Commencement

Pt 4 art. 30(1)-(2): Date to be appointed

Extent

Pt 4 art. 30(1)-(2): (extent not available)

N Not Yet In Force

31.— Transitional provision: person subject to the Consumer Credit Act 1974 who chooses to adopt new rules before 21st March 2016

(1) Paragraph (2) applies in relation to an agreement or proposed agreement where—

- (a) if made before 21st March 2016, the agreement would be a regulated consumer credit agreement;
- (b) if made on or after 21st March 2016, the agreement would not be a regulated consumer credit agreement;
- (c) the creditor has not acted in compliance or in purported compliance with any provision of Part 4 of the Consumer Credit Act 1974, or regulations made under that Part, in relation to the agreement or proposed agreement; and
- (d) before 21st March 2016, the creditor acts in compliance or in purported compliance with rules made by the FCA that would apply in relation to the agreement or proposed agreement from 21st March 2016.

(2) From the date on which the creditor first acts in compliance or purported compliance with such rules, the Consumer Credit Act 1974 applies in relation to the agreement or proposed agreement as if the amendments to legislation made by paragraphs 2 and 4 of Schedule 1 (amendments to the Consumer Credit Act 1974 and the Regulated Activities Order) had come into force.

(3) In this article—

“creditor” means a creditor within the meaning of section 8(1) of the Consumer Credit Act 1974¹; and

“regulated consumer credit agreement” means a regulated agreement within the meaning of section 8(3) of the Consumer Credit Act 1974.

Notes

¹ Section 8(1) was amended by section 2 of the Consumer Credit Act 2006.

Commencement

Pt 4 art. 31(1)-(3) definition of "regulated consumer credit agreement": Date to be appointed

Extent

Pt 4 art. 31(1)-(3) definition of "regulated consumer credit agreement": (extent not available)

N Not Yet In Force

32.— FCA power to direct timing of applications for permission and registration

- (1) This article applies to an application made before 21st September 2015 for—
- (a) a Part 4A permission or a variation of a Part 4A permission in relation to an activity of the kind specified by—
 - (i) article 53A¹ of the Regulated Activities Order (advising on regulated mortgage contracts),
 - (ii) article 25A² (arranging regulated mortgage contracts) or 61³ (entering into and administering regulated mortgage contracts) of the Regulated Activities Order as amended by this Order, or
 - (iii) article 53DA of the Regulated Activities Order (advising on regulated credit agreements for the acquisition of land) as inserted by this Order; or
 - (b) entry on the register of consumer buy-to-let mortgage firms under article 8 of this Order (register of consumer buy-to-let mortgage firms).
- (2) The application may not be made before such date (“the opening date”) as the FCA may direct.
- (3) Directions given under paragraph (2) may—
- (a) relate to different categories of applications;
 - (b) set different opening dates for different categories of applications;
 - (c) be amended by the FCA by further direction.
- (4) An application made before the opening date is to be treated as if it had not been made.
-

Notes

¹ Article 53A was inserted by S.I. 2003/1475.

² Article 25A was inserted by S.I. 2003/1475.

³ Article 61 was amended by S.I. 2001/3544, 2005/2114, 2006/2383 and 2010/2960.

Commencement

Pt 4 art. 32(1)-(4): Date to be appointed

Extent

Pt 4 art. 32(1)-(4): (extent not available)

PART 5

Review

 Not Yet In Force

33.— Review

- (1) The Treasury must from time to time—
 - (a) carry out a review of this Order;
 - (b) set out the conclusions of the review in a report; and
 - (c) publish the report.
- (2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the mortgages directive (which is implemented by means of this Order) is implemented in other EEA States.
- (3) The report must in particular—
 - (a) set out the objectives intended to be achieved by the regulatory system established by this Order;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this article must be published on or before 1st September 2018.
- (5) Reports under this article are afterwards to be published at intervals not exceeding five years.

Commencement

Pt 5 art. 33(1)-(5): Date to be appointed

Extent

Pt 5 art. 33(1)-(5): (extent not available)

 Not Yet In Force

Mark Lancaster
Gavin Barwell

Two of the Lords Commissioners of Her Majesty's Treasury

25th March 2015

SCHEDULE 1

Amendments to legislation

Article 3

PART 1

Amendments to primary legislation

N Not Yet In Force

1.— The Financial Services and Markets Act 2000

(1) The Act is amended as follows.

(2) In section 39 (exemption of appointed representatives)¹—

(a) after subsection (1) insert—

“(1ZA) But a person is not exempt as a result of subsection (1) if subsection (1A) or (1BA) applies to the person.”;

(b) in subsection (1A) for “But a person is not exempt as a result of subsection (1)” substitute “This subsection applies to a person”; and

(c) after subsection (1B) insert—

“(1BA) This subsection applies to a person (“A”)—

(a) if A's principal is a mortgage intermediary, and

(b) so far as the business for which A's principal has accepted responsibility is of a kind—

(i) specified in article 25A (arranging regulated mortgage contracts), article 36A (credit broking), article 53A (advising on regulated mortgage contracts) or article 53DA (advising on regulated credit agreements the purpose of which is to acquire land) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and

(ii) to which the mortgages directive applies,

unless A meets the requirements of subsection (1BB).

(1BB) The requirements of this subsection are—

(a) that A is entered on the record maintained by the FCA by virtue of section 347(1)(hb);

(b) that A's principal is a person who has a Part 4A permission to carry on one or more of the regulated activities mentioned in subsection (1BA)(b)(i); and

(c) that A's principal is not a tied mortgage intermediary.”.

(3) In section 55J (variation or cancellation on initiative of regulator)², after subsection (6A) insert—

“(6B) Without prejudice to the generality of subsections (1) to (3), the FCA may, in relation to an authorised person who is a mortgage intermediary and who has a Part 4A permission to carry on a relevant mortgage activity, exercise its power under this section to cancel the Part 4A permission or to vary the Part 4A permission by removing a relevant mortgage activity from the activities to which the permission relates, if it appears to the FCA that any of the following conditions is met—

- (a) during a period of at least six months, the person has not carried on a relevant mortgage activity;
- (b) the person obtained the Part 4A permission to carry on a relevant mortgage activity by making a false statement or by any other irregular means;
- (c) the person no longer meets the conditions which the person was, in accordance with Chapter 11 of the mortgages directive, required to meet in order to be granted a Part 4A permission to carry on a relevant mortgage activity; or
- (d) the person has seriously or systematically infringed any provision made by or under this Act which implements the operating conditions for mortgage intermediaries set out in the mortgages directive.

(6C) In subsection (6B) “relevant mortgage activity” means—

- (a) an activity of a kind specified in article 25A (arranging regulated mortgage contracts), article 53A (advising on regulated mortgage contracts) or article 53DA (advising on regulated credit agreements the purpose of which is to acquire land) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, or
- (b) an activity of a kind specified in article 36A of that Order (credit broking) which is referred to in Article 33(1)(a) of the mortgages directive.”.

(4) In section 137R (financial promotion rules)³, in subsection (5)(b)—

- (a) at the end of sub-paragraph (ii), omit “or”, and
- (b) at the end of sub-paragraph (iii) insert—

“or

(iv) Articles 10 and 11 of the mortgages directive.”.

(5) After section 194B (contravention by relevant EEA firm of requirement in capital requirements directive or capital requirements regulation)⁴ insert—

“194C.— Contravention by relevant EEA firm with UK branch of requirement in mortgages directive: appropriate regulator primarily responsible for securing compliance

(1) In this section “relevant EEA firm” means an EEA firm falling within paragraph 5(i) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the mortgages directive.

(2) This section applies if —

- (a) a relevant EEA firm has a branch in the United Kingdom; and
- (b) the appropriate regulator ascertains that the firm has contravened, or is contravening, a requirement to which Article 34(2) of the mortgages directive applies.

(3) The appropriate regulator must give the firm written notice which—

- (a) requires the relevant EEA firm to put an end to the contravention;
- (b) states that the appropriate regulator's power of intervention will become exercisable in relation to the firm if the firm continues the contravention; and
- (c) indicates any requirements that the appropriate regulator proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.

(4) The appropriate regulator may exercise its power of intervention in respect of the relevant EEA firm if—

- (a) a reasonable time has expired since the giving of the notice under subsection (3);
- (b) the firm has failed to put an end to the contravention within that time; and
- (c) the appropriate regulator has informed the firm's home state regulator of its intention to exercise its power of intervention in respect of the firm.

(5) Subsection (4) applies whether or not the appropriate regulator's power of intervention is also exercisable as a result of section 194.

(6) If the appropriate regulator exercises its power of intervention in respect of a relevant EEA firm by virtue of subsection (4), it must at the earliest opportunity inform the firm's home state regulator and the Commission of—

- (a) the fact that the appropriate regulator has exercised that power in respect of the firm; and
- (b) any requirements it has imposed on the firm in exercise of the power.

(7) Subsection (3) is not to be regarded as requiring the PRA to take action in relation to the contravention of a requirement falling within subsection (2)(b) in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (3) in relation to that requirement.

(8) In this section “appropriate regulator” means—

- (a) where the relevant EEA firm is a PRA-authorized person, the FCA or, subject to subsection (7), the PRA;
- (b) in any other case, the FCA.”.

(6) After section 195A (contravention by relevant EEA firm, EEA UCITS or EEA AIFM of directive requirements: home state regulator primarily responsible for securing compliance)⁵ insert—

“195B.— Contravention by relevant EEA firm of requirement in mortgages directive: home state regulator primarily responsible for securing compliance

(1) In this section “relevant EEA firm” means an EEA firm falling within paragraph 5(i) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the mortgages directive.

(2) This section applies if—

- (a) a relevant EEA firm has a branch, or is providing services, in the United Kingdom; and
- (b) the appropriate regulator has clear and demonstrable grounds for concluding that the firm has contravened, or is contravening, a requirement to which Article 34(4) of the mortgages directive applies.

- (3) The appropriate regulator must notify the relevant EEA firm's home state regulator of the situation mentioned in subsection (2).
- (4) The notice under subsection (3) must—
- (a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the relevant EEA firm puts an end to the contravention;
 - (b) state that the appropriate regulator's powers of intervention are likely to become exercisable in relation to the relevant EEA firm if it continues the contravention; and
 - (c) indicate any requirements that the appropriate regulator proposes to impose on the relevant EEA firm in exercise of its power of intervention in the event of the power becoming exercisable.
- (5) The appropriate regulator may exercise its power of intervention in respect of the relevant EEA firm if—
- (a) a period of one month beginning with the date on which it gave the notification referred to in subsection (3) has expired, and
 - (b) conditions A to C are satisfied.
- (6) Condition A is that—
- (a) the home state regulator of the relevant EEA firm has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or
 - (b) any measures taken by the home state regulator have proved inadequate for that purpose.
- (7) Condition B is that the relevant EEA firm is acting in a manner which is clearly prejudicial to the interests of consumers in the United Kingdom or to the orderly functioning of the markets.
- (8) Condition C is that the appropriate regulator has informed the home state regulator of the relevant EEA firm of its intention to exercise its powers of intervention in respect of the firm.
- (9) Subsection (5) applies whether or not the appropriate regulator's power of intervention is also exercisable as a result of section 194 or 195.
- (10) If the appropriate regulator exercises its power of intervention in respect of the relevant EEA firm by virtue of subsection (5), it must inform the Commission and EBA, without undue delay, of—
- (a) the fact that the appropriate regulator has exercised that power in respect of that firm; and
 - (b) any requirements it has imposed on the firm in exercise of the power.
- (11) If circumstances exist which enable the appropriate regulator to exercise its power of intervention under subsection (5), the appropriate regulator may refer the matter to EBA (and EBA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24th November 2010 establishing a European Supervisory Authority (European Banking Authority)⁶).
- (12) Subsection (3) is not to be regarded as requiring the PRA to notify the home state regulator in relation to the situation mentioned in subsection (2) in a case where the PRA

is satisfied that the FCA is required to act, and is acting, or has acted, under subsection (3) in relation to that situation.

(13) In this section “appropriate regulator” means—

- (a) where the relevant EEA firm is a PRA-authorized person, the FCA or, subject to subsection (12), the PRA;
- (b) in any other case, the FCA.”.

(7) In section 347 (the record of authorised persons etc.)⁷—

(a) in subsection (1)—

- (i) at the end of paragraph (ha), omit “and”; and
- (ii) after paragraph (ha) insert—

“(hb) appointed representative to whom subsection (2B) applies; and”;

(b) in subsection (2), after paragraph (h) insert—

“(i) in the case of a mortgage intermediary—

(i) the names of the persons within the management who are responsible for the activities specified by article 25A (arranging regulated mortgage contracts), article 36A (credit broking), article 53A (advising on regulated mortgage contracts) and article 53DA (advising on regulated credit agreements the purpose of which is to acquire land) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and

(ii) whether the mortgage intermediary is a tied mortgage intermediary or not;

(j) in the case of an appointed representative to whom subsection (2B) applies, the name of the mortgage intermediary on whose behalf the appointed representative acts;”;

(c) after subsection (2A) insert—

“(2B) This subsection applies to an appointed representative to whom section 39(1BA) applies or to whom that subsection would apply if the requirements of section 39(1BB) were not met.”;

(d) after subsection (4) insert—

“(4A) If the FCA cancels or varies the Part 4A permission of a mortgage intermediary and as a result the person to whom the entry relates no longer has a Part 4A permission to carry on a relevant mortgage activity within the meaning of section 55J(6C), the FCA must delete mention of such permission from the record without undue delay.”.

