
D R A F T S T A T U T O R Y I N S T R U M E N T S

2015 No. xxxx

FINANCIAL SERVICES AND MARKETS

The Mortgage Credit Directive Order 2015

Made - - - - ***

Coming into force - - ***

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

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

This Order contains a provision restricting an exemption provided by an earlier Order(d) 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 paragraph 2 of Schedule 2 to the European Communities Act 1972(e) and section 429(3) of and paragraphs 25 and 26(2) of Schedule 2 to the Financial Services and Markets Act 2000(f).

The Treasury make this Order in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972(g) and sections 22(1) and (5), 38 and 428(3) of the Financial Services and Markets Act 2000.

(a) S.I. 2012/1759.
(b) 1972 c. 68. 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) regulations 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).
(c) 2000 c.8.
(d) S.I. 2001/1201, amended by S.I. 2003/1675, S.I. 2005/592, S.I. 2006/2383, S.I. 2008//2831, S.I. 2009/1342, S.I. 2010/671, S.I. 2011/1626, S.I. 2012/641 and S.I. 2012/700; there are other amending instruments but none is relevant to this Order.
(e) 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.
(f) Paragraph 26 of Schedule 2 was substituted by section 8 of the Financial Services Act 2012 (c. 21).
(g) 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.

PART 1

Introductory Provisions

Citation and commencement

1.—(1) This Order may be cited as the Mortgage Credit Directive Order 2015.

(2) This Order comes into force—

(a) on 21st March 2015 for the purposes of enabling applications to be made—

(i) for—

(aa) a Part 4A permission, or

(bb) a variation of a Part 4A permission,

in relation to an activity of the kind specified by article 53A(a) of the Regulated Activities Order (advising on regulated mortgage contracts), or article 25A(b) or 61(c) of the Regulated Activities Order (arranging, entering into and administering regulated mortgage contracts) as amended by this Order; or

(ii) for entry on the register of consumer buy-to-let mortgage firms in accordance with article 43 of this Order;

(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); and

(ii) enabling the appropriate regulator to treat a notice of intention referred to in paragraph 19(2) or 20(1) 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.

(3) Nothing in paragraph (2)(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).

Interpretation

2.—(1) In this Order—

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

“appropriate regulator” means—

(a) where the UK firm is a PRA-authorized 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;

“the mortgages directive” means 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 and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010(d);

(a) Article 53A was inserted by S.I. 2003/1475.

(b) Article 25A was inserted by S.I. 2003/1475.

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

(d) OJ L 60, 28.2.2014, p.34.

“second charge back book mortgage contract” means a contract which, immediately before 21st March 2016—

- (a) is a regulated credit agreement within the meaning of article 60B(3) of the Regulated Activities Order, and
- (b) provides for the obligation of the borrower to repay to be secured by a mortgage on land that ranks in priority behind one or more other mortgages affecting the land in question; and

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

(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.

PART 2

Amendments to primary legislation

Amendments to the Act

3. Section 39 of the Act (exemption of appointed representatives)(b) is amended as follows.

(1) 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.”.

(2) In subsection (1A), for “But a person is not exempt as a result of subsection (1)” substitute “This subsection applies to a person”.

(3) After subsection (1B) insert—

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

- (a) if A’s principal is a mortgage creditor or a mortgage intermediary, and
- (b) so far as the business for which A’s principal has accepted responsibility is of a kind specified in article 25A (arranging regulated mortgage contracts) or article 53A (advising on regulated mortgage contracts) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001,

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

(1BB) The requirements of this subsection are—

- (a) that A is entered on the applicable mortgage business register; and
- (b) that A’s principal is not a tied mortgage intermediary.

(1BC) The “applicable mortgage business register” is—

- (a) in the case of a person established in an EEA State other than the United Kingdom, the register of appointed representatives maintained pursuant to Article 31(4) of the mortgages directive in that State; and
- (b) in the case of a person established in the United Kingdom, the record maintained by the FCA by virtue of section 347(1)(hb).”.

(a) S.I. 2001/544.

(b) Section 39 was amended by the Financial Services Act 2012 (c. 21) and by S.I. 2007/126 and S.I. 2013/3115.

4. In section 55J of the Act (variation or cancellation on initiative of regulator)(a), 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 an activity of a kind specified in article 25A (arranging regulated mortgage contracts) or article 53A (advising on regulated mortgage contracts) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the following conditions is met—

- (a) the person has, during a period of at least six months, neither carried on an activity of a kind specified in article 25A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, nor carried on an activity of a kind specified in article 53A of that Order;
- (b) the person obtained the Part 4A permission to carry on an activity of a kind specified in article 25A or article 53A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 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 the 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.”.

5. In section 137R of the Act (financial promotion rules)(b), 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,”.

6. After section 194B of the Act(c) insert—

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

194C.—(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, an obligation 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

(a) Section 55J was substituted, together with the rest of Part 4A, for the original Part IV, by the Financial Services Act 2012 (c.21) and was subsequently amended by S.I. 2013/1773.

(b) This section was substituted (together with the rest of Part 9A) for the original Part X by the Financial Services Act 2012.

(c) Section 194B was inserted by S.I. 2013/3115.

- (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.”.

7. After section 195A of the Act(a) insert—

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

195B.—(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, an obligation 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

(a) Section 195A was inserted by S.I. 2007/126, substituted by S.I. 2011/1613 and then subsequently amended by the Financial Services Act 2012 and by S.I. 2012/916, S.I. 2013/1773 and S.I. 2013/1797.

- (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 24 November 2010 establishing a European Supervisory Authority (European Banking Authority)(a)).

(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.”.

8. In section 226 of the Act (compulsory jurisdiction of the ombudsman scheme)(b), in subsection (2)(b) after “Payment Services Regulations 2009,” insert “or a registered consumer buy-to-let mortgage firm within the meaning of Part 5 of the Mortgage Credit Directive Order 2015,”.

(a) OJ L 331 15.12.2010, p.12.

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

9. In section 234 of the Act (industry funding)(a) after “any electronic money issuer within the meaning of the Electronic Money Regulations 2011” insert “, any registered consumer buy-to-let firm within the meaning of the Mortgage Credit Directive Order 2015”.

