



HM Treasury

Implementation of the EU Mortgage Credit Directive:

summary of responses

January 2015



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1 Introduction

Background to the consultation

1.1 The EU directive on credit agreements for consumers relating to residential immovable property, more commonly referred to as the Mortgage Credit Directive (MCD), was published in February 2014. Most of the MCD provisions are concerned with setting the minimum regulatory requirements that member states are required to meet in order to protect consumers taking out credit agreements relating to residential property. EU member states, including the UK, are required to implement the MCD requirements by 21 March 2016. This requires the UK government to make changes to the legislation that enables mortgage regulation.

1.2 The UK already has in place a robust regulatory regime to protect consumers engaged in the first charge residential mortgage market. Under the Financial Services and Markets Act 2000 (FSMA), the independent regulator, the Financial Conduct Authority (FCA) has the authority to put in place, supervise and enforce a range of rules to ensure that firms act responsibly in their mortgage activities. The government sets out the FCA's objectives in legislation as well as specifying what financial services activities bring a firm within their jurisdiction.

1.3 The government does not believe that the MCD offers many benefits to UK consumers beyond those already provided by the high level of protection offered by the existing FCA regime for mortgages. However, it does add a number of costs to UK industry. A further aim of the MCD is to facilitate a better internal market in mortgage lending across Europe. The government does not believe that it offers much benefit in this area in practice because it does not address the primary obstacles for such a market. From a lender's perspective, these include the relative difficulty in understanding unfamiliar markets and the complexity in enforcing loans under foreign legal systems. For consumers, the scale and nature of a mortgage commitment drives a preference for dealing with well established, or local, brands.

1.4 The government's approach to the negotiation and implementation of the MCD has therefore been to minimise the impact on the UK market as far as possible. On 5 September, the government published a consultation document, *Implementation of the EU Mortgage Credit Directive*, as well as draft legislation and a consultation stage impact assessment. The consultation invited responses on the government's proposed approach to transposing this directive into UK law as well as more information about the expected impact on the UK market.

1.5 The government received over 30 responses to the consultation. Responses came primarily from banks and building societies as well as a range of trade bodies and some consumer groups. A full list of respondents can be found at Annex A.

1.6 This document summarises the content of these representations and sets out the government's response, indicating where the final policy has been adjusted to take respondents' views into account. The government is grateful for all of the contributions made by stakeholders during the consultation process.

Next steps

1.7 The government published the final legislation alongside this summary of responses and this legislation will shortly be laid in Parliament. It will now be subject to scrutiny by both Houses of Parliament before it can be made.

1.8 The FCA has recently consulted on the changes that it will need to make to its rules in order to implement the MCD. Their consultation *Implementation of the Mortgage Credit Directive and*

the new regime for second charge mortgages was published in September 2014 and the consultation closed on 29 December. The FCA will shortly be consulting on the implementation of the new regime for buy-to-let lending to consumers set out by government in its legislation.

2 General approach to implementation

2.1 This chapter considers the overarching questions posed in the government's consultation document, asking whether the government's broad approach and timeline are appropriate.

Question 1: Do you agree with the government's proposed approach to implementation of the MCD?

Question 2: Do you agree with the government's proposed timeline for putting in place the legislation necessary for the implementation of the MCD?

2.2 All respondents who addressed the question of the government's proposed approach were supportive of the intention to build on the existing UK regulatory regime rather than copy-out the directive into UK legislation. The key reasons given for this were the significant market disruption that would be caused by a copy-out approach, particularly coming so soon after the changes introduced following the FCA's Mortgage Market Review (MMR). Many respondents also highlighted that the existing UK regime was more appropriate, having been designed specifically for the UK market. Consumer groups in particular highlighted the benefits of the MMR, which they would not want to see removed.

2.3 On the timeline for implementation, respondents generally recognised that this was driven by dates set in the directive. They were supportive of government's efforts to finalise the rules as quickly as possible, but commented that this still made for a tight implementation timetable. This was especially the case for second charge lenders, who highlighted the more significant extent of the change for them.

2.4 The concern about the length of time for implementation was exacerbated by the issue of transition to the new regime, which was a significant theme in many of the responses from mortgage lenders and intermediaries. In particular there was a concern about the 'pipeline' of mortgages for which the application had been started on a pre-MCD basis but had not yet been completed on 21 March 2016, the date on which rules implementing MCD come into force. Lenders warned of the potential disruption to the mortgage market if they were required to rerun certain processes in order to ensure that such mortgages were MCD compliant.