(8) In section 417(1) (definitions)⁸ in the appropriate places insert—

““mortgage creditor” means a creditor as defined in Article 4(2) of the mortgages directive;

“mortgage intermediary” means a credit intermediary as defined in Article 4(5) of the mortgages directive or a person providing advisory services as defined in Article 4(21) of the mortgages directive;

“tied mortgage intermediary” means a tied credit intermediary as defined in Article 4(7) of the mortgages directive;”.

(9) In section 425(1)(a) (expressions relating to authorisation elsewhere in the single market)⁹, after ““markets in financial instruments directive”,” insert ““mortgages directive”,”.

(10) In Schedule 3 to the Act (EEA passport rights)—

- (a) in paragraph 1 (the single market directives)¹⁰ —
- (i) at the end of paragraph (f) omit “and”; and
 - (ii) after paragraph (g) insert—

“; and

(h) the mortgages directive.”;

(b) after paragraph 4E (definition of the alternative investment managers directive)¹¹ insert—

“4F. The mortgages directive

“The mortgages directive” means Directive 2014/17/EU of the European Parliament and of the Council of 4th February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010.”;

- (c) in paragraph 5 (EEA firm)¹² —
- (i) at the end of paragraph (g) omit “or”; and
 - (ii) after paragraph (h) insert—

“; or

(i) a mortgage intermediary which is admitted (in accordance with Article 29(1) of the mortgages directive) by its home state regulator to carry out all or part of the credit intermediation activities set out in Article 4(5) of that directive or to provide advisory services (as defined in Article 4(21) of that directive).”;

(d) in paragraph 5A(a) (definition of relevant office for EEA firm)¹³ after “sub-paragraph (e)” insert “or (i)”;

(e) in paragraph 7A(a) (definition of relevant office for EEA right)¹⁴ after “insurance mediation directive” insert “or the mortgages directive”;

(f) in paragraph 13 (establishment)¹⁵ —

- (i) in sub-paragraph (1)—
- (aa) for “(f) or (h)” substitute “(f), (h) or (i)”;
 - (bb) in paragraph (c) omit “and”;
 - (cc) after paragraph (d) insert—

“; and

(e) in the case of a firm falling within paragraph 5(i)—

- (i) its home state regulator has informed it that the consent notice has been sent to the appropriate UK regulator, and
- (ii) one month has elapsed beginning with the date on which the firm's home state regulator informed the

firm that the consent notice has been sent to the appropriate UK regulator.”;

- (ii) in sub-paragraph (2)(b) for “or (h)” substitute “, (h) or (i)”;
- (iii) after sub-paragraph (3) insert—

“(3A) If the appropriate UK regulator has received a consent notice in respect of a firm that falls within paragraph 5(i), it must—

- (a) notify the firm of the applicable provisions (if any); and
- (b) use the information received from the firm's home state regulator to enter the necessary information into the record maintained by the FCA by virtue of section 347(1).

(3B) A notice under sub-paragraph (3A)(a) must be given before the end of the period of two months beginning with the day on which the appropriate UK regulator received the consent notice.”;

- (g) in paragraph 14 (services)¹⁶ —

- (i) in sub-paragraphs (1)(b) and (1)(c) for “or (h)” substitute “, (h) or (i)”;
- (ii) in sub-paragraph (1)(d) after “paragraph 5(e)” insert “or (i)”;
- (iii) after sub-paragraph (3) insert—

“(3ZA) If the appropriate UK regulator has received a relevant notice in respect of a firm that falls within paragraph 5(i), it must use the information received from the firm's home state regulator to enter the necessary information into the record maintained by the FCA by virtue of section 347(1).”;

- (h) in paragraph 19 (establishment)¹⁷ —

- (i) in sub-paragraph (5)(a) after “the insurance mediation directive” insert “or the mortgages directive”;
- (ii) after sub-paragraph (7BC) insert—

“(7BD) If the firm's EEA right derives from the mortgages directive and the first condition is satisfied, the appropriate UK regulator must give a consent notice to the host state regulator within one month beginning with the date on which it received the firm's notice of intention.”; and

- (iii) after sub-paragraph (11) insert—

“(11A) If the firm's EEA right derives from the mortgages directive, the appropriate UK regulator must give the written notice referred to in sub-paragraph (11) at the same time as it gives the consent notice to the host state regulator in accordance with sub-paragraph (7BD).”;

- (i) in paragraph 20 (services)¹⁸ —

- (i) in sub-paragraph (3) after “the markets in financial instruments directive” insert “, the mortgages directive”;
- (ii) after sub-paragraph (4BA) insert—

“(4BB) If the firm's EEA right derives from the mortgages directive it must not provide the services to which its notice of intention relates until one month, beginning with the date on which it receives the notice under sub-paragraph (4), has elapsed.”;

(j) in paragraph 20ZA (information for host state regulator)¹⁹ after sub-paragraph (3) insert—

“(4) The appropriate UK regulator must inform the host state regulator whenever it—

- (a) withdraws the authorisation of a UK firm that exercises an EEA right under the mortgages directive to establish a branch or provide services in an EEA State other than the United Kingdom; or
- (b) varies the Part 4A permission of such a firm, so that the firm no longer has permission to carry on any activity to which the mortgages directive relates.

(5) The appropriate UK regulator must provide the information referred to in sub-paragraph (4) as soon as possible and, at the latest, within 14 days of—

- (a) the date of the direction given in accordance with section 33(2) withdrawing the firm's status as an authorised person, or
 - (b) the date on which the variation of the Part 4A permission takes effect.”;
- (k) in paragraph 21 (offence relating to exercise of passport rights)²⁰ in sub-paragraph (1)(b) for “or (4B)” substitute “, (4B) or (4BB)”;
- (l) in paragraph 25 (information to be included in the public record)²¹ after “insurance mediation directive” insert “or the mortgages directive”.

Notes

- ¹ Section 39 was amended by section 10 of, and paragraph 5 of Schedule 18 to, the Financial Services Act 2012 (c. 21) and by S.I. 2007/126 and 2013/3115.
- ² Section 55J was substituted, together with the rest of Part 4A, for the original Part IV, by section 11 of the Financial Services Act 2012 and was subsequently amended by S.I. 2013/1773 and 3115.
- ³ Section 137R was substituted (together with the rest of Part 9A) for the original Part X by section 24 of the Financial Services Act 2012 (c. 21).
- ⁴ Section 194B was inserted by S.I. 2013/3115.
- ⁵ Section 195A was inserted by S.I. 2007/126, substituted by S.I. 2011/1613 and then subsequently amended by paragraph 35 of Schedule 4 to the Financial Services Act 2012 (c. 21) and by S.I. 2012/916 and 2013/1773 and 1797.
- ⁶ OJ L 331 15.12.2010, p.12.
- ⁷ Section 347 was amended by paragraph 16 of Schedule 12 to the Financial Services Act 2012 (c. 21), section 34 of, and paragraph 11 of Schedule 3 to, the Financial Services (Banking Reform) Act 2015 (c. 33) and S.I. 2007/126 and 2013/1388.
- ⁸ Section 417(1) was amended by paragraph 16 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16), section 964 of the Companies Act 2006 (c. 46), section 174 of the Banking Act 2009 (c. 1), paragraph 31 of Schedule 2 to the Financial Services Act 2010 (c. 28), section 48 of the Financial Services Act 2012 (c. 21), section 4 of the Financial Services (Banking Reform) Act 2013 (c. 33) and paragraph 71 of Schedule 4 to the Co-operative and Community Benefit Societies Act 2014 (c. 14), and by S.I. 2002/1775, 2005/1433, 2007/126, 2009/1941, 2010/22, 2012/916, 1809, 1906 and 2554, 2013/504, 1773 and 3115 and 2014/2879.
- ⁹ Section 425(1) was amended by S.I. 2003/2066, 2004/3379, 2006/2975, 2007/126 and 3253, 2012/1906 and 2013/1773 and 3115.
- ¹⁰ Paragraph 1 was amended by S.I. 2000/2952, 2003/1473 and 2066, 2007/126 and 3253, and 2013/1773 and 3115.
- ¹¹ Paragraph 4E was inserted by S.I. 2013/1773.
- ¹² Paragraph 5 was amended by S.I. 2003/1473 and 2066, 2004/3379, 2006/3221, 2007/126 and 3253, 2011/1613, 2012/1906, and 2013/1773, 1797 and 3115.
- ¹³ Paragraph 5A was inserted by S.I. 2003/1473 and amended by S.I. 2013/1773.

- ¹⁴ Paragraph 7A was inserted by S.I. 2003/1473 and amended by S.I. 2013/1773 and 1797.
- ¹⁵ Paragraph 13 was amended by paragraph 2 of Schedule 4 to the Financial Services Act 2012 (c. 21) and by S.I. 2003/1473 and 2066, 2007/126, 2012/1906 and 2013/1773.
- ¹⁶ Paragraph 14 was amended by paragraph 3 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2003/1473 and 2066, 2007/126, 2012/1906, and 2013/1773 and 1797.
- ¹⁷ Paragraph 19 is amended by paragraph 10 of Schedule 4 to the Financial Services Act 2012 (c. 21) and by S.I. 2003/1473 and 2066, 2007/126 and 3253, 2011/1613, 2012/916 and 1906, and 2013/1773, 1797 and 3115.
- ¹⁸ Paragraph 20 is amended by paragraph 11 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2001/1376, 2003/1473 and 2066, 2007/126 and 3253, 2011/1613, 2012/1906, and 2013/1773, 1797 and 3115.
- ¹⁹ Paragraph 20ZA was inserted by S.I. 2011/1613 and was subsequently amended by paragraph 13 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2013/3115.
- ²⁰ Paragraph 21 was amended by S.I. 2003/1473.
- ²¹ Paragraph 25 was inserted by S.I. 2003/1473 and was subsequently amended by paragraph 18 of Schedule 4 to the Financial Services Act 2012.

Commencement

Sch. 1(1) para. 1(1)-(10)(l): Date to be appointed

Extent

Sch. 1(1) para. 1(1)-(10)(l): (extent not available)

N Not Yet In Force

2.— The Consumer Credit Act 1974

(1) The Consumer Credit Act 1974 is amended as follows.

(2) In section 8 (consumer credit agreements) for subsection (3)¹ substitute—

“(3) A consumer credit agreement is a regulated credit agreement within the meaning of this Act if it—

(a) is a regulated credit agreement for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order; and

(b) is not an agreement of the type described in Article 3(1)(b) of Directive 2014/17/EU of the European Parliament and of the Council of 4th February 2014 on credit agreements for consumers relating to residential immovable property.”.

(3) In section 55C² (copy of draft consumer credit agreement), in subsection (4)(c), after “£60,260” insert “and which is not a residential renovation agreement”.

(4) In section 60³ (form and content of agreements), in subsection (5)(c), after “£60,260” insert “and which is not a residential renovation agreement”.

(5) In section 61A⁴ (duty to supply copy of executed consumer credit agreement), after subsection (6) insert—

“(6A) An agreement is not an excluded agreement by virtue of subsection (6)(b)(ii) if it is a residential renovation agreement.”.

(6) In section 66A⁵ (withdrawal from consumer credit agreement), in subsection (14)(a), after “£60,260” insert “, other than a residential renovation agreement”.

(7) In section 75A⁶ (further provision for liability of creditor for breaches by supplier), in subsection (6)(b), after “£60,260” insert “and is not a residential renovation agreement”.

(8) In section 77B⁷ (fixed-sum credit agreement: statement of account to be provided on request), in subsection (9)(c), after “£60,260” insert “and which is not a residential renovation agreement”.

(9) In section 189⁸ (definitions), in subsection (1), after the definition of “representation” insert—

““residential renovation agreement” means a consumer credit agreement—

(a) which is unsecured; and

(b) the purpose of which is the renovation of residential property, as described in Article 2(2a) of Directive 2008/48/EC of the European Parliament and of the Council of 23rd April 2008 on credit agreements for consumers⁹.”.

Notes

¹ Subsection (3) was substituted by S.I. 2013/1881.

² Section 55C was inserted by S.I. 2010/1010 and subsequently amended by S.I. 2013/1881.

³ Section 60 was amended by paragraph 6 of Schedule 25 to the Enterprise Act 2002 (c. 40) and by S.I. 2010/1010 and 2013/1881 and 1882.

⁴ Section 61A was inserted by S.I. 2010/1010 and subsequently amended by S.I. 2013/1881.

⁵ Section 66A was inserted by S.I. 2010/1010.

⁶ Section 75A was inserted by S.I. 2010/1010 and subsequently amended by S.I. 2013/1881.

⁷ Section 77B was inserted by S.I. 2010/1010 and subsequently amended by section 27 of the Energy Act 2011 (c. 16) and by S.I. 2013/1881 and 2014/436.

⁸ There are amendments to section 189 but none is relevant to this Order.

⁹ OJ L 133, 22.5.2008, p. 66; Article 2(2a) was inserted by article 46 of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property (OJ L 60, 28.2.2014, p.34).

Commencement

Sch. 1(1) para. 2(1)-(9): Date to be appointed

Extent

Sch. 1(1) para. 2(1)-(9): (extent not available)

PART 2

Amendments to secondary legislation

N Not Yet In Force

3. The Consumer Credit (Agreements) Regulations 1983

In regulation 8 of the Consumer Credit (Agreements) Regulations 1983¹ (application of regulations), in paragraph (1A)(b) after “regulations” insert “other than residential renovation agreements”.