10.—(1) Section 347 of the Act (the record of authorised persons etc.)(b) is amended as follows.

(2) In subsection (1)—

(a) at the end of paragraph (ha), omit “and”, and

(b) after paragraph (ha) insert—

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

(3) 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) and article 53A (advising on regulated mortgage contracts) 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—

(i) the mortgage intermediary on whose behalf the appointed representative acts; and

(ii) if the appointed representative acts for a tied mortgage intermediary, the mortgage creditor on whose behalf the appointed representative acts;”.

(4) After subsection (2A) insert—

“(2B) This subsection applies to an appointed representative for whom the applicable mortgage business register (as defined by section 39(1BC)) is the record maintained by virtue of subsection (1)(hb);”.

11. In section 417(1) of the Act (definitions)(c) 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;”.

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

13.—(1) Schedule 3 to the Act (EEA passport rights) is amended as follows.

(2) In paragraph 1 (the single market directives)(e) —

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

(b) There are amendments to section 347 but none is relevant to this order.

(c) 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 and section 49 of the Financial Services Act 2012, and by S.I. 2002/1775, S.I. 2007/126, S.I. 2009/1941, S.I. 2010/22, S.I. 2012/916, S.I. 2012/1809, S.I. 2012/1906, S.I. 2012/2554, S.I. 2013/504, S.I. 2013/1773 and S.I. 2013/3115.

(d) Section 425(1) was amended by S.I. 2003/2066, S.I. 2004/3379, S.I. 2006/2975, S.I. 2007/126, S.I. 2007/3253, S.I. 2012/1906, S.I. 2013/1773 and S.I. 2013/3115.

(e) Paragraph 1 was amended by S.I. 2000/2952, S.I. 2003/1473, S.I. 2003/2066, S.I. 2007/126, S.I. 2007/3253, S.I. 2013/1773 and S.I. 2013/3115.

- (a) at the end of paragraph (f) omit “and”; and
- (b) after paragraph (g) insert—
 - “and
 - (h) the mortgages directive.”.

(3) After paragraph 4E(a) insert—

“The mortgages directive

4F. “The mortgages directive” means 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.”.

(4) In paragraph 5 (EEA firm)(b)—

- (a) at the end of paragraph (g) omit “or”; and
- (b) 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).”.

(5) In paragraph 5A(a) (definition of relevant office for EEA firm)(c) after “sub-paragraph (e)” insert “or (i)”.

(6) In paragraph 7A(a) (definition of relevant office for EEA right)(d) after “insurance directive” insert “or the mortgages directive”.

(7) In paragraph 13 (establishment)(e)—

- (a) in sub-paragraph (1)—
 - (i) for “(f) or (h)” substitute “(f), (h) or (i)”;
 - (ii) in paragraph (c) omit “and”;
 - (iii) 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.”;

(b) in sub-paragraph (2)(b) for “or (h)” substitute “, (h) or (i)”;

(c) 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).

(a) Paragraph 4E was inserted by S.I. 2013/1773.
 (b) Paragraph 5 was amended by S.I. 2003/1473, S.I. 2003/2066, S.I. 2004/3379, S.I. 2006/3221, S.I. 2007/126, S.I. 2007/3253, S.I. 2011/1613, S.I. 2012/1906, S.I. 2013/1773, S.I. 2013/1797 and S.I. 2013/3115.
 (c) Paragraph 5A was inserted by S.I. 2003/1473 and amended by S.I. 2013/1773.
 (d) Paragraph 7A was inserted by S.I. 2003/1473 and amended by S.I. 2013/1773 and S.I. 2013/1797.
 (e) Paragraph 13 was amended by the Financial Services Act 2012 (c. ??) and by S.I. 2003/1473, S.I. 2003/2066, S.I. 2007/126, S.I. 2012/1906 and S.I. 2013/1773.

(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.”.

(8) In paragraph 14 (services)(a)—

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

(9) In paragraph 19 (establishment)(b)—

- (a) in sub-paragraph (5)(a) after “the insurance mediation directive” insert “or the mortgages directive”;
- (b) 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, and must do so within one month beginning with the date on which it received the firm’s notice of intention.”; and

- (c) 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).”.

(10) In paragraph 20 (services)(c)—

- (a) in sub-paragraph (3) after “the markets in financial instruments directive” insert “, the mortgages directive”;
- (b) 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.”.

(11) In paragraph 20ZA (information for host state regulator)(d) 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 the date of the direction given in accordance with section 33(2) withdrawing that person’s status as an authorised person.”.

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- (a) Paragraph 14 was amended by the Financial Services Act 2012 (c. ??) and by S.I. 2003/1473, S.I. 2003/2066, S.I. 2007/126, S.I. 2012/1906, S.I. 2013/1773 and S.I. 2013/1797.
 - (b) Paragraph 19 is amended by the Financial Services Act 2012 (c. xx) and by S.I. 2003/1473, S.I. 2003/2066, S.I. 2007/126, S.I. 2007/3253, S.I. 2011/1613, S.I. 2012/916, S.I. 2012/1906, S.I. 2013/1773, S.I. 2013/1797 and S.I. 2013/3115.
 - (c) Paragraph 20 is amended by the Financial Services Act 2012 (c. xx) and by S.I. 2001/1376, S.I. 2003/1473, S.I. 2003/2066, S.I. 2007/126, S.I. 2007/3253, S.I. 2011/1613, S.I. 2012/1906, S.I. 2013/1773, S.I. 2013/1797 and S.I. 2013/3115.
 - (d) Paragraph 20ZA was inserted by S.I. 2011/1613 and was subsequently amended by the Financial Services Act 2012 and by S.I. 2013/3115.

(12) In paragraph 21 (offence relating to exercise of passport rights)(a) in sub-paragraph (1)(b) for “or (4B)” substitute “, (4B) or (4BB)”.

(13) In paragraph 25 (information to be included in the public record)(b) after “insurance mediation directive” insert “or the mortgages directive”.

14. In Schedule 17 to the Act (the ombudsman scheme), in sub-paragraph (4) of paragraph 13(c) after “an electronic money issuer within the meaning of the Electronic Money Regulations 2011,” insert “a registered consumer buy-to-let mortgage firm within the meaning of the Mortgage Credit Directive Order 2015,”.