Government response

2.5 The government is not proposing any fundamental changes to its overall approach to implementation following consultation. However, the consultation document highlighted that it would consider whether there were further steps that could be taken to ease the transition to the new regime. The first step that the government has taken, which is reflected in the final legislation, is to make it possible for all firms subject to the MCD to adopt the revised rules up to 6 months ahead of the implementation date of 21 March 2016. Those firms that can make the necessary changes in time to take advantage of this flexibility will be able to reduce the disruption caused by the transition, as they could ensure that most of their mortgages in the 'pipeline' on 21 March 2016 already meet MCD requirements.

2.6 In addition the government has also made it clear that, where credit is granted pursuant to an agreement that exists before the implementation date of 21 March 2016, the affected mortgage does not need to be subject to the MCD. It will be for firms to assess when an agreement exists; and that question is a matter of fact and law that may depend on the practice

of the individual lender. However, for example, it may be the case that an agreement exists at the formal offer stage of the mortgage lending process. Where such an agreement exists before 21 March 2016 the regulatory treatment as it was prior to the amendments to implement the MCD can be applied. For types of loan such as buy-to-let lending to consumers which are being regulated for the first time, this transitional provision will determine whether any regulatory requirements need to be met. This transitional provision also applies to second charge loans, except that the legislation provides for second charge mortgages entered into under these circumstances to be transferred to the mortgages regime post-completion and treated in the same way as the rest of the second charge back book.

Other issues raised by respondents

2.7 A number of consultation responses addressed issues that had not been explicitly highlighted in the consultation. In most cases this is because these are issues which affect activities that are already under the FCA's regulatory jurisdiction, and they are therefore addressed through the FCA consultation on changes to their rules rather than in the government consultation on the required legislative changes. This section seeks to set out and respond to these concerns.

2.8 Some respondents pointed to some of the types of lending for which there was an exemption in the MCD, in particular bridging lending and equity release. As these types of lending weren't addressed in the consultation document, they sought clarity that such activity was indeed exempted from the MCD and so would not be affected by the legislation implementing the directive.

2.9 We also received representations from both the valuation and the advertising industries. In the case of the valuation industry they asked for clarity that established industry standards for valuation be relied on in transposing Article 19 of the MCD on property valuation. The advertising industry made the argument that the prescriptive requirements set out in the MCD did not necessarily make for advertising that was clear for the consumer.

2.10 Finally, there were some representations from law firms, who highlighted elements of the existing statutory framework that they thought needed adapting. These were not specific to changes initiated by the implementation of the MCD, but rather points about whether the drafting of the wider regulations reflected government's policy intent. In particular one respondent pointed to a change to the regulations as part of the transfer of consumer credit to the FCA, which had given rise to an unexpected impact on the regulatory requirements for the activity of introducing a consumer to a regulated mortgage firm.

Government response

2.11 On equity release and bridging loans, Article 3 of the directive does provide some exemptions. Where existing UK regulation also provides such regulatory exemptions, the government has sought to maintain these, an example being the preservation of a regulatory exemption for certain types of second charge bridging loans. However, both equity release and bridging loans are already subject to some FCA regulation, and government's general approach has been to preserve regulation where it already exists. This is why these types of lending have not been the focus of the HM Treasury consultation. But the exemptions in the MCD are still beneficial, as they provide the FCA with the flexibility not to apply to these loans the rule changes driven by the MCD. The FCA consultation demonstrates that the FCA are seeking to use this flexibility.

2.12 The representations by the valuations and advertising industry are largely issues for FCA rules rather than the government legislation. However, the government did note that some of

the representations from the advertising industry recognised that the root of their concerns was the requirements of the MCD itself, rather than any FCA rules.

2.13 On the question raised by one law firm, on the impact of recent regulatory changes on the requirements on firms that introduce a consumer to a regulated mortgage firm, the government agreed that this change was not intentional. As such a legislative change has been made so that a firm does not need to be FCA authorised if it is undertaking only this activity.

Second charge mortgage lending

3

3.1 The government has an existing policy commitment to move second charge mortgage lending into the regulatory regime for mortgage lending rather than the regime for consumer credit. There is a strong case for regulating lending secured on the borrower's home consistently, regardless of whether it is a first or subsequent charge. The MCD also follows this principle and makes no distinction between the requirements for first and second charge mortgage lending. It therefore makes sense to make this change alongside the implementation of the MCD.