Notes

¹ Regulation 8 was amended by S.I. 2010/1010 and 1969 and 2013/1881.

Commencement

Sch. 1(2) para. 3: Date to be appointed

Extent

Sch. 1(2) para. 3: (extent not available)

N Not Yet In Force

4.— The Financial Services and Markets (Regulated Activities) Order 2001

(1) The Regulated Activities Order is amended as follows.

(2) In article 3(1) (interpretation)¹, in the definition of “home Member State”, after “capital requirements regulation” insert “, and, in relation to a mortgage intermediary, has the meaning given by Article 4(19) of the mortgages directive”.

(3) In article 4 (specified activities: general)² after paragraph (4A) insert—

“(4B) Where—

- (a) a person is a mortgage creditor or a mortgage intermediary; and
- (b) in acting as a mortgage creditor or a mortgage intermediary, that person would be treated as carrying on an activity of a kind specified by article 25A (arranging regulated mortgage contracts), 36A (credit broking), 53A (advising on regulated mortgage contracts), 53DA (advising on regulated credit agreements for the acquisition of land), 60B (regulated credit agreements) or 61 (entering into and administering regulated mortgage contracts), but for an exclusion or exemption provided for by this Order,

that exclusion or exemption is to be disregarded (and accordingly that person is to be treated as carrying on an activity of the kind specified by the provision in question) to the extent that such exclusion or exemption does not fall within Article 3(2) or (3) of the mortgages directive.”.

(4) In article 25A (arranging regulated mortgage contracts)³—

(a) after paragraph (2) insert—

“(2A) Making arrangements to enter into a regulated mortgage contract with a borrower on behalf of a lender is also a specified kind of activity.”; and

(b) in paragraph (3) for ““borrower” has the meaning” substitute ““borrower” and “lender” have the meanings”.

(5) In article 29 (arranging deals with or through authorised persons)⁴—

- (a) in paragraph (1) for “25A(1) and (2)” substitute “25A(1), (2) and (2A)”; and
- (b) in paragraph (3) after “article 4(4)” insert “and (4B)”.

(6) In article 36 (other exclusions)⁵, after paragraph (2) insert—

“(2A) Article 25A is also subject to the exclusion in article 72I (registered consumer buy-to-let mortgage firms).”.

(7) For article 36E⁶ (activities in relation to certain agreements relating to land) substitute—

“36E.— Activities in relation to certain agreements relating to land

(1) There are excluded from article 36A activities carried on with a view to an individual or a relevant recipient of credit entering into an investment property loan, as defined in article 61A(6) (mortgage contracts which are not regulated mortgage contracts).

(2) There are excluded from article 36A activities of a kind specified by article 25A (arranging regulated mortgage contracts) or 25C (arranging regulated home purchase plans).

(3) There are excluded from article 36A other activities not excluded by paragraph (1) or (2) which consist of effecting an introduction with a view to an individual or relevant recipient of credit entering into a relevant agreement, if the person to whom the introduction is made is an authorised person who has permission to—

- (a) enter into such an agreement as lender or home purchase provider (as the case may be), or
- (b) make an introduction to an authorised person who has permission to enter into such an agreement as lender or home purchase provider (as the case may be).

(4) In paragraph (3) “relevant agreement” means a regulated mortgage contract or a regulated home purchase plan.”.

(8) In article 36G (other exclusions)⁷ for “the exclusion in article 72A (information society services) and the exclusion in article 72G (local authorities)” substitute “the exclusions in articles 72A (information society services), 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms)”.

(9) After article 53D (advising on regulated sale and rent back agreements)⁸ insert—

“53DA.— Advising on regulated credit agreements for the acquisition of land

(1) Advising a person (“P”) is a specified kind of activity if—

- (a) the advice is given to P in P’s capacity as a recipient of credit, or potential recipient of credit, under a regulated credit agreement;
- (b) P intends to use the credit to acquire or retain property rights in land or in an existing or projected building; and
- (c) the advice consists of the provision of personal recommendations to P in respect of one or more transactions relating to regulated credit agreements.

(2) In this article “regulated credit agreement” has the meaning given by article 60B(3).”.

(10) In article 54 (advice given in newspapers etc.)⁹—

- (a) after “53D” each time that it appears insert “, 53DA”; and

(b) after paragraph (1)(b)(v) insert—

“(va) to enter as a recipient of credit into a regulated credit agreement the purpose of which is to acquire or retain property rights in land or in an existing or projected building.”.

(11) In article 54A (advice given in the course of administration by an authorised person)¹⁰, after paragraph (4) insert—

“(5) A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 53DA by reason of—

(a) anything done by an authorised person (“B”) in relation to a regulated credit agreement which B is administering pursuant to arrangements of the kind mentioned in article 60I(a) (arranging administration by authorised person); or

(b) anything A does in connection with the administration of a regulated credit agreement in circumstances falling within article 60I(b).”.

(12) In article 55 (other exclusions)¹¹, in paragraph (2)—

(a) for “53C and 53D” substitute “53C, 53D and 53DA”; and

(b) for “and 72G (local authorities)” substitute “, 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms)”.

(13) In article 60C (exempt agreements: exemptions relating to the nature of the agreement)¹², in paragraph (2) for “a regulated home purchase plan” substitute “if it is of a type described in article 61A(1) or (2) (mortgage contracts which are not regulated mortgage contracts)”.

(14) In article 60D (exempt agreements: exemption relating to the purchase of land for non-residential purposes), after paragraph (3) insert—

“(4) This article does not apply to an agreement of the type described in Article 3(1)(b) of the mortgages directive.”.

(15) In article 60E (exempt agreements: exemptions relating to the nature of the lender)—

(a) in paragraph (2) for “A relevant credit agreement” substitute “Subject to article 60HA, a relevant credit agreement”; and

(b) in paragraph (5) for “A relevant credit agreement” substitute “Subject to article 60HA, a relevant credit agreement”.

(16) In article 60F (exempt agreements: exemptions relating to the number of repayments to be made), in paragraph (4) for “A credit agreement” substitute “Subject to article 60HA, a credit agreement”.

(17) In article 60G (exempt agreements: exemptions relating to the total charge for credit)—

(a) in paragraph (2)—

(i) after sub-paragraph (a) omit “and”; and

(ii) after sub-paragraph (b) insert—

“, and

(c) paragraph (2A) applies to the agreement.”;

(b) after paragraph (2) insert—

“(2A) This paragraph applies to the agreement if—

- (a) the agreement is not of a type described in Article 3(1) of the mortgages directive; or
- (b) the agreement is of such a type and—
 - (i) the agreement is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive,
 - (ii) the agreement is a bridging loan within the meaning of Article 4(23) of the mortgages directive, or
 - (iii) in relation to the agreement—
 - (aa) the borrower receives timely information on the main features, risks and costs of the agreement at the pre-contractual stage, and
 - (bb) any advertising of the agreement is fair, clear and not misleading.”;
- (c) in paragraph (3) for “A credit agreement” substitute “Subject to paragraph (8), a credit agreement”;
- (d) in paragraph (4) for “A credit agreement” substitute “Subject to paragraph (8), a credit agreement”;
- (e) in paragraph (6) for “paragraph (5)” substitute “paragraphs (5) and (8)”;
- (f) after paragraph (7) insert—

“(8) A credit agreement of a type described in Article 3(1) of the mortgages directive is an exempt agreement pursuant to paragraph (3) or (4) only if—

- (a) the agreement meets the general interest test;
- (b) the borrower receives timely information on the main features, risks and costs of the agreement at the pre-contractual stage; and
- (c) any advertising of the agreement is fair, clear and not misleading.”.

(18) In article 60H (exempt agreements: exemptions relating to the nature of the borrower)—

- (a) the existing text becomes paragraph (1);
- (b) in paragraph (1)—
 - (i) for “A credit agreement” substitute “Subject to article 60HA, a credit agreement”;
 - and
 - (ii) for sub-paragraph (b)(ii) substitute—

“(ii) for credit which exceeds £60,260 and is for a purpose other than—

- (aa) the renovation of residential property, or
- (bb) to acquire or retain property rights in land or in an existing or projected building.”; and

- (c) after paragraph (1) insert—

“(2) Where a credit agreement would be an exempt agreement pursuant to this article but for paragraph (1)(b)(ii)(bb) or article 60HA, the FCA may treat the agreement as an exempt agreement except for the purpose of the application of the requirements of the mortgages directive.”.

(19) After article 60H insert—

“60HA.— Exempt agreements: exemptions not permitted under the mortgages directive

(1) A credit agreement is not an exempt agreement pursuant to article 60E(2) or (5), 60F(4) or 60H(1) if—

- (a) the agreement is of a type described in Article 3(1) of the mortgages directive, and
- (b) paragraph (2) does not apply.

(2) This paragraph applies if—

- (a) the agreement is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;
- (b) the agreement is a bridging loan within the meaning of Article 4(23) of that directive; or
- (c) the agreement is a restricted public loan in respect of which—
 - (i) the borrower receives timely information on the main features, risks and costs at the pre-contractual stage; and
 - (ii) any advertising is fair, clear and not misleading.

(3) In paragraph (2)(c) “restricted public loan” means a credit agreement that is—

- (a) offered to a particular class of borrower and not offered to the public generally;
- (b) offered under an enactment with a general interest purpose; and
- (c) provided on terms which are more favourable to the borrower than those prevailing on the market, because it meets one of the following conditions—
 - (i) it is interest free;
 - (ii) the rate of interest is lower than that prevailing on the market; or
 - (iii) the rate of interest is no higher than that prevailing on the market but the other terms on which credit is provided are more favourable to the borrower.”

(20) In article 60K (other exclusions) for “the exclusion in article 72A (information society services) and the exclusion in article 72G (local authorities)” substitute “the exclusions in articles 72A (information society services), 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms)”.

(21) In article 61 (regulated mortgage contracts)¹³—

- (a) in paragraph (3)(a)—
 - (i) for paragraphs (i) to (iii) substitute—

- “(i) the contract is one under which a person (“the lender”) provides credit to an individual or to trustees (“the borrower”);
- (ii) the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land in the EEA;
- (iii) at least 40% of that land is used, or is intended to be used—
 - (aa) in the case of credit provided to an individual, as or in connection with a dwelling; or
 - (bb) in the case of credit provided to a trustee which is not an individual, as or in connection with a dwelling by an individual who is a beneficiary of the trust, or by a related person”; and

- (ii) in the wording after paragraph (iii) for “is a regulated home purchase plan” substitute “falls within article 61A(1) or (2)”;
- (b) for paragraph (4)(a) substitute—

“(a) “mortgage” includes a charge and (in Scotland) a heritable security;”;
and

- (c) in paragraph (4)—
 - (i) after sub-paragraph (c) omit “and”; and
 - (ii) omit sub-paragraph (d).

(22) After article 61 insert—

“61A.— Mortgage contracts which are not regulated mortgage contracts

- (1) A contract falls within this paragraph if it is—
 - (a) a regulated home purchase plan;
 - (b) a limited payment second charge bridging loan;
 - (c) a second charge business loan;
 - (d) an investment property loan; or
 - (e) an exempt consumer buy-to-let mortgage contract.
- (2) A contract falls within this paragraph if—
 - (a) it is a limited interest second charge credit union loan;
 - (b) the borrower receives timely information on the main features, risks and costs of the contract at the pre-contractual stage; and
 - (c) any advertising of the contract is fair, clear and not misleading.
- (3) For the purposes of this article, if an agreement includes a declaration which—
 - (a) is made by the borrower, and
 - (b) includes—
 - (i) a statement that the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower,
 - (ii) a statement that the borrower understands that the borrower will not have the benefit of the protection and remedies that would be available to the borrower under the Act if the agreement were a regulated mortgage contract under the Act, and
 - (iii) a statement that the borrower is aware that if the borrower is in any doubt as to the consequences of the agreement not being regulated by the Act, then the borrower should seek independent legal advice,

the agreement is to be presumed to have been entered into by the borrower wholly or predominantly for the purposes specified in sub-paragraph (b)(i) unless paragraph (4) applies.
- (4) This paragraph applies if, when the agreement is entered into—
 - (a) the lender (or, if there is more than one lender, any of the lenders), or
 - (b) any person who has acted on behalf of the lender (or, if there is more than one lender, any of the lenders) in connection with the entering into of the agreement, knows or has reasonable cause to suspect that the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(5) For the purposes of this article a borrower is to be regarded as entering into an agreement for the purposes of a business carried on, or intended to be carried on, by the borrower if the agreement is a buy-to-let mortgage contract and—

(a)

(i) the borrower previously purchased, or is entering into the contract in order to finance the purchase by the borrower of, the land subject to the mortgage;

(ii) at the time of the purchase the borrower intended that the land would be occupied as a dwelling on the basis of a rental agreement and would not at any time be occupied as a dwelling by the borrower or by a related person, or where the borrower has not yet purchased the land the borrower has such an intention at the time of entering into the contract; and

(iii) where the borrower has purchased the land, since the time of the purchase the land has not at any time been occupied as a dwelling by the borrower or by a related person; or

(b) the borrower is the owner of land, other than the land subject to the mortgage, which is—

(i) occupied as a dwelling on the basis of a rental agreement and is not occupied as a dwelling by the borrower or by a related person; or

(ii) secured by a mortgage under a buy-to-let mortgage contract.