Amendments to the Consumer Credit Act 1974

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

(2) In section 8 (consumer credit agreements) for subsection (3)(e) 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 4 February 2014 on credit agreements for consumers relating to residential immovable property.”.

(3) In section 55C(f) (copy of draft consumer credit agreement)—

- (a) in subsection (4)(c), after “£60,260” insert “and which is not a residential renovation agreement”; and
- (b) after subsection (4) insert—

“(4A) A consumer credit agreement is, for the purposes of this Act, a “residential renovation agreement” if—

- (a) it is unsecured; and
- (b) its purpose 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 23 April 2008 on credit agreements for consumers(g).”.

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

(5) In section 61A(i) (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 66A(j) (withdrawal from consumer credit agreement), in subsection (14)(a), after “£60,260” insert “, other than a residential renovation agreement”.

(a) Paragraph 21 is amended by S.I. 2003/1473.

(b) Paragraph 25 was inserted by S.I. 2003/1473 and was subsequently amended by the Financial Services Act 2012.

(c) 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 S.I. 2011/99.

(d) 1974 c.39.

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

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

(g) 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.

(h) Section 60 was amended by paragraphs 2 to 6 of Schedule 25 to the Enterprise Act 2002 and by S.I. 2010/1010, S.I. 2013/1881 and S.I. 2013/1882.

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

(j) Section 66A was inserted by S.I. 2010/1010.

(7) In section 75A(a) (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 77B(b) (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 189(c) (definitions), in subsection (1), after the definition of “representation” insert—

““residential renovation agreement” has the meaning given by section 55C(4A);”.

PART 3

Amendments to the Regulated Activities Order

Amendments of the Regulated Activities Order

16. Articles 17 to 34 amend the Regulated Activities Order.

Interpretation

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

Specified activities

18. In article 4 (specified activities: general)(e) after paragraph (4A) insert—

“(4B) Where—

(a) a person is—

(i) a mortgage creditor; or

(ii) 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, 36A, 53A, 53E, 60B(1) or 61(1), but for an exclusion or exemption in any of articles 29, 60E, 60F, 60H, 66 and 67,

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).”.

Arranging regulated mortgage contracts

19. In article 25A (arranging regulated mortgage contracts)(f)—

(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

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

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

(c) There are amendments to section 189 but none is relevant to this Order.

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

(e) Article 4 was amended by S.I. 2003/1476, S.I. 2006/3384, S.I. 2009/1389, S.I. 2013/1773 and S.I. 2013/1881.

(f) Article 25A was inserted by S.I. 2003/1475.

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

Exclusion for arranging deals with or through authorised persons

- 20.** In article 29 (arranging deals with or through authorised persons)(a)—
- (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)”.

Other exclusions

- 21.** In article 36 (other exclusions)(b), after paragraph (2) insert—
- “(2A) Article 25A is also subject to the exclusion in article 72I (registered consumer buy-to-let mortgage firms).”.

Advising on regulated credit agreements the purpose of which is to acquire land

- 22.** After article 53D (advising on regulated sale and rent back agreements)(c) insert—

“Advising on regulated credit agreements the purpose of which is to acquire land

- 53E.**—(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).”.

Exclusion for advice given in newspapers etc.

- 23.** In article 54 (advice given in newspapers etc.)(d)—
- (1) for “and 53D” each time that it appears substitute “, 53D and 53E”; and
 - (2) after sub-paragraph (b)(v) insert—
- “, or
- (vi) 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.”.

Exclusion for advice given in the course of administration by an authorised person

- 24.** In article 54A (advice given in the course of administration by an authorised person)(e), 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 53E by reason of—

(a) Article 29 was amended by S.I. 2003/1476, S.I. 2006/2383, S.I. 2006/3384 and S.I. 2009/1342.
(b) Article 36 was amended by S.I. 2002/1776, S.I. 2003/1475, S.I. 2003/1476, S.I. 2006/2383, S.I. 2006/3384, S.I. 2009/1342, S.I. 2013/1773 and S.I. 2014/366.
(c) Article 53D was inserted by S.I. 2009/1342.
(d) Article 54 was amended by S.I. 2003/1476, S.I. 2006/2383, S.I. 2009/1342 and S.I. 2013/472.
(e) Article 54A was inserted by S.I. 2003/1475 and subsequently amended by S.I. 2006/2383 and S.I. 2009/1342.

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

Other exclusions

25. In article 55 (other exclusions)(a), in paragraph (2)—

- (a) for “53C and 53D” substitute “53C, 53D and 53E”; and
- (b) for “and 72G (local authorities” substitute “, 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms)”.

Regulated credit agreements

26. In article 60H (exempt agreements: exemptions relating to the nature of the borrower)(b), for 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,”.

Regulated mortgage contracts

27.—(1) Article 61 (regulated mortgage contracts)(c) is amended as follows.

(2) In paragraph (3)(a)—

- (a) 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, as or in connection with a dwelling;”;
- (b) in the full out wording after paragraph (iii) for “is a regulated home purchase plan” substitute “falls within article 61A(1) or (2)”;

(3) For paragraph (4)(a) substitute—

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

(4) Omit paragraphs (4)(c) and (d).

Mortgage contracts which are not regulated mortgage contracts

28. After article 61 insert—

“Mortgage contracts which are not regulated mortgage contracts

61A.—(1) A contract falls within this paragraph if it is—

- (a) a regulated home purchase plan;

(a) Article 55 was amended by S.I. 2002/1776, S.I. 2003/1475, S.I. 2003/1476, S.I. 2006/2383, S.I. 2009/1342, S.I. 2013/1773 and S.I. 2014/366.

(b) Article 60H was inserted by S.I. 2013/1881.

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

- (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 doubts 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 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—
- “borrower” and “lender” have the meaning set out in article 61(3);
- “borrower-lender agreement”, “borrower-lender-supplier agreement”, “credit union” and “total charge for credit” have the meanings set out in article 60L;
- “bridging loan” has the meaning given by article 4(23) of the mortgages directive;
- “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 Part 5 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 secured by 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 changing to another financial arrangement for the land secured by 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;

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

“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.”.