3.2 The HMT consultation invited views on the proposed change to the legislation so that second charge lending is defined as a mortgage activity, to which the FCA's Mortgages and Home Finance: Conduct of Business (MCOB) sourcebook rules apply, rather than a consumer credit activity.

Question 3(a): Do you agree with the government's proposal to amend the scope of FCA mortgages regulation to cover both first and second charge lending?

Question 3(b): What will be the costs to second charge firms associated with the government's proposal that they are required to secure a FCA mortgages permission rather than a FCA consumer credit permission?

3.3 There was widespread support among respondents for the decision to bring second charge mortgages into the same regime as mortgages. It was seen as a logical move as well as dealing with the MCD requirement to treat first and second charge mortgages in the same way for regulatory purposes. However, there were comments about the precise mechanism by which this change would happen.

3.4 First, a number of respondents highlighted that, while the first and second charge markets did share many characteristics that made their regulation under a single regime appropriate, there were also a number of differences that spoke in favour of an approach that was tailored. For example the amounts borrowed under second charge mortgages tend to be much smaller. Feedback from builders, in particular, highlighted that the additional requirements of the MCOB regime did not fit well with their use of second charge lending, which was in the context of shared equity products that tended to be offered only at certain times in the market cycle and represented only a small part of their wider business.

3.5 A number of responses touched on the limited Consumer Credit Act (CCA) protections that are being preserved for the back book of second charge loans that will be transferred to the mortgages regime. Second charge lenders and their representatives argued that the preservation of these protections drove complexity and cost, and that the mortgage regime provided adequate protections to replace those lost with the removal of consumer credit protections. Consumer groups, on the other hand, welcomed the preservation of these protections, and were keen for these to be extended to loans originated under the new regime, rather than just restricted to the back book.

3.6 Some lenders also highlighted that the government's proposed changes would leave a limited number of loans secured on residential property in the consumer credit framework. In particular, they pointed to some first charge mortgages, originated before 2004, which are

regulated under the consumer credit regime. They argued that this treatment would create confusion and make the ongoing administration of such loans disproportionately expensive.

3.7 Some respondents commented on the decision to retain the regulatory exemptions for second charge lending as far as the MCD allowed it. On the exemption for business lending over £25,000 industry thought that, in the absence of detailed analysis to indicate that it led to consumer detriment, it was right to maintain this. Credit unions welcomed their continued exemption, but wanted more guidance on the requirements on pre-contractual disclosures and advertising that they would still face under the legislation.

3.8 In terms of the impact of the changes, many respondents found it difficult to estimate these. The government's assessment of the impact of the legislative changes, based on responses gathered through consultation, is included in the final stage impact assessment published alongside this document.

Government response

3.9 Many comments received on the changes to the regulatory regime for second charge mortgages understandably focused on the FCA rules that would apply to second charge loans under the new regime, rather than the high level change, made in legislation, to move the regulation from the consumer credit regime to the mortgages regime. This response document does not seek to address these comments in detail, which should more appropriately be addressed to the FCA.

3.10 In terms of the concerns expressed by builders, the government is sympathetic to some of the issues raised. However, the decision for the government is around the overall scope of regulation, and it does not believe that there is a case for taking builder shared equity lending out of regulation. The FCA will be finalising the new regulatory regime shortly, and we are keen to engage constructively with builders in the coming months as they prepare to work within the new rules.

3.11 On the issue of the retention of some CCA protections for existing loans, the government has taken on board the comments, and on balance judges that the existing approach strikes an appropriate balance. While we understand the argument that MCOB provides strong protections for loans originated under the CCA, and believe that this justifies the decision not to adopt these protections for new second charge loans written under the MCOB regime, taking such protections away from customers who have already entered into a loan agreement does not seem reasonable.

3.12 The government is grateful for the feedback on the treatment of a small number of first charge mortgages currently regulated under the consumer credit regime. In response the government has amended the draft Order so that any type of existing consumer credit regulated loans that would, if made after March 2016, be regulated as a mortgage, whether first or second charge, will move to MCOB as we implement the MCD. Mortgages that have never been subject to consumer credit regulation, for example, because they date from before 31 October 2004 and the loan exceeded the financial limit in place at that time, will remain outside of regulation.

3.13 In response to comments on the decision to maintain second charge exemptions in the new regime where possible, the government has concluded that it will not make any changes to the draft legislation in this area. However, it is an area that the government will be keeping under review, and will consider taking action if evidence of detriment emerges. In terms of the use of some of the exemptions provided by the MCD, which are conditional on some high-level requirements on pre-contractual disclosures and advertising, firms should look at what is set out in the legislation. It will ultimately be for a court to decide whether these requirements have been met.