(6) For the purposes of this article—

“borrower” and “lender” have the meaning set out in article 61(3) (regulated mortgage contracts);

“borrower-lender agreement”, “borrower-lender-supplier agreement”, “credit union” and “total charge for credit” have the meanings set out in article 60L (interpretation of Chapter 14A);

“bridging loan” has the meaning given by Article 4(23) of the mortgages directive;

“buy-to-let mortgage contract” has the meaning given in article 4 of the Mortgage Credit Directive Order 2015 (interpretation of Part 3);

“exempt consumer buy-to-let mortgage contract” is a contract that, at the time it is entered into, is a consumer buy-to-let mortgage contract within the meaning of article 4 of the Mortgage Credit Directive Order 2015 and—

(a) is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive; or

(b) is a bridging loan;

“investment property loan” is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—

(a) less than 40% of the land subject to the mortgage is used, or intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a related person; and

(b) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower;

“limited payment second charge bridging loan” is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—

- (a) it is a borrower-lender-supplier agreement financing the purchase of land;
- (b) it is used by the borrower as a temporary financing solution while transitioning to another financial arrangement for the land subject to the mortgage;
- (c) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and
- (d) the number of payments to be made by the borrower under the contract is not more than four;

“limited interest second charge credit union loan” is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—

- (a) it is a borrower-lender agreement;
- (b) the mortgage ranks in priority behind one or more other mortgages affecting the land in question;
- (c) the lender is a credit union; and
- (d) the rate of the total charge for credit does not exceed 42.6 per cent;

“payment” has the meaning set out in article 60F(8) (exempt agreement: exemptions relating to number of repayments to be made);

“regulated home purchase plan” has the meaning set out in article 63F(3)(a) (entering into and administering regulated home purchase plans);

“related person” in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust, means—

- (a) that person's spouse or civil partner;
- (b) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or
- (c) that person's parent, brother, sister, child, grandparent or grandchild;

“second charge business loan” is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—

- (a) the lender provides the borrower with credit exceeding £25,000;
- (b) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and
- (c) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.”.

(23) In article 63A (other exclusions)¹⁴ for “and 72G (local authorities)” substitute “, 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms)”.

(24) In article 66 (trustees, nominees and personal representatives)¹⁵ —

- (a) in paragraph (2) for “25A(1) and (2)” substitute “25A(1), (2) and (2A)”;
- (b) in paragraph (6) for “53C and 53D” substitute “53C, 53D and 53DA”; and
- (c) in paragraph (8) after “article 4(4A)” insert “and (4B)”.

(25) In article 67 (activities carried on in the course of a profession or non-investment business)¹⁶ —

- (a) in paragraph (1) for “53C and 53D” substitute “53C, 53D and 53DA”; and
- (b) in paragraph (3) for “4(4) and (4A)” substitute “4(4), (4A) and (4B)”.

(26) In article 72 (overseas persons)¹⁷ —

- (a) in paragraph (5A) after “25A(1)(a),” insert “25A(2A),”; and
- (b) after paragraph (9) insert—

“(10) Paragraphs (5A) and (5C) do not apply where the overseas person is a mortgage intermediary whose home Member State is the United Kingdom.”.

(27) In article 72G (local authorities)¹⁸ —

- (a) in paragraph (3)—
 - (i) for “25A” substitute “25A(1)(b), 25A(2)”; and
 - (ii) omit “53A,” and “61,”;
- (b) after paragraph (3) insert—

“(3A) There is excluded from article 25A(1)(b) and (2) any activity which is carried on by a company which is a wholly-owned subsidiary of a local authority.

(3B) There is excluded from articles 25A(1)(a) and (2A), 53A, 53DA and 61 any activity which is carried on by a local authority, or a company which is a wholly-owned subsidiary of a local authority, in so far as the contract is—

- (a) of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;
- (b) a bridging loan; or
- (c) a restricted public loan in relation to which the requirements of paragraph (6) are met.”;

(c) for paragraph (4) substitute—

“(4) There is excluded from article 60B—

- (a) any activity which is carried on by a local authority, the purpose of which is other than to acquire or retain property rights in land or in an existing or projected building, in so far as the credit agreement is of a kind to which the consumer credit directive does not apply by virtue of Article 2(2) of that directive;
- (b) any activity which is carried on by a local authority, the purpose of which is to acquire or retain property rights in land or in an existing or projected building, in so far as the credit agreement meets one of the following conditions—
 - (i) it is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;
 - (ii) it is a bridging loan; or
 - (iii) it is a restricted public loan in relation to which the requirements of paragraph (6) are met.”; and

(d) after paragraph (5) insert—

“(6) The requirements of this paragraph are that—

- (a) the borrower receives timely information on the main features, risks and costs of the loan at the pre-contractual stage; and
- (b) any advertising of the loan is fair, clear and not misleading.

(7) In this article—

“bridging loan” has the meaning given by Article 4(23) of the mortgages directive;

“borrower” means a person receiving credit;

“consumer credit directive” means Directive 2008/48/EC of the European Parliament and of the Council of 23rd April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EC¹⁹;

“credit” includes a cash loan and any other form of financial accommodation;

“restricted public loan” means credit that is—

(a) offered to a particular class of borrower and not offered to the public generally;

(b) offered under an enactment with a general interest purpose; and

(c) provided on terms which are more favourable to the borrower than those prevailing on the market, because the credit meets one of the following conditions—

(i) it is interest free;

(ii) the rate of interest is lower than that prevailing on the market; or

(iii) the rate of interest is no higher than that prevailing on the market but the other terms on which the credit is provided are more favourable to the borrower; and

“wholly-owned subsidiary” has the same meaning as in section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006 and, for the purposes of this definition, a local authority is to be treated as a body corporate.

(28) After article 72H (insolvency practitioners)²⁰ insert—

“72I.— Registered consumer buy-to-let mortgage firms

(1) There is excluded from articles 25A, 36A, 53A, 53DA, 60B and 61 any consumer buy-to-let mortgage business carried on by a registered consumer buy-to-let mortgage firm.

(2) In this article “consumer buy-to-let mortgage business” and “registered consumer buy-to-let mortgage firm” have the meanings given in article 4 of the Mortgage Credit Directive Order 2015 (interpretation of Part 3).”.

Notes

¹ Article 3 was amended by S.I. 2006/3384 and 2013/3115; there are other amendments to article 3 but none is relevant to this Order.

² Article 4 was amended by S.I. 2003/1476, 2006/3384, 2009/1389, 2013/1773 and 1881 and 2014/1292.

³ Article 25A was inserted by S.I. 2003/1475.

⁴ Article 29 was amended by S.I. 2003/1476, 2006/2383 and 3384 and 2009/1342.

⁵ Article 36 was amended by S.I. 2002/1776, 2003/1475 and 1476, 2006/2383 and 3384, 2009/1342, 2013/1773 and 2014/366.

⁶ Article 36E was inserted by S.I. 2013/1881.

⁷ Article 36G was amended by S.I. 2013/1881 and amended by S.I. 2014/366.

⁸ Article 53D was inserted by S.I. 2009/1342.

⁹ Article 54 was amended by S.I. 2003/1475 and 1476, 2006/2383, 2009/1342 and 2013/472.

¹⁰ Article 54A was inserted by S.I. 2003/1475 and subsequently amended by S.I. 2006/2383 and 2009/1342.

- ¹¹ Article 55 was amended by S.I. 2002/1776, 2003/1475 and 1476, 2006/2383, 2009/1342, 2013/1773 and 2014/366.
- ¹² Chapter 14A (articles 60B to 60M) was inserted by S.I. 2013/1881. Articles 60C to 60G and 60K were subsequently amended by S.I. 2014/366.
- ¹³ Article 61 was amended by S.I. 2001/3544, 2005/2114, 2006/2383 and 2010/2960.
- ¹⁴ Article 63A was inserted by S.I. 2002/1776, substituted by S.I. 2003/1475 and subsequently amended by S.I. 2013/1773 and 2014/366.
- ¹⁵ Article 66 was amended by S.I. 2003/1475 and 1476, 2005/593, 2006/2383 and 3384, 2009/1342.
- ¹⁶ Article 67 was amended by S.I. 2001/3544, 2003/1475 and 1476, 2006/2383 and 3384 and 2009/1342.
- ¹⁷ Article 72 was amended by S.I. 2003/1475 and 1476, 2006/2383 and 3384, 2009/1342 and 2013/504.
- ¹⁸ Article 72G was inserted by S.I. 2014/366.
- ¹⁹ OJ L 133 22.5.2008, p.66.
- ²⁰ Article 72H was inserted by S.I. 2014/366.

Commencement

Sch. 1(2) para. 4(1)-(28): Date to be appointed

Extent

Sch. 1(2) para. 4(1)-(28): (extent not available)

 Not Yet In Force

5.— The Financial Services and Markets Act 2000 (Exemption) Order 2001

(1) Paragraph 48 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001¹ is amended as follows.

(2) For sub-paragraph (1)(b) substitute “article 25A(1)(b) and (2) of that Order (arranging a regulated mortgage contract);”.

(3) After sub-paragraph (1) insert—

“(1A) A relevant housing body is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 25A(1)(a) or (2A), 53A or 61 of that Order (arranging, advising on, entering into or administering a regulated mortgage contract) in so far as the contract—

- (a) is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;
- (b) is a bridging loan; or
- (c) is a restricted public loan in relation to which the requirements of sub-paragraph (1B) are met.

(1B) The requirements of this sub-paragraph are that—

- (a) the borrower receives timely information on the main features, risks and costs of the loan at the pre-contractual stage; and
- (b) any advertising of the loan is fair, clear and not misleading.”.

(4) In sub-paragraph (2)—

- (a) omit paragraphs (d) (Scottish Homes) and (f) (Communities Scotland);
- (b) after paragraph (g) insert—

“(h) except for the purposes of sub-paragraph (1)(a), the Scottish Ministers;
 (i) except for the purposes of sub-paragraph (1)(a), the Welsh Ministers.”.

(5) After sub-paragraph (2) insert—

“(3) Except for the purposes of sub-paragraph (1)(a), “relevant housing body” also includes a wholly-owned subsidiary of a body listed in sub-paragraph (2)(a), (aa), (b), (ca), (h) or (i).

(4) In this paragraph—

“bridging loan” has the meaning given by Article 4(23) of the mortgages directive;

“borrower” means a person receiving credit;

“credit” includes a cash loan and any other form of financial accommodation;

“restricted public loan” means credit that is—

(a) offered to a particular class of borrower and not offered to the public generally;

(b) offered under an enactment with a general interest purpose; and

(c) provided on terms which are more favourable to the borrower than those prevailing on the market, because it meets one of the following conditions—

(i) it is interest free;

(ii) the rate of interest is lower than that prevailing on the market;

or

(iii) the rate of interest is no higher than that prevailing on the market but the other terms on which credit is provided are more favourable to the borrower; and

“wholly-owned subsidiary” has the same meaning as in section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006 and, for the purposes of this definition, a relevant housing body is to be treated as a body corporate.”.

Notes

¹ Paragraph 48 of the Schedule was substituted by S.I. 2003/1675 and subsequently amended by S.I. 2005/592, 2006/2383, 2008/2831, 2009/1342, 2010/671, 2011/1626 and 2012/641 and 700.

Commencement

Sch. 1(2) para. 5(1)-(5): Date to be appointed

Extent

Sch. 1(2) para. 5(1)-(5): (extent not available)

 Not Yet In Force

6.— The Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001

(1) The Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001 are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation)¹, after the definition of “relevant management company” insert—

““relevant mortgage intermediary” means a mortgage intermediary falling within paragraph 5(i) of Schedule 3 to the Act which is providing all or part of the credit intermediation activities set out in Article 4(5) of the mortgages directive or which is providing advisory services (as defined in Article 4(21) of the mortgages directive) in the United Kingdom;”.

(3) In regulation 2 (persons not to be regarded as relevant persons)²—

- (a) after sub-paragraph (1)(d) omit “and”;
- (b) after sub-paragraph (1)(e) insert—

“; and

- (f) any relevant mortgage intermediary.”; and
- (c) in paragraph (2) for “(b) and (c)” substitute “(b), (c) and (f)”.

(4) In regulation 3 (persons who may elect to participate)³—

- (a) after sub-paragraph (1)(c) omit “and”; and
- (b) after sub-paragraph (1)(d) insert—

“; and

(e) any relevant mortgage intermediary which has established a branch in the United Kingdom in exercise of an EEA right and which is not an investment firm, a credit institution or an insurance intermediary.”.

(5) In regulation 4 (persons in respect of whom inspection under section 224 does not apply)⁴—

- (a) after paragraph (d) omit “and”; and
- (b) after paragraph (e) insert—

“; and

(f) any relevant mortgage intermediary.”.

Notes

¹ Regulation 1 was amended by S.I. 2003/1476 and 2066, 2011/1613 and 2013/1773 and 3115.

² Regulation 2 was amended by S.I. 2003/1476 and 2066, 2011/1613 and 2013/1773.

³ Regulation 3 was amended by S.I. 2003/1476 and 2066 and 2013/1773.

⁴ Regulation 4 was amended by S.I. 2003/1476 and 2066 and 2013/1773.

Commencement

Sch. 1(2) para. 6(1)-(5)(b): Date to be appointed

Extent

Sch. 1(2) para. 6(1)-(5)(b): (extent not available)

N Not Yet In Force

7.— The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001

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

(2) In regulation 2(1) (descriptions of business for which appointed representatives are exempt)¹, after sub-paragraph (cc) insert—

“(cca) an activity of the kind specified by article 53DA of that Order (advising on regulated credit agreements for the acquisition of land);”.