Exclusions

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

Exclusion for trustees, nominees and personal representatives

30. In article 66 (trustees, nominees and personal representatives)(b)—

- (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 53E”; and

(a) Article 63A was inserted by S.I. 2002/1776 and subsequently amended by S.I. 2003/1475, S.I. 2013/1773 and S.I. 2014/366.

(b) Article 66(8) was inserted by S.I. 2006/3384.

- (c) in paragraph (8) after “article 4(4A)” insert “and (4B)”.

Exclusion for activities carried on in the course of a profession or non-investment business

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

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

32. In article 72 (overseas persons)(b)—

- (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.”.

33.—(1) Article 72G (local authorities)(c) is amended as follows.

(2) In paragraph (3)—

- (a) for “25A” substitute “25A(1)(b), 25A(2)”; and
(b) omit “53A,” and “61,”.

(3) 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, 53E 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.”.

(4) 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—
(i) is of a kind to which the consumer credit directive does not apply by virtue of Article 2(2) of that directive; and
(ii) meets one of the following conditions—
(aa) it is of a kind to which the mortgages directive does not apply by virtue of article 3(2) of that directive;
(bb) it is a bridging loan; or

(a) Article 67(3) was inserted by S.I. 2006/3384.

(b) Article 72 was amended by S.I. 2003/1475, S.I. 2003/1476, S.I. 2006/2383, S.I. 2006/3384, S.I. 2009/1342 and S.I. 2013/504.

(c) Article 72G was inserted by S.I. 2014/366.

(cc) it is a restricted public loan in relation to which the requirements of paragraph (6) are met.”.

(5) 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 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EC;

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

“restricted public loan” means credit granted to a restricted public under a statutory provision with a general interest purpose, free of interest or at lower borrowing rates than those prevailing on the market or on other terms which are more favourable than those prevailing on the market and at borrowing rates not higher than those prevailing on the market; and

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

34. After article 72H (insolvency practitioners)^(b) insert—

“Registered consumer buy-to-let mortgage firms

72I.—(1) There is excluded from articles 25A, 36A, 53A 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 by Part 5 of the Mortgage Credit Directive Order 2015.”.

PART 4

Amendments of secondary legislation made under the Act

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

35.—(1) The Financial Services and Markets Act 2000 (Exemption) Order 2001^(c) is amended as follows.

(2) In paragraph 48 (persons exempt in respect of particular regulated activities: social housing)^(d) of Part 4 of the Schedule—

- (a) for sub-paragraph (1)(b) substitute “article 25A(1)(b) of that Order (arranging the variation of a regulated mortgage contract);”; and
- (b) after sub-paragraph (1) insert—

(a) 2006 c. 46.

(b) Article 72H was inserted by S.I. 2014/366.

(c) S.I. 2001/1201.

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

“(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.”.

(c) after sub-paragraph (2) insert—

“(3) For the purposes of sub-paragraphs (1)(b) and (1A), “relevant housing body” also includes a wholly-owned subsidiary of a registered social landlord within the meaning of Part I of the Housing Act 1996.

(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” has the meaning given by section 9 of the Consumer Credit Act 1974;

“restricted public loan” means credit granted to a restricted public under a statutory provision with a general interest purpose, free of interest or at lower borrowing rates than those prevailing on the market or on other terms which are more favourable than those prevailing on the market and at borrowing rates not higher than those prevailing on the market; 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 registered social landlord is to be treated as a body corporate.”.

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

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

(2) In regulation 2—

(a) after the definition of “markets in financial instruments directive information”(b) 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;”; and

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

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

(3) In regulation 9(a)—

(a) S.I. 2001/2188.

(b) The definition of “markets in financial instruments directive information” was inserted by S.I. 2006/3413 and was subsequently amended by S.I. 2013/472.

(c) The definition of “single market restrictions” in regulation 2 was inserted by S.I. 2012/916 and was subsequently amended by S.I. 2013/3115, S.I. 2013/504 and S.I. 2013/1773. There are other amendments to regulation 2 but none is relevant to these regulations.

(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.”

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

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

(2) In regulation 1(2) (citation, commencement and interpretation)(c) 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)(d) 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)(e) 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)(f) insert—

“EEA mortgage intermediary: changes to branch details or services

7B.—(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

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

(b) S.I. 2001/2511

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

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

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

(f) Regulation 7A was inserted by S.I. 2013/1773.

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)(a) insert—

"EEA credit intermediaries giving up right to authorisation

9A.—(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 43(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)(b) insert—

(a) Regulation 9 was amended by S.I. 2013/642.

(b) Regulation 17A was inserted by S.I. 2013/1773.

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

17B.—(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.”.

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

38. In article 58 (duration of interim permission)(a) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013(b)—

(a) 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”.

(b) after paragraph (1) insert—

“(1A) This paragraph applies to an activity—

- (a) of the kind specified by article 60B of the Regulated Activities Order (regulated credit agreements); and
- (b) where any sums due under the regulated credit agreement to which the activity relates are secured on land.

(1B) In relation to an activity to which paragraph (1A) applies, P’s interim permission ceases to have effect—

- (a) if P applies to the appropriate regulator 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 the kind specified by those articles to those to which the permission relates, before 21st March 2016, on the date on which that application is determined; and
- (b) in any other case, on 21st March 2016.”;

(c) in paragraph (2) for “Paragraph (1) does” substitute “Paragraphs (1) and (1B) do”;

(d) in paragraph (3) for “paragraph (1)(a)” substitute “paragraphs (1)(a) and (1B)(a)”;

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

(a) Article 58 was amended by S.I. 2014/208, S.I. 2014/366 and S.I. 2014/506.

(b) S.I. 2013/1881.

PART 5

Consumer buy-to-let mortgages

Interpretation of this Part

39.—(1) In this Part—

“advisory services” has the meaning given by article 41;

“buy-to-let mortgage contract” is a contract that, at the time it is entered into—

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

(b) provides that the land secured by the mortgage—

(i) cannot at any time be occupied as a dwelling by the borrower or by a related person; and

(ii) 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 lender;

(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 40;

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

“lender” means a person who enters into, or promises to enter into, a consumer buy-to-let mortgage contract, in the course of a trade, business or profession;

“register” has the meaning given by article 43;

“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; and

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

(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;

(a) Section 388 was amended by paragraphs 1 and 27 of Schedule 9 to the Financial Services Act 2012 and by paragraph 13 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33).