Buy-to-let mortgage lending

4

Mortgage lending where the borrower occupies less than 40% of the property

4.1 The existing definition of a regulated mortgage in UK legislation includes a requirement that at least 40% of the land is used by the borrower or a relative as their home, with the result that the mortgage is not regulated where more than 60% of the property is let out, even if the borrower also occupies a part of the property. This is not in line with the MCD which only permits a buy-to-let mortgage to be excluded from the full requirements of the directive where, as a term of the contract, the property may not be occupied at any time by the borrower or a family member. This requires a change to the legislation.

Question 4(a): Do you have any comments on the government's proposed legislative changes to bring mortgages into FCA regulation if any part of the property is occupied by the borrower or their relative and the borrower is acting for purposes which are outside his trade, business or profession?

Question 4(b): Do you agree with the government's assessment that this change will have a limited impact on the market?

4.2 We had a number of responses on this question, mainly from mortgage lenders and intermediaries. In general, they recognised the discrepancy between the MCD and the existing UK legislation which drove the need for the change. All responses supported the government's initial assessment that it was common market practice for such transactions to be treated as regulated mortgage lending anyway, and as such most did not expect a significant impact as a result of this change. However, some respondents queried the legislative drafting of this change, and in particular whether it achieved the stated policy intent.

Government response

4.3 The policy intent is to preserve the UK's existing regulatory framework as far as possible, while also ensuring compliance with the MCD. This does lead to some complexity in recasting this exemption. Currently the legislation says that if less than 40% of the property is occupied as a dwelling by the borrower (or their relative), it is not a regulated mortgage contract. The MCD requires us to remove this, but only where the circumstances are such that another exemption (permitted by the MCD) does not apply. Importantly, this means that the exemption can still apply where the mortgage is for predominantly business purposes.

4.4 As such the legislation allows for the exemption to be maintained in a number of circumstances where the borrower or their relative does in fact occupy up to 40% of the property. The first is where less than 40% of the property is being used for residential purposes. Examples of these circumstances might include a farm or a live/work unit. The second is where more than 40% is residential but it is still predominantly a business. This might apply in circumstances such as secured lending to a bed and breakfast business, where the property is arguably residential but the overall purpose of the mortgage is predominantly business. In these cases, therefore, the legislation is drafted so that the loan is not a regulated mortgage contract.

Buy-to-let mortgage lending to consumers

4.5 One of the most significant areas of legislative change in the implementation of the MCD is the introduction of a framework for the regulation of consumer buy-to-let.

4.6 It is important that standards continue to improve across the private rented sector, and there are a number of legal requirements that all landlords must meet. However, existing UK legislation does not include buy-to-let mortgage lending within the scope of FCA regulation. This approach is driven by 2 key considerations. The first is that, unlike an owner-occupier, the borrower's home is not at risk. Second is the acknowledgement that buy-to-let borrowers tend to be acting as a business. The government is committed to introducing FCA regulation only where there is a clear case for doing so, in order to avoid putting additional costs on firms that would ultimately lead to higher costs for borrowers. Businesses are expected to be better placed than consumers to judge whether contracts they make with other businesses are in their interest.

4.7 While member states have the option to make use of the exemption for buy-to-let from the full requirements of the directive, the MCD requires those member states using this option to apply an appropriate framework for such mortgages where they are taken out by consumers. The government will use this option to put in place the minimum requirements to meet the UK's legal obligations, as it is not persuaded of the case for the full conduct regulation of buy-to-let mortgage lending. Our consultation asked for views on this approach.

Question 5(a): What are your views on the government's proposed use of the provisions in the MCD which allow member states to limit the application of an appropriate framework to buy-to-let consumers?

4.8 A number of respondents provided their views on the government's decision to use a legislative framework to implement this requirement, rather than extend the application of MCOB. While a few suggested that MCOB might be a more straightforward approach, the majority agreed with the government's judgement that a separate legislative framework was more appropriate in this case. They thought the use of a framework set out in legislation rather than FCA rules ensured that the government avoided gold-plating of MCD requirements and allowed the application of a set of rules tailored to the different circumstances of buy-to-let.

4.9 Responses from representatives of mortgage intermediaries highlighted that the introduction of a framework for consumer buy-to-let would be layered on top of existing regulatory requirements for buy-to-let intermediaries whose activities are included in the scope of the activity of 'credit broking' within the regulatory regime for consumer credit. They were concerned that this would cause complexity and confusion.