(3) In regulation 3(3) (requirements applying to contracts between authorised persons and appointed representatives)²—

(a) after sub-paragraph (a)(ii) omit “or”;

(b) in sub-paragraph (b)(ii) for “with other counterparties.” substitute—

“with other counterparties; or

(c) gives advice (in circumstances constituting the carrying on of an activity of the kind specified by article 53DA of that Order) which consists of the provision of personal recommendations to a person in respect of one or more transactions with other counterparties.”.

Notes

¹ Regulation 2(1) was amended by S.I. 2001/2508, 2003/1475 and 1476, 2004/453 and 2737, 2006/2383, 2012/1906, 2013/1881 and 2014/206

² Regulation 3(3) was inserted by S.I. 2003/1475.

Commencement

Sch. 1(2) para. 7(1)-(3)(b): Date to be appointed

Extent

Sch. 1(2) para. 7(1)-(3)(b): (extent not available)

N Not Yet In Force

8.— The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 are amended as follows.

(2) In regulation 2 (interpretation)¹—

(a) after the definition of “markets in financial instruments directive information” insert—

““mortgages directive information” means confidential information received by the FCA or the PRA in the course of discharging its functions as a competent authority under the mortgages directive;”

(b) in the definition of “single market restrictions”, after paragraph (ga) insert—

“(gb) Articles 5(2) and 36 of the mortgages directive;”.

(3) In regulation 9 (disclosure by regulators or regulator workers to certain other persons)² —

(a) in paragraph (1), after “(3E)” insert “, (3F)”; and

(b) after paragraph (3E) insert—

“(3F) Paragraph (1) does not permit disclosure of mortgages directive information to a person specified in the first column of Schedule 1 in contravention of Articles 5(2) or 36 of the mortgages directive.”.

Notes

¹ In regulation 2 the definition of “markets in financial instruments directive information” was inserted by S.I. 2006/3413 and was subsequently amended by S.I. 2010/2628 and 2013/472 and 3115. The definition of “single market restrictions” was inserted by S.I. 2012/916 and was subsequently amended by S.I. 2013/504, 1773 and 3115. There are other amendments to regulation 2 but none is relevant to this Order.

² Regulation 9 was amended by S.I. 2003/693, 2004/3379, 2006/3413, 2007/3255, 2010/2628, 2011/1613, 2012/916, 2013/472, 504, 1773 and 3115.

Commencement

Sch. 1(2) para. 8(1)-(3)(b): Date to be appointed

Extent

Sch. 1(2) para. 8(1)-(3)(b): (extent not available)

 Not Yet In Force

9.— The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001

(1) The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)¹ after the definition of “EEA activities” insert—

““EEA mortgage intermediary” means a person falling within paragraph 5(i) of Schedule 3;”

(3) In regulation 2 (establishment of a branch: contents of consent notice)² after paragraph (7) insert—

“(8) In the case of an EEA mortgage intermediary, the prescribed information is—

(a) a statement that the firm is an EEA mortgage intermediary;

(b) the requisite details of the branch;

(c) whether the EEA mortgage intermediary is a tied mortgage intermediary;

(d) the name and address of the mortgage creditors (if any) to which the EEA mortgage intermediary is tied; and

(e) whether those mortgage creditors (if any) take full and unconditional responsibility for the activities of the EEA mortgage intermediary.”.

(4) In regulation 3 (provision of services: contents of regulator's notice)³ after paragraph (5) insert—

“(6) In the case of an EEA mortgage intermediary, the prescribed information is—

- (a) a statement that the firm is an EEA mortgage intermediary;
- (b) particulars of the services to be carried on in the United Kingdom;
- (c) whether the EEA mortgage intermediary is a tied mortgage intermediary;
- (d) the name and address of the mortgage creditors (if any) to which the EEA mortgage intermediary is tied; and
- (e) whether those mortgage creditors (if any) take full and unconditional responsibility for the activities of the EEA mortgage intermediary.”.

(5) After regulation 7A (EEA AIFM: changes to branch details or services)⁴ insert—

“7B.— EEA mortgage intermediary: changes to branch details or services

(1) An EEA mortgage intermediary which is exercising an EEA right in the United Kingdom deriving from the mortgages directive must not make a material change to any of the matters referred to in regulation 2(8)(b) to (e) or regulation 3(6)(b) to (e) unless the relevant requirements have been complied with.

(2) Where the relevant requirements have been complied with, the mortgage intermediary's permission is to be treated as varied accordingly.

(3) For the purposes of this regulation, the “relevant requirements” are those of paragraph (4) or (if the change is occasioned by circumstances beyond the mortgage intermediary's control) paragraph (5).

(4) The requirements of this paragraph are that—

- (a) the mortgage intermediary has given a notice to the appropriate UK regulator and to its home state regulator stating the details of the proposed change; and
- (b) either the appropriate UK regulator has informed the mortgage intermediary that it may make the change, or the period of one month beginning with the day on which the mortgage intermediary gave the appropriate UK regulator the notice mentioned in sub-paragraph (a) has elapsed.

(5) The requirements of this paragraph are that the mortgage intermediary has as soon as practicable (whether before or after the change) given a notice to the appropriate UK regulator and to its home state regulator, stating the details of the change.

(6) The appropriate UK regulator must, as soon as practicable after receiving a notice from a mortgage intermediary under this regulation, inform the mortgage intermediary of any consequential changes in the applicable provisions (within the meaning of paragraph 13 or, as the case may be, paragraph 14 of Schedule 3).

(7) In this regulation “the appropriate UK regulator” has the same meaning as in paragraph 14 of Schedule 3.”.

(6) After regulation 9 (financial institutions giving up right to authorisation)⁵ insert—

“9A.— EEA mortgage intermediaries giving up right to authorisation

(1) The appropriate UK regulator may, where paragraph (2) or (3) applies, direct that the qualification for authorisation given to an EEA mortgage intermediary under Schedule 3 is cancelled from such date as may be specified in the direction.

(2) This paragraph applies if the appropriate UK regulator receives notice (“a withdrawal notice”) from the EEA mortgage intermediary's home state regulator stating that the EEA mortgage intermediary's authorisation which gives rise to an EEA right under the mortgages directive has been withdrawn.

(3) This paragraph applies if—

(a) despite action taken by the appropriate regulator under section 194C of the Act, the EEA mortgage intermediary persists in contravening an obligation to which Article 34(2) of the mortgages directive applies; and

(b) the appropriate UK regulator has informed the home state regulator that it intends to direct that the qualification for authorisation given to the EEA mortgage intermediary under Schedule 3 is cancelled.

(4) Where paragraph (3) applies and the appropriate UK regulator makes a direction under paragraph (1), the appropriate UK regulator must inform the European Commission of that direction without undue delay.

(5) In this regulation “the appropriate UK regulator” has the same meaning as in paragraph 14 of Schedule 3.”.

(7) After regulation 17A (full-scope UK AIFM: changes to branch details or services)⁶ insert—

“17B.— UK firm exercising an EEA right under the mortgages directive: changes to branch details or services

(1) A mortgage intermediary which has exercised an EEA right deriving from the mortgages directive to establish a branch or provide services must not make any material change to the requisite details of the branch or to the services to be carried on in exercise of that EEA right unless the requirements of paragraph (2) have been complied with.

(2) The requirements are that—

(a) the mortgage intermediary has given a notice to the appropriate UK regulator stating the details of the proposed change, and

(b) the period of one month beginning with the day on which the mortgage intermediary gave the notice has elapsed.

(3) The appropriate UK regulator must, as soon as reasonably practicable after receiving a notice under paragraph (2), inform the host state regulator of the proposed change.

(4) Paragraph (1) does not apply to a change occasioned by circumstances beyond the mortgage intermediary's control.”.

Notes

¹ Regulation 1(2) was amended by S.I. 2002/765, 2003/1473 and 2066, 2006/3385, 2007/763, 2011/99 and 2013/642.

² Regulation 2 was amended by S.I. 2002/765, 2003/2066, 2004/1862, 2006/3385, 2011/99 and 2013/642, 1773, 1797 and 3115.

³ Regulation 3 was amended by S.I. 2003/1473 and 2066, 2004/1862, 2006/3385 and 2013/642, and 1773.

⁴ Regulation 7A was inserted by S.I. 2013/1773.

⁵ Regulation 9 was amended by S.I. 2013/642.

⁶ Regulation 17A was inserted by S.I. 2013/1773 and amended by S.I. 2013 1797.

Commencement

Sch. 1(2) para. 9(1)-(7): Date to be appointed

Extent

Sch. 1(2) para. 9(1)-(7): (extent not available)

N Not Yet In Force

10.— The Financial Services and Markets Act 2000 (Gibraltar) Order 2001

(1) The Financial Services and Markets Act 2000 (Gibraltar) Order 2001 is amended as follows.

(2) In article 2 (exercise of deemed passport rights by Gibraltar-based firms)¹—

(a) after paragraph (3D) insert—

“(3E) A Gibraltar-based firm falling within paragraph 5(i) of Schedule 3 is to be treated as having an entitlement, corresponding to its EEA right deriving from the mortgages directive, to establish a branch or provide services in the United Kingdom.”;

(b) in paragraph (4)—

(i) for “and (3D)” substitute “, (3D) and (3E)”;

(ii) for “and (h)” substitute “, (h) and (i)”;

(c) in paragraph (5) for “or (3D)” in both places that it appears substitute “, (3D) or (3E)”;

(d) in paragraph (7) for “or (3D)” substitute “, (3D) or (3E)”;

(e) in paragraph (8)—

(i) in sub-paragraph (a), for “section 194A(7) has” substitute “sections 194A(7) and 194C(6)² have”;

(ii) in sub-paragraph (b), for “section 195A(11) is” substitute “sections 195A(11) and 195B(10)³ are”.

(3) In article 3 (EEA firms satisfying conditions under Gibraltar law)⁴, in paragraph (3) for “(7A)” substitute “(7B)”.

Notes

¹ Article 2 was amended by S.I. 2005/1, 2006/1805, 2007/2932 and 3254, 2012/2017, 2013/472 and 3115 and 2014/1292.

² Section 194C is inserted by this Order.

³ Section 195B is inserted by this Order.

⁴ Article 3 was amended by S.I. 2007/3254 and 2014/1292.

Commencement

Sch. 1(2) para. 10(1)-(3): Date to be appointed

Extent

Sch. 1(2) para. 10(1)-(3): (extent not available)

N Not Yet In Force

11. The Consumer Credit (Disclosure of Information) Regulations 2004

In regulation 2 of the Consumer Credit (Disclosure of Information) Regulations 2004¹ (agreements to which these regulations apply), in sub-paragraph (1)(c) after “£60,260” insert “other than residential renovation agreements”.

Notes

¹ Regulation 2 was substituted by S.I. 2010/1010, as amended by S.I. 2011/1969.

Commencement

Sch. 1(2) para. 11: Date to be appointed

Extent

Sch. 1(2) para. 11: (extent not available)

N Not Yet In Force

12.— The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

(1) Schedule 1 to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005¹ is amended as follows.

(2) After paragraph 10BA (providing relevant consumer credit) insert—

“10BAA.— Advising on certain relevant consumer credit relating to land

Advising a person is a controlled activity if the advice—

- (a) is given to the person in the person's capacity as a recipient of credit, or potential recipient of credit; and
- (b) consists of the provision of personal recommendations to the person in respect of one or more transactions relating to a relevant credit agreement where the person intends to use the credit to acquire or retain property rights in land or in an existing or projected building, other than an agreement under which qualifying credit within the meaning of paragraph 10 is provided.”.

(3) In paragraph 28 (interpretation) for the definition of “relevant credit agreement” substitute—

““relevant credit agreement” means a credit agreement (within the meaning given by article 60B of the Regulated Activities Order) other than—

- (a) a regulated mortgage contract or a regulated home purchase plan (within the meaning of that Order); or

(b) a buy-to-let mortgage contract as defined in article 4 of the Mortgage Credit Directive Order 2015;”.

Notes

¹ Paragraph 10BA was inserted by S.I. 2013/1881 and amended by S.I. 2014/366. In paragraph 28 the definition of “relevant credit agreement was inserted by S.I. 2013/1881 and amended by S.I. 2014/366.

Commencement

Sch. 1(2) para. 12(1)-(3): Date to be appointed

Extent

Sch. 1(2) para. 12(1)-(3): (extent not available)

 Not Yet In Force

13. The Consumer Credit (Disclosure of Information) Regulations 2010

In regulation 2 of the Consumer Credit (Disclosure of Information) Regulations 2010¹ (agreements to which these regulations apply), in sub-paragraphs (3)(a) and (4)(a) after “£60,260” insert “unless it is a residential renovation agreement”.

Notes

¹ Regulation 2 was amended by S.I. 2013/1881.

Commencement

Sch. 1(2) para. 13: Date to be appointed

Extent

Sch. 1(2) para. 13: (extent not available)

 Not Yet In Force

14.— The Consumer Credit (Agreements) Regulations 2010

(1) The Consumer Credit (Agreements) Regulations 2010 are amended as follows.

(2) In regulation 2 (agreements to which these regulations apply)¹, in sub-paragraph (3)(b) after “£60,260” insert “other than a residential renovation agreement”.

(3) In Schedule 1 (information to be included in regulated consumer credit agreements)², in paragraph 25 in the second column after “£60,260” insert “other than a residential renovation agreement”.

Notes

¹ Regulation 2 was amended by S.I. 2010/1969 and 2013/1881.

² Schedule 1 was amended by S.I. 2010/1969, 2012/2798, 2013/1881 and 2014/366.