(b) 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.

- (ii) a statement that the borrower understands that, by signing the declaration, the borrower will not have 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 understands that if the borrower is in any doubts 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 paragraph (b)(i), unless paragraph (3) applies.

(3) 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.

Meaning of credit intermediary

40.—(1) A person acts as a credit intermediary if the person—

- (a) is not a lender;
- (b) is not merely introducing, either directly or indirectly, a consumer to a lender 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 lender.

Meaning of advisory services

41.—(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.

Consumer buy-to-let mortgage firms: limit on permission to carry on regulated activities

42. If a person has a Part 4A permission to carry on an activity of the kind specified by article 25A, 36A(a), 53A 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.

Register of consumer buy-to-let mortgage firms

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

(2) The conditions in this paragraph are that the firm—

- (a) carries on or is seeking to carry on consumer buy-to-let mortgage business;
- (b) has a Part 4A permission to carry on one or more regulated activities; and
- (c) applies to the FCA in manner that complies with the requirements of, and any requirements imposed under, article 44 for entry on the register.

(3) The conditions in this paragraph are that—

- (a) the firm carries on, or is seeking to carry on, consumer buy-to-let mortgage business;
- (b) the firm'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 consumer buy-to-let mortgage business within the firm—
 - (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 firm is a partnership, an unincorporated association or a body corporate, the firm satisfies the FCA that any persons having a controlling interest over the firm 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 firm satisfies the FCA that—
 - (i) where the firm is 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 firm is not a lender but is a credit intermediary or provides advisory services for the purposes of this Part, the firm 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 by the European Commission in regulatory technical standards adopted under article 29(2)(a) of the mortgages directive;
- (g) the individuals responsible for the management or operation of consumer buy-to-let mortgage business within the firm possess an appropriate level of knowledge and competence in relation to consumer buy-to-let mortgage contracts; and
- (h) the firm applies to the FCA in a manner that complies with the requirements of, and any requirements imposed under, article 44 for entry on the register.

(a) Article 36A was inserted by S.I. 2013/1881.

(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 B 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.

Applications for entry on the register or variation of an existing entry on the register

44.—(1) 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.

(2) 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.

(3) Different directions may be given, and different requirements imposed, in relation to different applications or categories of applications.

(4) The FCA may require an applicant to provide information which it is required to give under this article in such form, or to verify it in such manner, as the FCA may specify.

Determination of applications

45.—(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 if it considers it appropriate to do so; 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.

Procedure when refusing an application

46.—(1) If the FCA proposes to refuse an application made under article 45(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.

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

47. If a registered consumer buy-to-let mortgage firm ceases to meet a condition in article 43(2) or (3) that applies to it, it must inform the FCA immediately.

Grounds for revocation of registration

- 48.** 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 43(2) or (3) that applies to it;
 - (b) the firm has contravened a requirement imposed by the Schedule 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; or
 - (e) a fee due in respect of the registration has not been paid.

Procedure on revocation

49.—(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.

Grounds for suspension of registration

50.—(1) If it appears to the FCA that a registered consumer buy-to-let mortgage firm does not meet a condition in article 43(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 52.

Procedure on suspension

51.—(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 (3) 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 50, considers that it is necessary for the suspension to take effect immediately or on that date.

(3) If the FCA proposes to suspend a registration, or suspends a registration with immediate effect—

- (a) it must give written notice to the firm concerned; and
- (b) that firm may refer the matter to the Tribunal.

- (4) A notice given under paragraph (3)(a) must state—
- (a) the details of the suspension;
 - (b) when the suspension takes effect;
 - (c) the FCA’s reasons for imposing the suspension and for its determination as to when the suspension takes effect;
 - (d) that the firm to which it is given may make representations to the FCA within such period as may be specified in it (whether or not it has referred the matter to the Tribunal); and
 - (e) that the firm has the right to refer the matter to the Tribunal.
- (5) The FCA may extend the period allowed under the notice for making representations.
- (6) Having considered any representations made by the firm to whom the notice was given—
- (a) the FCA must give written notice to the firm as to whether it decides—
 - (i) to make the suspension in the way proposed (or, if the suspension has already been imposed, not to revoke the suspension);
 - (ii) to make the suspension in a way other than that proposed (or, if the suspension has already been imposed, to amend the suspension); or
 - (iii) not to make the suspension (or, if the suspension has already been imposed, to revoke the suspension); and
 - (b) unless the FCA decides not to make, or to revoke, the suspension, the firm may refer the matter to the Tribunal.
- (7) For the purposes of paragraph (1)(c), section 391(8) of the Act (publication) applies as if a notice under paragraph (3)(a) or (6)(a) were a supervisory notice.

Obligations of registered consumer buy-to-let mortgage firms

- 52.**—(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 of the Schedule; and
 - (b) provide the FCA with such information in relation to its consumer buy-to-let mortgage business and its compliance with the requirements of the Schedule as the FCA may direct, in order to enable the FCA to discharge its supervisory obligations.
- (2) Information provided under paragraph (1)(b) must be given at such times and in such manner, and verified in such manner, as the FCA may direct.

Power to direct registered consumer buy-to-let mortgage firms to take appropriate measures

- 53.**—(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 the Schedule in respect of its consumer buy-to-let mortgage business.
- (2) A direction may, in particular, be imposed—
- (a) so as to require the firm to take specified action, or
 - (b) so as to require the firm to refrain from taking specified action.
- (3) A direction may refer to the past conduct of the firm concerned (for example, by requiring the firm concerned to review or take remedial action in respect of past conduct).
- (4) A direction may be imposed on a consumer buy-to-let mortgage firm that is no longer registered, in respect of conduct that occurred whilst the firm was registered.
- (5) A firm must comply with any direction given to it by the FCA under paragraph (1).