Commencement

Sch. 1(2) para. 14(1)-(3): Date to be appointed

Extent

Sch. 1(2) para. 14(1)-(3): (extent not available)

N Not Yet In Force

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

(1) Article 58 (duration of interim permission) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013¹ is amended as follows.

(2) In paragraph (1), after “in so far as it relates to a particular regulated activity or class of activity”, insert “other than an activity to which paragraph (1A) applies”.

(3) After paragraph (1) insert—

“(1A) Paragraphs (1B) and (1C) apply to an activity—

- (a) of a kind specified by article 36A or 60B of the Regulated Activities Order (regulated credit agreements) as that Order is in force before 21st March 2016; and
- (b) which, if carried on on or after 21st March 2016, would be of a kind specified by article 25A, 53A or 61 of the Regulated Activities Order by virtue of the amendments made to that Order by the Mortgage Credit Directive Order 2015.

(1B) P's interim permission ceases to have effect—

- (a) if P applies to the appropriate regulator before 21st March 2016 for Part 4A permission to carry on an activity of the kind specified by article 25A, 53A or 61 of the Regulated Activities Order or (as the case may be) to vary P's permission to add an activity of a kind specified by those articles to those to which the permission relates, on the date on which that application is determined; and
- (b) in any other case, on 21st March 2016;

(1C) P's interim permission is to be treated as an interim permission to carry on the activity from 21st March 2016 until the interim permission ceases to have effect, if—

- (a) P's interim permission continues to have effect on 21st March 2016 by virtue of paragraph (1B)(a), and
- (b) P had permission to carry on the activity immediately before 21st March 2016 by virtue of the interim permission.

(1D) If P's interim permission continues to have effect on 21st March 2016 by virtue of paragraph (1B)(a), from 21st March 2016 until the interim permission ceases to have effect the interim permission is to be treated as giving permission to carry on an activity which—

- (a) if carried on immediately before 21st March 2016, would not have been a regulated activity, and
- (b) becomes a regulated activity on 21st March 2016 by virtue of the amendments made to the Regulated Activities Order by the Mortgage Credit Directive Order 2015.”.

(4) In paragraph (2) for “Paragraph (1) does” substitute “Paragraphs (1) and (1B) to (1D) do”.

(5) In paragraph (3) for “paragraph (1)(a)” substitute “paragraphs (1)(a) and (1B)(a)”.

(6) In paragraph (6) after “paragraph (1)” insert “or (1B)”.

Notes

¹ Article 58 was amended by S.I. 2014/208, 366, 506 and 2632.

Commencement

Sch. 1(2) para. 15(1)-(6): Date to be appointed

Extent

Sch. 1(2) para. 15(1)-(6): (extent not available)

SCHEDULE 2

Requirements for registered consumer buy-to-let mortgage firms

Article 18

Conditions applicable to creditors and credit intermediaries

N Not Yet In Force

1.— Conduct of business obligations when providing consumer buy-to-let mortgage products to consumers

(1) When manufacturing consumer buy-to-let mortgage contracts or granting, intermediating or providing advisory services on consumer buy-to-let mortgage contracts and, where appropriate, ancillary services to consumers or when executing a consumer buy-to-let mortgage contract, the creditor or credit intermediary must act honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers.

(2) The granting, intermediating or provision of advisory services on consumer buy-to-let mortgage contracts and, where appropriate, the provision of ancillary services must be based on—

- (a) information about the borrower's circumstances;
- (b) any specific requirement made known by the borrower;
- (c) reasonable assumptions about risks to the borrower's situation over the term of the contract;
- (d) where the activity is the provision of advisory services, the information set out in paragraph 13(4)(a) and (b); and
- (e) information on the typical rental levels and rental demands within the property's locality and the impact of future interest rate rises, rental voids, rental arrears and typical letting costs.

(3) The manner in which creditors remunerate their staff and credit intermediaries and the manner in which credit intermediaries remunerate their staff must not impede compliance with the obligation set out in sub-paragraph (1).

(4) When establishing and applying remuneration policies for their staff responsible for the assessment of creditworthiness, creditors must comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities—

(a) the remuneration policy must be consistent with and promote sound and effective risk management and must not encourage risk-taking that exceeds the level of tolerated risk of the creditor;

(b) the remuneration policy must be in line with the business strategy, objectives, values and long-term interests of the creditor, and must incorporate measures to avoid conflicts of interest, in particular by providing that remuneration is not contingent on the number or proportion of applications accepted.

(5) Where a creditor or credit intermediary provides advisory services, the remuneration structure of the staff involved must not prejudice their ability to act in the consumer's best interest and in particular must not be contingent on sales targets.

Commencement

Sch. 2 para. 1(1)-(5): Date to be appointed

Extent

Sch. 2 para. 1(1)-(5): (extent not available)

 Not Yet In Force

2. Obligation to provide information free of charge to consumers

Any information provided to consumers in compliance with the requirements set out in this Schedule must be provided free of charge.

Commencement

Sch. 2 para. 2: Date to be appointed

Extent

Sch. 2 para. 2: (extent not available)

 Not Yet In Force

3.— Knowledge and competence requirements for staff

(1) Creditors and credit intermediaries must require their staff to possess and keep up-to-date an appropriate level of knowledge and competence in relation to—

(a) the manufacturing, offering or granting of consumer buy-to-let mortgage contracts,

- (b) acting as a credit intermediary in relation to consumer buy-to-let mortgage contracts, or
 - (c) the provision of advisory services in respect of consumer buy-to-let mortgage contracts.
- (2) The appropriate level of knowledge and competence referred to in sub-paragraph (1) must include at least—
- (a) appropriate knowledge of consumer buy-to-let mortgage contracts and the ancillary services typically offered with them;
 - (b) appropriate knowledge of the laws relating to consumer buy-to-let mortgage contracts, in particular consumer protection;
 - (c) appropriate knowledge and understanding of the process for purchasing land;
 - (d) appropriate knowledge of security valuation;
 - (e) appropriate knowledge of the organisation and functioning of land registers;
 - (f) appropriate knowledge of the market in the United Kingdom for consumer buy-to-let mortgage business;
 - (g) appropriate knowledge of business ethics standards;
 - (h) appropriate knowledge of the consumer creditworthiness assessment process or, where applicable, competence in assessing consumers' creditworthiness; and
 - (i) an appropriate level of financial and economic competency.

Commencement

Sch. 2 para. 3(1)-(2)(i): Date to be appointed

Extent

Sch. 2 para. 3(1)-(2)(i): (extent not available)

Information and practices preliminary to the conclusion of the consumer buy-to-let mortgage contract

 Not Yet In Force

4.— Tying and bundling practices

- (1) Except in the circumstances described in sub-paragraphs (2) to (4), a creditor must not offer or sell a consumer buy-to-let mortgage contract in a package with other distinct financial products or services where that mortgage contract is not made available to the borrower separately.
- (2) A creditor may request the borrower or a related person to—
- (a) open or maintain a payment or savings account where the only purpose of such an account is to accumulate capital to repay the credit, to service the credit, to pool resources to obtain the credit, or to provide additional security for the creditor in the event of default;
 - (b) purchase or keep an investment product or a private pension product, where such product which primarily offers the investor an income in retirement serves also to provide additional security for the creditor in the event of default or to accumulate capital to repay the credit, to service the credit or to pool resources to obtain the credit; or

(c) conclude a separate credit agreement in conjunction with a shared-equity credit agreement to obtain the credit.

(3) Notwithstanding sub-paragraph (1), a creditor may offer or sell a consumer buy-to-let mortgage contract where the creditor can demonstrate to the FCA that the tied products or categories of product offered, on terms and conditions similar to each other, which are not made available separately, result in a clear benefit to a borrower taking due account of the availability and the prices of the relevant products offered on the market.

(4) A creditor may require the borrower to hold an insurance policy related to the consumer buy-to-let mortgage contract, provided that the creditor must accept an insurance policy from a supplier different to the creditor's preferred supplier where the policy has a level of guarantee equivalent to the level of guarantee in the insurance policy proposed by the creditor.

Commencement

Sch. 2 para. 4(1)-(4): Date to be appointed

Extent

Sch. 2 para. 4(1)-(4): (extent not available)

N Not Yet In Force

5.— General information

(1) A creditor must make available clear and comprehensible general information about consumer buy-to-let mortgage contracts at all times on paper or on another durable medium or in electronic form.

(2) The general information referred to in sub-paragraph (1) must include at least the following—

- (a) the name and address of the creditor;
- (b) the purposes for which the credit provided under the consumer buy-to-let mortgage contract may be used;
- (c) the form of any security, including, where applicable, the possibility for it to be located in another EEA State;
- (d) the possible duration of the consumer buy-to-let mortgage contract;
- (e) the types of available borrowing rate, indicating whether fixed or variable or both, with a short description of the characteristics of a fixed and variable rate, including related implications for the borrower;
- (f) where foreign currency loans are available, an indication of the foreign currency or currencies, including an explanation of the implications for the borrower where the consumer buy-to-let mortgage contract is denominated in a foreign currency;
- (g) a representative example of the total amount of credit, the total cost of the credit to the borrower, the total amount payable by the borrower and the annual percentage rate of charge;
- (h) an indication of possible further costs not included in the total cost of the credit to the borrower, to be paid in connection with a consumer buy-to-let mortgage contract;
- (i) the range of different options available for reimbursing the credit to the creditor, including the number, frequency and amount of the regular repayment instalments;


- (j) where applicable, a clear and concise statement that compliance with the terms and conditions of the consumer buy-to-let mortgage contract does not guarantee repayment of the total amount of credit under that contract;
- (k) a description of the conditions directly relating to early repayment;
- (l) whether a valuation of the property is necessary and, where applicable, who is responsible for ensuring that the valuation is carried out, and whether any related costs arise for the borrower;
- (m) an indication of any ancillary services the borrower is obliged to acquire in order to obtain the consumer buy-to-let mortgage contract or to obtain it on the terms and conditions marketed and, where applicable, a clarification that the ancillary services may be purchased from a provider that is not the creditor; and
- (n) a general warning concerning possible consequences of non-compliance with the commitments linked to the consumer buy-to-let mortgage contract.

Commencement

Sch. 2 para. 5(1)-(2)(n): Date to be appointed

Extent

Sch. 2 para. 5(1)-(2)(n): (extent not available)

 Not Yet In Force

6.— Pre-contractual information

- (1) A creditor and, where applicable, a credit intermediary must provide a borrower with a lending illustration on paper or another durable medium—
- (a) without undue delay after the borrower has given the necessary information on the borrower's needs, financial situation and preferences in accordance with paragraph 12; and
 - (b) in good time before the borrower is bound by any credit agreement or offer.
- (2) The lending illustration must include at least the following—
- (a) the name of the borrower;
 - (b) the date of issue of the lending illustration;
 - (c) the date until which the lending illustration remains valid;
 - (d) the name, address and telephone number of the creditor;
 - (e) where applicable, the name, address and telephone number of the credit intermediary;
 - (f) the amount of the loan required, including any charges added to the amount of the loan;
 - (g) the value of any property against which the loan is to be secured;
 - (h) the term of the consumer buy-to-let mortgage contract;
 - (i) a description of whether the consumer buy-to-let mortgage contract is to be provided on an interest-only basis, a repayment basis or a combination of the two;
 - (j) the type of interest rate payable;
 - (k) the interest rate payable including, if applicable, the initial interest rate and any reversionary rate;
 - (l) the frequency and amount of each instalment and the number of instalments;
 - (m) the overall cost of the consumer buy-to-let mortgage contract;
 - (n) the annual percentage rate of charge;

- (o) where the credit agreement allows for variations in the interest rate, either—
 - (i) an illustration of how the annual percentage rate of charge might change in the event of an increase in the interest rate of 1%, and the resulting increase in the amount of each instalment; or
 - (ii) an additional annual percentage rate of charge which illustrates the possible risks for the borrower linked to a significant increase in the interest rate, including the possible increase in the amount of each instalment;
- (p) details of any early repayment charges;
- (q) a warning of the risk that interest rates may rise;
- (r) a warning of the risk that rental income may fall;
- (s) where applicable, a warning of the risk that the property may be repossessed if the borrower does not keep up with mortgage repayments;
- (t) where applicable, a warning of the risk of foreign currency loans; and
- (u) where it is an interest-only loan, a warning that the borrower will still owe the loan amount at the end of the term.

(3) The creditor or, where applicable, the credit intermediary, must provide the borrower with a copy of the draft consumer buy-to-let mortgage contract at the time of the provision of an offer.

(4) In this paragraph “lending illustration” means the personalised information needed by the borrower to compare the products available on the market, assess their implications and make an informed decision on whether to conclude a consumer buy-to-let mortgage contract.

Commencement

Sch. 2 para. 6(1)-(4): Date to be appointed

Extent

Sch. 2 para. 6(1)-(4): (extent not available)

 Not Yet In Force

7.— Information requirements concerning credit intermediaries

(1) In good time before the carrying on of any of the credit intermediation activities described in article 5(2) to (4), a credit intermediary must provide the borrower with at least the following information on paper or another durable medium—

- (a) the name and address of the credit intermediary;
- (b) details of the register, the credit intermediary's registration number, where applicable, and the means for verifying such registration;
- (c) whether the credit intermediary is tied to or works exclusively for one or more creditors;
- (d) if the credit intermediary is tied to or works exclusively for one or more creditors, the names of the creditors for which the credit intermediary is acting;
- (e) if the credit intermediary meets the criteria set out in paragraph 13(5), a statement that the credit intermediary is independent;
- (f) whether the credit intermediary offers advisory services;
- (g) the fee, where applicable, payable by the borrower to the credit intermediary for its services or, where this is not possible, the method for calculating the fee;

- (h) the procedures allowing borrowers or other interested parties to register complaints internally about credit intermediaries and, where appropriate, the means by which recourse to out-of-court complaint and redress procedures can be sought;
- (i) where applicable, the existence of commissions or other inducements payable by the creditor or third parties to the credit intermediary for their services in relation to the contract; and
- (j) either the amount of such commissions or other inducements or, where the amount is not known at the time of disclosure, a statement that the credit intermediary shall inform the borrower of the actual amount as part of the lending illustration referred to in paragraph 6.