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

Application of procedural provisions of the Act

54.—(1) Part 9 of the Act 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 applies to warning notices and decision notices given under this Part as it applies to such notices given under the Act.

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

55.—(1) For the purposes of the following provisions of the Act, a requirement imposed by the FCA 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 imposed on that firm by or under the Act—

- (a) section 1L(d) (supervision, monitoring and enforcement);
- (b) section 165(4) (regulators' power to require information: authorised persons etc.);
- (c) section 177(1) (offences);
- (d) section 204A(e) (meaning of "relevant requirements");
- (e) section 380(f) (injunctions);
- (f) section 382(g) (restitution orders); and
- (g) 398(h) (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 165(i) (regulators' power to require information: authorised persons etc.);
- (b) section 166(j) (reports by skilled persons);
- (c) section 167(k) (appointment of persons to carry out general investigations);
- (d) section 168(4) to (6)(l) (appointment of persons to carry out investigations in particular cases);
- (e) section 169(m) (investigations etc. in support of overseas regulator);

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- (a) Section 55Y was substituted, together with the rest of Part 4A of the Act, by section 11(2) of the Financial Services Act 2012.
 - (b) Section 55Z3 was substituted, together with the rest of Part 4A of the Act, by section 11(2) of the Financial Services Act 2012.
 - (c) Section 55L was substituted, together with the rest of Part 4A of the Act, by section 11(2) of the Financial Services Act 2012.
 - (d) Section 1L was substituted by section 6 of the Financial Services Act 2012 and subsequently amended by S.I. 2013/1773.
 - (e) Section 204A was inserted by paragraphs 1 and 10 of Schedule 9 to the Financial Services Act 2012.
 - (f) Section 380 was amended by paragraphs 1 and 19 of Schedule 9 to the Financial Services Act 2012, by paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and by S.I. 2013/1773.
 - (g) Section 382 was amended by paragraphs 1 and 21 of Schedule 9 to the Financial Services Act 2012, by paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and by S.I. 2013/1773.
 - (h) Section 398 was amended by paragraphs 1 and 36 of Schedule 9 to the Financial Services Act 2012 and by S.I. 2013/1773.
 - (i) Section 165 was amended by paragraph 15 of Schedule 2 to the Financial Services Act 2010 and paragraph 1 of Schedule 12 to the Financial Services Act 2012 and by S.I. 2013/1773.
 - (j) Section 166 was substituted by paragraph 5 of Schedule 12 to the Financial Services Act 2012.
 - (k) Section 167 was amended by paragraph 7 of Schedule 12 to the Financial Services Act 2012 and by S.I. 2007/126.
 - (l) Section 168 was amended by paragraph 33 of Schedule 7 to the Counter-Terrorism Act 2008, by paragraphs 1 and 16 of Schedule 2 to the Financial Services Act 2010, by paragraph 8 of Schedule 12 to the Financial Services Act 2012 and by S.I. 2007/126, S.I. 2012/2554 and S.I. 2013/1773.
 - (m) Section 169 was amended by paragraph 9 of Schedule 12 to the Financial Services Act 2012.

- (f) section 170(a) (investigations: general);
- (g) section 171(b) (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 174(c) (admissibility of statements made to investigators);
- (k) section 175(d) (information and documents: supplemental provisions);
- (l) section 176(e) (entry of premises under warrant);
- (m) section 176A(f) (retention of documents taken under section 176);
- (n) section 177(g) (offences);
- (o) section 205(h) (public censure); and
- (p) section 206(i) (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 of, and paragraph 20 of Schedule 1ZA to the Act(j) 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 their exercise in respect of authorised persons.

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

Functions of the FCA in relation to this Part

56.—(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.

(a) Section 170 was amended by paragraph 10 of Schedule 12 to the Financial Services Act 2012.
 (b) Section 171 was amended by S.I. 2007/126.
 (c) Section 174 was amended by paragraph 12 of Schedule 12 to the Financial Services Act 2012.
 (d) Section 175 was amended by paragraph 13 of Schedule 12 to the Financial Services Act 2012.
 (e) 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.
 (f) Section 176A was inserted by paragraph 15 of Schedule 12 to the Financial Services Act 2012.
 (g) Section 177 was amended by paragraph 8 of Schedule 8 to the Financial Services Act 2012 and S.I. 2001/1090.
 (h) Section 205 was amended by paragraphs 1 and 11 of Schedule 9 to the Financial Services Act 2012.
 (i) Section 206 was amended by section 10 of the Financial Services Act 2010 and by paragraphs 1 and 12 of Schedule 9 to the Financial Services Act 2012.
 (j) Sections 207 to 211 were amended by paragraphs 18, 19 and 20 of Schedule 2 to the Financial Services Act 2010 and by paragraphs 1, 14, 15, 16, 17 and 18 of Schedule 9 to the Financial Services Act 2012. Schedule 1ZA was substituted by Schedule 3 to the 2012 Act.

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

57. The functions of the FCA under this Order are to be treated for the purposes of—

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

as functions conferred on the FCA under that Act.

Monitoring and enforcement

58.—(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 its 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).

Guidance

59.—(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.

PART 6

Transitional Provisions

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

60.—(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, 53A 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.

(a) Schedule 1ZA was substituted by Schedule 3 to the Financial Services Act 2012. Paragraph 23 was subsequently amended by paragraph 7 of Schedule 8 and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and by S.I. 2013/1773.

Transitional provision: contracts existing before 21st March 2016

61. This Order does not apply to a contract existing before 21st March 2016, unless the contract is a second charge back book mortgage contract.

Transitional provision: second charge back book mortgage contracts.

62.—(1) This article applies to a second charge back book mortgage contract.

(2) If, immediately before 21st March 2016, the contract is enforceable against the borrower on an order of the court only, as a result of the application of any provision of the Consumer Credit Act 1974(a) specified in paragraph (3), the contract remains so enforceable on and after 21st March 2016 and section 127 of the Consumer Credit Act 1974 (enforcement orders in cases of infringement)(b) continues to apply 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)(c),
- (b) section 61B(3) (duty to supply copy of overdraft agreement)(d),
- (c) section 65(1) (improperly executed agreements),
- (d) section 105(7)(a) or (b) (improperly executed security instruments), or
- (e) section 111(2) (failure to serve copy of notice on surety).

(4) If, immediately before 21st March 2016, a contract is void, or part of a contract is void, as a result of the application of section 56(3) of the Consumer Credit Act 1974 (antecedent negotiations), the contract, or that part of the contract, remains void on and after 21st March 2016.

(5) If, immediately before 21st March 2016, a creditor is not 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) 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 only enforce the contract on or after 21st March 2016 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)(e),
- (b) section 77A(1) (statements to be provided in relation to fixed-sum credit agreements)(f),
- (c) section 78(1) (duty to give information to debtor under running-account credit agreement)(g), and
- (d) section 85(1) (duty on issue of new credit-tokens)(h),
- (e) section 97(1) (duty to give information about early repayment)(i).

(7) If, immediately before 21st March 2016, a creditor is not 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)(j), 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 only enforce the contract on or after 21st March 2016 if the period of non-compliance has ended.

(a) 1974 c.39.

(b) Section 127 was amended by Schedule 4 to the Consumer Credit Act 2006 (c. 14) and by S.I. 2010/1010.

(c) Section 55(2) was substituted by S.I. 2010/1010.

(d) Section 61B was inserted by S.I. 2010/1010.

(e) Section 77(1) was amended by S.I. 1998/997.

(f) Section 77A(1) was inserted by section 6 of the Consumer Credit Act 2006 and subsequently substituted by S.I. 2008/2826.

(g) Section 78(1) was amended by S.I. 1998/997.

(h) Section 85 was amended by S.I. 2008/1277.

(i) Section 97(1) was amended by S.I. 2010/1010.

(j) Section 86D was inserted by section 11 of the Consumer Credit Act 2006.

(8) If, immediately before 21st March 2016, a creditor is not entitled to enforce a contract because section 86E(5) of the Consumer Credit Act 1974 (notice of default sums)(a) applies, then the creditor may only enforce the security on or after 21st March 2016 if the creditor has given the notice required by section 86E to the borrower.

(9) If, immediately before 21st March 2016, a creditor is not 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) 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 only enforce the security on or after 21st March 2016 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)(b),
- (b) section 108(1) (duty to give information to surety under running-account credit agreement)(c),
- (c) section 110(1) (duty to give information to debtor or hirer)(d).

(11) The following provisions of the Consumer Credit Act 1974 and regulations made under those provisions continue to apply in respect of the contract on and after 21st March 2016 as if the contract were a regulated agreement—

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

(12) Sections 140A to 140C of the Consumer Credit Act 1974 (unfair relationships)(g) apply to the contract on and after 21st March 2016 as if section 140A(5) were omitted.

(13) In this section “regulated agreement” has the meaning given by section 8(3) of the Consumer Credit Act 1974.

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

63.—(1) A lender 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 the Schedule until 21st March 2017.

(2) In this article, the terms “lender”, “credit intermediary” and “consumer buy-to-let mortgage business” have the meanings set out in Part 5.

PART 7

Final provisions

Review

64.—(1) The Treasury must from time to time—

- (a) carry out a review of this Order;

(a) Section 86E was inserted by section 12 of the Consumer Credit Act 2006.
(b) Section 107 was amended by S.I. 1998/997 and S.I. 2008/1277.
(c) Section 108 was amended by S.I. 1998/997 and S.I. 2008/1277.
(d) Section 110 was amended by S.I. 1998/997 and S.I. 2008/1277.
(e) Section 94 was amended by section 29 of the Energy Act 2011 (c.16) and by S.I. 2010/1010.
(f) Section 95 was amended by S.I. 2010/1010.
(g) Sections 140A to 140C were inserted by sections 19 to 21 of the Consumer Credit Act 2006 and subsequently amended by S.I. 2013/1881.

- (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.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Articles 52 and 53

Requirements of registered consumer buy-to-let mortgage firms

Conditions applicable to lenders and credit intermediaries

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

1.—(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 lender 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 consumer's circumstances;
- (b) any specific requirement made known by the consumer;
- (c) reasonable assumptions about risks to the consumer'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; 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 lenders 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, lenders 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 lender;
- (b) the remuneration policy must be in line with the business strategy, objectives, values and long-term interests of the lender, 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 lender 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.

Obligation to provide information free of charge to consumers

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

Knowledge and competence requirements for staff

3.—(1) Lenders 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.

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

Tying and bundling practices

4.—(1) Except in the circumstances described in sub-paragraphs (2) to (4), a lender 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 consumer separately.

(2) A lender may request the consumer 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 lender 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 lender 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) A lender may offer or sell a consumer buy-to-let mortgage in the manner described in sub-paragraph (1) where the lender 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 consumer taking due account of the availability and the prices of the relevant products offered on the market.

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

General information

5.—(1) A lender must provide clear and comprehensible general information to a borrower about consumer buy-to-let mortgage contracts 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 lender;
- (b) the purposes for which the consumer buy-to-let mortgage may be used;
- (c) the forms of 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 contracts;
- (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 lender; and
- (n) a general warning concerning possible consequences of non-compliance with the commitments linked to the consumer buy-to-let mortgage contract.

Pre-contractual information

6.—(1) A lender and, where applicable, a credit intermediary must provide a borrower with a mortgage illustration—

- (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 10; and
- (b) in good time before the borrower is bound by any credit agreement or offer.

(2) The mortgage illustration must include at least the following—

- (a) the name of the borrower;
- (b) the date of issue of the mortgage illustration;
- (c) the date until which the mortgage illustration remains valid;
- (d) the name, address and telephone number of the lender;
- (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 the 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 rate of interest 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) an illustration of how the annual percentage rate of charge might change in the event of an increase in the interest rate of 1%;
- (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) 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 lender 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 binding on the lender.

(4) In this paragraph “mortgage 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.

Information requirements concerning credit intermediaries

7.—(1) In good time before the carrying on of any of the credit intermediation activities described in article 40(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) the register in which the credit intermediary has been included, the 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 lenders;
- (d) if the credit intermediary is tied to or works exclusively for one or more lenders, the names of the lenders 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 lender 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 mortgage illustration referred to in paragraph 6.