(2) Where the credit intermediary charges a fee to the borrower and additionally receives commission from the creditor or a third party, the credit intermediary must explain to the borrower whether or not the commission will be offset against the fee, either in part or in full.

(3) The credit intermediary must inform the creditor of the fee, if any, payable by the borrower to the credit intermediary for its services.

Commencement

Sch. 2 para. 7(1)-(3): Date to be appointed

Extent

Sch. 2 para. 7(1)-(3): (extent not available)

N Not Yet In Force

8.— Adequate explanations

(1) Creditors and, where applicable, credit intermediaries, must provide an adequate explanation to the borrower on a proposed consumer buy-to-let mortgage contract and any ancillary services, in order to place the borrower in a position enabling the borrower to assess whether the proposed agreement and ancillary services are adapted to the borrower's needs and financial situation.

(2) The adequate explanation must, where applicable, include—

- (a) in the case of creditors, the information described in paragraph 6(2);
- (b) in the case of credit intermediaries, the information described in paragraphs 6(2) and 7(1); and
- (c) in all cases—
 - (i) the essential characteristics of the consumer buy-to-let mortgage contract proposed;
 - (ii) the specific effect the contract proposed may have on the borrower, including the consequences of default in payment by the borrower; and
 - (iii) where ancillary services are bundled with a consumer buy-to-let mortgage contract, whether each component of the bundle can be terminated separately and the implications for the borrower of doing so.

Commencement

Sch. 2 para. 8(1)-(2)(c)(iii): Date to be appointed

Extent

Sch. 2 para. 8(1)-(2)(c)(iii): (extent not available)

Annual percentage rate of charge

N Not Yet In Force

9.— Calculation of the annual percentage rate of charge

(1) The annual percentage rate of charge must be calculated in accordance with the mathematical formula set out in paragraph 20.

(2) The costs of opening and maintaining a specific account, the costs of using a means of payment for both transactions and drawdowns on that account and other costs relating to payment transactions shall be included in the total cost of credit to the borrower whenever the opening or maintaining of an account is obligatory in order to obtain the credit or to obtain it on the terms and conditions marketed.

(3) The calculation of the annual percentage rate of charge must be based on the assumption that the consumer buy-to-let mortgage contract is to remain valid for the period agreed and that the creditor and the borrower will fulfil their obligations under the terms and by the dates specified in that contract.

(4) If the consumer buy-to-let mortgage contract allows variations in the borrowing rate and, where applicable, in the charges contained in the annual percentage rate of charge but unquantifiable at the time of calculation, the annual percentage rate of charge must be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the level set at the conclusion of the contract.

(5) Where applicable, the additional assumptions set out in paragraph 21 must be used in calculating the annual percentage rate of charge.

(6) In this paragraph—

“annual percentage rate of charge” means the total cost of the credit to the borrower, expressed as an annual percentage of the total amount of credit, where applicable, including the costs referred to in sub-paragraph (2) and equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed by the creditor and the borrower;

“total amount of credit” means the ceiling or total sums made available under the consumer buy-to-let mortgage contract;

“total cost of credit to the borrower” means all the costs which the borrower is required to pay in connection with the credit agreement and which are known to the creditor, including

the costs referred to in sub-paragraph (7) but excluding the costs referred to in sub-paragraph (8).

(7) The costs referred to in this sub-paragraph are—

- (a) interest;
- (b) commissions;
- (c) taxes;
- (d) any other kind of fees;
- (e) the cost of valuation of property where such valuation is necessary to obtain the consumer buy-to-let mortgage contract; and
- (f) costs in respect of ancillary services, in particular insurance premiums, where the purchase of those ancillary services is compulsory in order to obtain the consumer buy-to-let mortgage contract or to obtain it on the terms and conditions marketed.

(8) The costs referred to in this sub-paragraph are—

- (a) notarial costs;
- (b) registration fees for the transfer of ownership of the property; and
- (c) any charges payable by the borrower for non-compliance with the commitments laid down in the consumer buy-to-let mortgage contract.

Commencement

Sch. 2 para. 9(1)-(8)(c): Date to be appointed

Extent

Sch. 2 para. 9(1)-(8)(c): (extent not available)

Creditworthiness assessment

N Not Yet In Force

10.— Obligation to assess the creditworthiness of the borrower

(1) Before concluding a consumer buy-to-let mortgage contract, the creditor must make a thorough assessment of the borrower's creditworthiness, taking appropriate account of factors relevant to verifying the prospect of the borrower meeting the borrower's obligations under that contract.

(2) The creditor must establish, document and maintain procedures on which it bases a creditworthiness assessment in relation to a consumer buy-to-let mortgage contract.

(3) The assessment of creditworthiness must not rely predominantly on the value of the property exceeding the amount of the credit or on the assumption that the property will increase in value unless the purpose of the consumer buy-to-let mortgage contract is to construct or renovate the property.

(4) Where a creditor concludes a consumer buy-to-let mortgage contract with a borrower the creditor must not subsequently cancel or alter the contract to the detriment of the borrower on the grounds

that the assessment of creditworthiness was incorrectly conducted, unless the borrower knowingly withheld or falsified information as described in paragraph 12.

(5) The creditor must only enter into the consumer buy-to-let mortgage contract with the borrower where the result of the creditworthiness assessment indicates that the borrower is likely to meet the obligations resulting from that contract in the manner required under that contract.

(6) Where the application is rejected, the creditor must inform the borrower without delay of the rejection and, where applicable, that the decision is based on automated processing of data.

(7) Where the creditor consults a database as part of the creditworthiness assessment, the creditor must—

- (a) inform the borrower in advance that a database is to be consulted; and
- (b) where the application is rejected, and the rejection is based on the result of the database consultation, inform the borrower of the result of such consultation and of the particulars of the database consulted.


(8) Before granting any significant increase in the total sums made available under the consumer buy-to-let mortgage contract after the conclusion of that contract, the creditor must re-assess the borrower's creditworthiness on the basis of updated information, unless such an increase was envisaged and included in the original creditworthiness assessment.

Commencement

Sch. 2 para. 10(1)-(8): Date to be appointed

Extent

Sch. 2 para. 10(1)-(8): (extent not available)

 Not Yet In Force

11. Property valuation

A creditor must use reliable standards when carrying out a property valuation or take reasonable steps to ensure that reliable standards are applied where a valuation is conducted by a third party.

Commencement

Sch. 2 para. 11: Date to be appointed

Extent

Sch. 2 para. 11: (extent not available)

 Not Yet In Force

12.— Disclosure and verification of borrower information

(1) A creditor must carry out the assessment of creditworthiness referred to in paragraph 10 on the basis of information which is necessary, sufficient and proportionate, including—

- (a) any values provided to the creditor as part of its assessment of the property;

- (b) typical rental levels and rental demands within the property's locality;
 - (c) the impact of future interest rate rises, rental voids and rental arrears and the ability of the borrower to meet payments should such pressures arise; and
 - (d) typical letting costs.
- (2) The information referred to in sub-paragraph (1) may include information obtained by the creditor from relevant internal or external sources, including one or more of the following—
- (a) the borrower;
 - (b) any credit intermediary or appointed representative which obtained information during the credit application process; and
 - (c) a calculation developed by the creditor to demonstrate that the estimated rental income from the property will exceed the interest payments due by an amount sufficient to cover the estimated other costs associated with the property and its rental.
- (3) The information referred to in sub-paragraph (1) must be appropriately verified through reference to independently verifiable documentation when necessary.
- (4) A credit intermediary must accurately submit the necessary information obtained from the borrower to the creditor to enable the creditworthiness assessment to be carried out.
- (5) A creditor must specify in a clear and straightforward way at the pre-contractual phase the necessary information and independently verifiable evidence that the borrower needs to provide and the timeframe within which the borrower needs to provide the information.
- (6) A request for information referred to in sub-paragraph (5) must be proportionate and limited to what is necessary to conduct a proper creditworthiness assessment.
- (7) A creditor may seek clarification of the information received in response to a request for information referred to in sub-paragraph (5) where necessary to enable the assessment of creditworthiness.
- (8) A creditor must not terminate a consumer buy-to-let mortgage contract on the grounds that the information provided by the borrower before the conclusion of the contract was incomplete, unless the borrower knowingly withheld or falsified the information.
- (9) The creditor or credit intermediary must inform the borrower of the need to provide correct and complete information in response to a request referred to in sub-paragraph (5) and must warn the borrower that, where the creditor is unable to carry out an assessment of creditworthiness because the borrower chooses not to provide the information or verification necessary for an assessment of creditworthiness, the credit cannot be granted.

Commencement

Sch. 2 para. 12(1)-(9): Date to be appointed

Extent

Sch. 2 para. 12(1)-(9): (extent not available)

Advisory services

N Not Yet In Force

13.— Standards for advisory services

- (1) A creditor or credit intermediary must explicitly inform the borrower, in the context of a given transaction, whether advisory services are being or can be provided to the borrower.
- (2) Before the provision of advisory services or, where applicable, the conclusion of a contract for the provision of advisory services, the creditor or credit intermediary must provide the borrower with the following information on paper or another durable medium—
- (a) whether the recommendation will be based on a consideration of only the creditor's or the credit intermediary's own product range or a consideration of a wide range of products from across the market; and
 - (b) where applicable, the fee payable by the borrower for the advisory services or, where the amount cannot be ascertained at the time of disclosure, the method used for its calculation.
- (3) The information referred to in sub-paragraph (2) may be provided to the borrower as part of the lending illustration under paragraph 6.
- (4) Where a creditor or credit intermediary provides advisory services to a borrower, the creditor or credit intermediary must—
- (a) obtain the necessary information regarding the borrower's personal and financial situation, preferences and objectives so as to enable the recommendation of suitable consumer buy-to-let mortgage contracts;
 - (b) base its recommendation on information that is up-to-date and takes into account reasonable assumptions as to risks to the borrower's situation over the term of the proposed agreement, including information on the typical rental levels and rental demands within the property's locality, the impact of future interest rate rises, rental voids, and rental arrears and typical letting costs;
 - (c) act in the best interests of the borrower by—
 - (i) informing itself about the borrower's needs and circumstances; and
 - (ii) recommending suitable mortgages in accordance with paragraphs (a) and (b); and
 - (d) give the borrower a record on paper or another durable medium of the recommendation provided.
- (5) A creditor or credit intermediary must not use the term “independent advice” or “independent advisor” in the course of providing advisory services unless—
- (a) the creditor or credit intermediary considers a sufficiently large number of credit agreements available on the market; and
 - (b) if the number of creditors considered is less than a majority of the market, the creditor or credit intermediary is not remunerated for those advisory services by one or more creditors.

Commencement

Sch. 2 para. 13(1)-(5)(b): Date to be appointed

Extent

Sch. 2 para. 13(1)-(5)(b): (extent not available)

Foreign currency loans and variable rate loans

N Not Yet In Force

14.— Foreign currency loans

- (1) Where a borrower enters into a buy-to-let mortgage contract that is a foreign currency loan—
- (a) the borrower must have a right to convert the contract into an alternative currency if conditions specified by the creditor are met;
 - (b) the creditor must put in place arrangements to limit the exchange rate risk to which the borrower is exposed under the contract; and
 - (c) if sub-paragraph (4) applies, the creditor must give the borrower, on a regular basis, foreign currency risk warnings.
- (2) The creditor may specify the alternative currency referred to in sub-paragraph (1)(a), but it must be either—
- (a) the currency in which the borrower primarily receives income or holds assets from which the credit is to be repaid, as indicated at the time the most recent creditworthiness assessment in relation to the contract was made; or
 - (b) the currency of the EEA State in which the borrower either was resident at the time the contract was concluded or is currently resident.
- (3) Where a borrower has a right to convert the contract into an alternative currency in accordance with sub-paragraph (1)(a), the exchange rate at which the conversion is carried out must be the market exchange rate applicable on the day of application for conversion, unless otherwise specified in the contract.
- (4) This sub-paragraph applies if the value of—
- (a) the total amount payable by the borrower which remains outstanding; or
 - (b) the regular instalments,
- varies by more than 20% from what it would be if the exchange rate between the currency of the contract and sterling applicable at the time of the conclusion of the contract were applied.
- (5) In this paragraph “foreign currency risk warning” means a warning, on paper or on another durable medium—
- (a) informing the borrower of a rise in the total amount payable by the borrower;
 - (b) setting out, where applicable, the borrower's right to convert to an alternative currency and the conditions for doing so; and
 - (c) explaining any other applicable mechanism for limiting the exchange rate risk to which the borrower is exposed.

Commencement

Sch. 2 para. 14(1)-(5)(c): Date to be appointed

Extent

Sch. 2 para. 14(1)-(5)(c): (extent not available)

N Not Yet In Force

15. Variable rate credits

Where the contract provides for variable rate credit, the creditor must—

- (a) make any indexes or reference rates used to calculate the borrowing rate clear, accessible, objective and verifiable by the borrower and the FCA; and
- (b) maintain historical records of indexes used by the creditor for calculating the borrowing rates.