(2) Where the credit intermediary charges a fee to the borrower and additionally receives commission from the lender 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 lender of the fee, if any, payable by the borrower to the credit intermediary for its services.

Adequate explanations

8.—(1) Lenders 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 lenders, 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.

Calculation of the annual percentage rate of charge

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

(2) The costs of opening and maintaining a specific account, of using a means of payment for both transactions and drawdowns on that account and of 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 lender 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 article 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 lender 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 lender, including the matters 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.

Obligation to assess the creditworthiness of the borrower

10.—(1) Before concluding a consumer buy-to-let mortgage contract, the lender 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 mortgage contract.

(2) The lender 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 lender concludes a consumer buy-to-let mortgage contract with a borrower the lender 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 lender 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 lender 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 lender consults a database as part of the creditworthiness assessment, the lender 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 lender 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.

Property valuation

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

Disclosure and verification of borrower information

12.—(1) The assessment of creditworthiness referred to in paragraph 10 must be carried out on the basis of information on the typical rental levels and rental demands within the property's locality, as well as the impact of future interest rate rises, rental voids, rental arrears and typical letting costs.

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

- (a) obtained by the lender from relevant internal or external sources, including the borrower, and including information provided to the credit intermediary during the credit application process; and
- (b) appropriately verified through reference to independently verifiable documentation when necessary.

(3) A credit intermediary must accurately submit the necessary information obtained from the borrower to the lender to enable the creditworthiness assessment to be carried out.

(4) A lender 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.

(5) A request for information referred to in sub-paragraph (4) must be proportionate and limited to what is necessary to conduct a proper creditworthiness assessment.

(6) A lender may seek clarification of the information received in response to a request for information referred to in sub-paragraph (4) where necessary to enable the assessment of creditworthiness.

(7) A lender 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.

(8) The lender 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 (4) and must warn the borrower that, where the lender 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 consumer buy-to-let mortgage contract cannot be granted.

Advisory services

Standards for advisory services

13.—(1) A lender 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 lender 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 mortgage illustration under paragraph 6.

(4) Where a lender or credit intermediary provides advisory services to a borrower, the lender 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 mortgage contract, 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 lender or credit intermediary must not use the term "independent advice" or "independent advisor" in the course of providing advisory services unless—

- (a) the lender or credit intermediary considers a sufficiently large number of credit agreements available on the market; and
- (b) if the number of lenders considered is less than a majority of the market, the lender or credit intermediary is not remunerated for those advisory services by one or more creditors.

Foreign currency loans and variable rate loans

Foreign currency loans

14.—(1) Where a borrower enters into a buy-to-let mortgage contract that is a foreign currency loan—

- (a) if the conditions specified by the lender are met, the borrower must have a right to convert the contract into an alternative currency;
- (b) the lender 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 lender must give the borrower, on a regular basis, foreign currency risk warnings.

(2) The lender 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 sub-paragraph—

“foreign currency loan” means a consumer buy-to-let mortgage contract where the credit is—

- (a) 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; or
- (b) denominated in a currency other than that of the EEA State in which the borrower is resident; and

“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.

Variable rate credits

15. Where the contract provides for variable rate credit, the lender 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 lender for calculating the borrowing rates.

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

Early repayment

16.—(1) Subject to sub-paragraph (3), the lender 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 lender 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 lender 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 lender is entitled to fair and objective compensation, where justified, for possible costs directly linked to the early repayment but the lender must not impose a sanction on the borrower and the amount of compensation must not exceed the financial loss of the lender.

(5) Where a borrower seeks to exercise the right referred to in sub-paragraph (1), the lender 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 that option.

(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 lender in making that quantification.

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

Flexible and reliable markets

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

Information concerning changes in the borrowing rate

18.—(1) Unless sub-paragraph (3) applies, the lender must inform the borrower of any change in 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 lender 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 lender and communicated personally to the borrower together with the amount of new periodic instalments.

Arrears and possession

19.—(1) A lender must exercise reasonable forbearance before initiating possession proceedings.

(2) Any charges that the lender imposes on the borrower arising from the borrower's default must be no greater than is necessary to compensate the lender for costs incurred by the lender 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 lender must take all reasonable steps to obtain the best possible price for the secured property.

(4) Where, after possession proceedings, outstanding debt remains, the lender must put in place measures to facilitate repayment by the borrower.

Calculation of the annual percentage rate of charge

Basic equation expressing the equivalence of drawdowns on the one hand and repayments and charges on the other

20.—(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—

$$\sum_{k=1}^m C_k (1+X)^{-t_k} = \sum_{l=1}^{m'} D_l (1+X)^{-s_l}$$

where—

X is the annual percentage rate of charge;

m is the number of the last drawdown;

k is the number of a drawdown thus, $1 \leq k \leq m$;

C_k is the amount of drawdown k ;

t_k is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus $t_1 = 0$;

m' is the number of the last repayment or payment of charges;

l is the number of a repayment or payment of charges;

D_l is the amount of a repayment or payment of charges; and

s_l is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

Remarks

- (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—

$$s = \sum_{k=1}^n A_k (1 + X)^{-t_k}$$

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.

Additional assumptions for the calculation of the annual percentage rate of charge

21.—(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 consumer 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 consumer 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 APRC, 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 consumer 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 consumer 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 consumer 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 lender 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 consumer 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 consumer 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 consumer 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 consumers 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.

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 4 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”). 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 sets out amendments to the Financial Services and Markets Act 2000 required to implement the mortgages directive. These 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. It also sets out amendments to the Consumer Credit Act 1974 required to implement the mortgages directive.

Part 3 amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 to ensure that the FCA has power to regulate those mortgage-related activities which are covered by the mortgages directive. The definition of a “regulated mortgage contract” is amended to bring second charge mortgage lending out of scope of the consumer credit regime (where it is currently regulated) and into scope of the mortgages regime.

Part 4 makes consequential changes to other orders and regulations.

Part 5, including the Schedule, sets out an appropriate framework for regulating buy-to-let mortgage lending to consumers.

Part 6 makes provision for transition to the new regime for existing lenders, intermediaries and appointed representatives.

Part 7 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.