Commencement

Sch. 2 para. 15(a)-(b): Date to be appointed

Extent

Sch. 2 para. 15(a)-(b): (extent not available)

Sound execution of consumer buy-to-let mortgage contracts and related rights

N Not Yet In Force

16.— Early repayment

(1) Subject to sub-paragraph (3), the creditor must allow the borrower to discharge fully or partially the borrower's obligations under the consumer buy-to-let mortgage contract prior to the expiry of that contract.

(2) Where the borrower discharges, fully or partially, the borrower's obligations prior to the expiry of the contract, the creditor must provide the borrower with a reduction in the total cost of credit to the borrower, consisting of the interest and costs for the remaining duration of the contract.

(3) The creditor may provide that the exercise of the right referred to in sub-paragraph (1) is subject to one or more of the following conditions—

- (a) time limitations on the exercise of the right;
- (b) different treatment depending on the type of borrowing rate or on the moment the borrower exercises the right;
- (c) restrictions with regard to the circumstances in which the right may be exercised; or
- (d) if the exercise of the right falls within a period for which the borrowing rate is fixed, the existence of a legitimate interest on the part of the borrower.

(4) The creditor is entitled to fair and objective compensation, where justified, for possible costs directly linked to the early repayment but the creditor must not impose a sanction on the borrower and the amount of compensation must not exceed the financial loss of the creditor.

(5) Where a borrower seeks to exercise the right referred to in sub-paragraph (1), the creditor must provide the borrower without delay after receipt of the borrower's request, on paper or on another durable medium, with the information necessary to consider whether to proceed with the exercise of the right.

(6) The information referred to in sub-paragraph (5) must include—

- (a) a quantification of the implications for the borrower of exercising the right; and
- (b) any assumptions used by the creditor in making that quantification.

(7) The assumptions referred to in sub-paragraph (6)(b) must be reasonable and justifiable.

Commencement

Sch. 2 para. 16(1)-(7): Date to be appointed

Extent

Sch. 2 para. 16(1)-(7): (extent not available)

N Not Yet In Force

17. Flexible and reliable markets

The creditor must keep appropriate records concerning, where applicable, the types of property accepted by the creditor as security and the related mortgage underwriting policies used by the creditor in relation to its consumer buy-to-let mortgage business.

Commencement

Sch. 2 para. 17: Date to be appointed

Extent

Sch. 2 para. 17: (extent not available)

N Not Yet In Force

18.— Information concerning changes in the borrowing rate

(1) Unless sub-paragraph (3) applies, the creditor must inform the borrower of any change in the borrowing rate, on paper or another durable medium, before the change takes effect.

(2) The information referred to in sub-paragraph (1) must include—

- (a) a statement of the amount of the payments to be made after the new borrowing rate takes effect; and
- (b) in cases where the number or frequency of the payments changes, particulars of those changes.

(3) This sub-paragraph applies if—

- (a) the change in the borrowing rate is correlated with a change in a reference rate;
- (b) the new reference rate is made publicly available by appropriate means;
- (c) the creditor agrees with the borrower in the contract that information about any change in borrowing rate may be given to the borrower periodically; and
- (d) the information concerning the new reference rate is kept available in the premises of the creditor and communicated personally to the borrower together with the amount of new periodic instalments.

Commencement

Sch. 2 para. 18(1)-(3)(d): Date to be appointed

Extent

Sch. 2 para. 18(1)-(3)(d): (extent not available)

N Not Yet In Force

19.— Arrears and possession

- (1) A creditor must exercise reasonable forbearance before initiating possession proceedings.
- (2) Any charges that the creditor imposes on the borrower arising from the borrower's default must be no greater than is necessary to compensate the creditor for costs incurred by the creditor as a result of the default.
- (3) Where the price obtained for the secured property affects the amount owed by the borrower under the contract, the creditor must take all reasonable steps to obtain the best possible price for the secured property.
- (4) Where, after possession proceedings, outstanding debt remains, the creditor must put in place measures to facilitate repayment by the borrower.

Commencement

Sch. 2 para. 19(1)-(4): Date to be appointed

Extent

Sch. 2 para. 19(1)-(4): (extent not available)

Calculation of the annual percentage rate of charge

N Not Yet In Force

20.— Basic equation expressing the equivalence of drawdowns on the one hand and repayments and charges on the other

(1) The basic equation, which establishes the annual percentage rate of charge, equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other hand, expressed by means of the following formula—

[Image not available in online format. Please see original printed copy.]

(2) The following remarks apply to the equation set out in sub-paragraph (1)—

- (a) the amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals;
- (b) the starting date must be that of the first drawdown;
- (c) intervals between dates used in the calculation must be expressed in years or in fractions of a year, where—
 - (i) a year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months; and
 - (ii) an equal month is presumed to have 30.41666 days regardless of whether or not it is a leap year;
- (d) where intervals between dates used in the calculations cannot be expressed as a whole number of weeks, months or years, the intervals must be expressed as a whole number of one of those periods in combination with a number of days;
- (e) for the purposes of paragraph (d), where using days—
 - (i) every day must be counted, including weekends and holidays;
 - (ii) equal periods and then days must be counted backwards to the date of the initial drawdown; and
 - (iii) the length of the period of days must be—
 - (aa) obtained excluding the first day and including the last day; and
 - (bb) expressed in years by dividing this period by the number of days (365 or 366 days) of the complete year counted backwards from the last day to the same day of the previous year;
- (f) the result of the calculation must be expressed with an accuracy of at least one decimal place and if the figure at the following decimal place is greater than or equal to 5, the figure at the preceding decimal place must be increased by one;
- (g) the equation may be rewritten using a single sum and the concept of flows (A_k), which will be positive or negative, in other words either paid or received during periods 1 to n , expressed in years, using the following formula—

[Image not available in online format. Please see original printed copy.]

 where s is the present balance of flows;
- (h) for the purposes of paragraph (g), if the aim is to maintain the equivalence of flows, the value of s will be zero.

Commencement

Sch. 2 para. 20(1)-(2)(h): Date to be appointed

Extent

Sch. 2 para. 20(1)-(2)(h): (extent not available)

 Not Yet In Force

21.— Additional assumptions for the calculation of the annual percentage rate of charge

(1) The following additional assumptions apply for the purposes of calculating the annual percentage rate of charge.

- (2) If a consumer buy-to-let mortgage contract gives the borrower freedom of drawdown, the total amount of credit must be deemed to be drawn down immediately and in full.
- (3) If a consumer buy-to-let mortgage contract provides different ways of drawdown with different charges or borrowing rates, the total amount of credit must be deemed to be drawn down at the highest charge and borrowing rate applied to the most common drawdown mechanism for this type of contract.
- (4) If a consumer buy-to-let mortgage contract gives the borrower freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time, the amount of credit must be deemed to be drawn down on the earliest date provided for in the contract and in accordance with those drawdown limits.
- (5) If different borrowing rates and charges are offered for a limited period or amount, the highest borrowing rate and charges must be deemed to be the borrowing rate and charges for the whole duration of the contract.
- (6) For consumer buy-to-let mortgage contracts for which a fixed rate borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator or internal reference rate the calculation of the annual percentage rate of charge must be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculation of the annual percentage rate of charge, based on the value of the agreed indicator or internal reference rate at that time, but is not less than the fixed borrowing rate.
- (7) If the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be—
- (a) in the case of credit agreements, other than contingent liabilities or guarantees, the purpose of which is not to acquire or retain a right in immovable property or land, overdrafts, deferred debit cards or credit cards, EUR 1,500; and
 - (b) in all other cases, EUR 170,000.
- (8) In the case of credit agreements other than overdrafts, bridging loans, shared equity credit agreements, contingent liabilities or guarantees and open-ended credit agreements as referred to in the assumptions set out in sub-paragraphs (10), (11), (12), (16) and (17)—
- (a) if the date or amount of a repayment of capital to be made by the borrower cannot be ascertained, it must be assumed that the repayment is made at the earliest date provided for in the credit agreement and is for the lowest amount for which the credit agreement provides; and
 - (b) if the interval between the date of initial drawdown and the date of the first payment to be made by the borrower cannot be ascertained, it must be assumed to be the shortest interval.
- (9) Where the date or amount of a payment to be made by the borrower cannot be ascertained on the basis of the credit agreement or the assumptions set out in sub-paragraphs (8), (10), (11), (12), (16) and (17) it must be assumed that the payment is made in accordance with the dates and conditions required by the creditor and, when these are unknown—
- (a) interest charges are paid together with the repayment of the capital;
 - (b) non-interest charges expressed as a single sum are paid at the date of the conclusion of the credit agreement;

- (c) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital, and if the amount of such payments is not known they shall be assumed to be equal amounts; and
 - (d) the final payment clears the balance of capital, interest and other charges, if any.
- (10) In the case of an overdraft facility, the total amount of credit must be deemed to be drawn down in full and for the whole duration of the credit agreement and, if the duration of the overdraft facility is not known, the annual percentage rate of charge must be calculated on the assumption that the duration of the credit is three months.
- (11) In the case of a bridging loan, the total amount of credit must be deemed to be drawn down in full and for the whole duration of the credit agreement and, if the duration of the credit agreement is not known, the annual percentage rate of charge must be calculated on the assumption that the duration of the credit is 12 months.
- (12) In the case of an open-ended credit agreement, other than an overdraft facility and bridging loan, it must be assumed that—
 - (a) for credit agreements the purpose of which is to acquire or retain rights in immovable property, the credit is provided for a period of 20 years starting from the date of the initial drawdown, and the final payment made by the borrower clears the balance of capital, interest and other charges, if any;
 - (b) for credit agreements the purpose of which is not to acquire or retain rights in immovable property or which are drawn down by deferred debit cards or credit cards, the credit is provided for a period of 1 year starting from the date of the initial drawdown;
 - (c) unless sub-paragraph (13) applies, the capital is repaid by the borrower in equal monthly payments, commencing one month after the date of the initial drawdown.
- (13) This sub-paragraph applies in cases where the capital must be repaid only in full, in a single payment, within each payment period.
- (14) If sub-paragraph (13) applies—
 - (a) successive drawdowns and repayments of the entire capital by the borrower must be assumed to occur over the period of one year; and
 - (b) interest and other charges must be applied in accordance with those drawdowns and repayments of capital and as provided for in the credit agreement.
- (15) For the purposes of sub-paragraph (12), an open-ended credit agreement is a credit agreement without fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.
- (16) In the case of contingent liabilities or guarantees, the total amount of credit must be deemed to be drawn down in full as a single amount at the earlier of—
 - (a) the latest draw down date permitted under the credit agreement being the potential source of the contingent liability or guarantee; or
 - (b) in the case of a rolling credit agreement at the end of the initial period prior to the rollover of the agreement.
- (17) In the case of a shared equity credit agreement—
 - (a) the payments by borrowers must be deemed to occur at the latest date or dates permitted under the credit agreement; and
 - (b) percentage increases in value of the immovable property which secures the shared equity credit agreement, and the rate of any inflation index referred to in the agreement,

shall be assumed to be a percentage equal to the higher of the current central bank target inflation rate or the level of inflation rate in the EEA State where the property is located at the time of conclusion of the credit agreement or 0% if those percentages are negative.

Commencement

Sch. 2 para. 21(1)-(17)(b): Date to be appointed

Extent

Sch. 2 para. 21(1)-(17)(b): (extent not available)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order transposes in part Directive 2014/17/EU of the European Parliament and of the Council of 4th February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (“the mortgages directive”) (OJ L 60, 28.2.2014, p.34). The Financial Conduct Authority (“FCA”) is responsible for transposing other parts of the mortgages directive. A transposition note setting out how the mortgages directive will be transposed into UK law will be available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on HM Treasury's website (www.gov.uk/government/organisations/hm-treasury).

Part 2 introduces Schedule 1, which contains amendments to legislation required to implement the mortgages directive. Part 1 of that Schedule sets out amendments to primary legislation, including the Financial Services and Markets Act 2000 (c. 8) and the Consumer Credit Act 1974 (c. 39). The amendments to the Financial Services and Markets Act 2000 include amendments to the regulatory regime for appointed representatives carrying out mortgage-related activities and amendments to the provisions about cross-border activities within the EEA.

Part 2 of Schedule 1 sets out amendments to secondary legislation, including amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) to ensure that the mortgage-related activities regulated by the FCA include those activities required to be regulated by the mortgages directive, and that existing exemptions from regulation apply only where permitted by the mortgages directive. The definition of a “regulated mortgage contract” is amended to take second charge mortgage lending out of scope of the consumer credit regulatory regime and bring it into scope of the mortgages regime. That Part also sets out consequential changes to other orders and regulations.

Part 3, including Schedule 2, sets out a framework for regulating buy-to-let mortgage lending to consumers. The Part makes provision for a register of the firms involved in such lending, for the

requirements with which such firms must comply, and for the FCA to monitor and enforce those requirements.

Part 4 makes provisions relating to the transition to the new regime for existing lenders, intermediaries and appointed representatives.

Part 5 requires the Treasury to review the operation and effect of this Order by 1st September 2018 and within every 5 years after that.

A full Impact Assessment of the effect that this Order 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 HM Treasury's website (www.gov.uk/government/organisations/hm-treasury) and is published with the Explanatory Memorandum alongside this Order on the legislation.gov.uk website.

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