4.10 The majority of respondents understood and agreed with the government's objective to do the minimum to meet the MCD, emphasising the different business-driven nature of buy-to-let mortgage borrowing. On the question of which borrowers would fall under the definition of consumer and be subject to the regime, some argued that all buy-to-let borrowing was for business purposes, while others gave different views as to the circumstances in which a buy-to-let borrower should be considered to be acting for business purposes. However, the most consistent feedback on this question was a request for greater clarity about what is in and out of the scope of the new regulations.

Government response

4.11 The government has not made any significant changes to the overall structure of its approach to meeting the UK's obligations around the regulation of consumer buy-to-let. This will be implemented through a framework set out in UK legislation and supervised and enforced

by the FCA. However, there are a number of adjustments that the government intends to make in response to feedback gathered through consultation.

4.12 On buy-to-let broking the government agreed with respondents who made the point that the introduction of a consumer buy-to-let regime on top of the existing consumer credit regulation would lead to confusion. Given this, and on the basis that an appropriate regulatory framework for buy-to-let will provide adequate protection, the government has decided to remove broking on buy-to-let mortgages from the scope of credit broking. As a result, there will be no regulatory requirements for intermediaries engaged in business buy-to-let activity, while those participating in consumer buy-to-let will be subject to the government's appropriate framework.

4.13 In response to concerns about the clarity of the definition of consumer buy-to-let, the government has added to the legislation to provide more clarity about what this means. In particular the legislation sets out that a buy-to-let loan is for business purposes and out of scope of regulation if the property was initially purchased with the sole intention of letting it out and the borrower has never lived in it, or if the borrower taking out the loan has other buy-to-let property. Alongside this clarification, the legislation retains the provision that allows firms to evidence the categorisation of a buy-to-let loan through a borrower declaration, confirming that they are acting wholly or predominantly for business purposes, as long as the lender does not have reasonable cause to suspect that the customer declaration is incorrect.

4.14 The government has also updated the draft legislation to ensure that appropriate protections are provided for consumer buy-to-let activity where the loan is unsecured or secured on something other than residential property. As the consultation document made clear, the MCD requires member states to put in place regulations in relation to loans to consumers, where the purpose is to purchase residential property, regardless of whether it the loan is secured or not. In the case of consumer buy-to-let, where member states are required to put in place an 'appropriate framework', the government has concluded that such lending should be exempted from the consumer credit regime and instead be subject to the framework that has been put in place for consumer buy-to-let that is secured through a mortgage.

Question 5(b): Under these proposals, how many transactions would you expect to be subject to an appropriate framework for buy-to-let mortgage lending to consumers?

4.15 There were a variety of responses to this question. The concept of consumer buy-to-let is new, so many respondents explained that making an estimate was difficult. This was compounded by some differing interpretations of what would fall in and out of scope. Many respondents also highlighted that different business models might lead to differences between lenders in the proportion of their buy-to-let lending that was to consumers.

4.16 The overall conclusion was that lending to consumers represented a minority of transactions in the buy-to-let market, which in itself represents a relatively small proportion of the overall mortgage market. The impact assessment calculates a weighted average of the estimates provided by buy-to-let lenders and intermediaries representing over 50% of each of these markets. This led us to a central estimate for the proportion of the buy-to-let market affected of 11%, which equates to around 18,000 transactions a year.

Question 6(a): What are your views on the proposed content of the appropriate framework for buy-to-let mortgage lending to consumers?

4.17 A number of respondents provided detailed comments on the content of the appropriate framework. For example, suggestions were made to amend the wording for the requirements for an affordability test. These comments highlighted the different nature of affordability tests in the buy-to-let market, where the most important part of the assessment was whether the rental

income of that property would be sufficient to cover the costs of the mortgage, rather than a wider analysis of the income and expenditure of the borrower.

4.18 Some respondents also highlighted that the requirements around foreign currency loans were not appropriate in a buy-to-let context, given that the mortgage is likely to be paid for by rental income on that property. The location of the borrower, or the currency in which they earned other income, should not therefore be of primary relevance.

4.19 There were a number of comments on the requirements around knowledge and competency, with responses expressing concern that the proposed language was not sufficiently clear as to the requirements. Some respondents were keen for clarity that the qualifications framework used by the FCA could be carried over, and avoid the creation of a new bespoke qualification, which might drive disproportionate cost in this relatively small market. The idea that, where possible and appropriate, the framework should allow existing practice in the FCA regulated mortgage market to be carried across came out in other comments too. For example, on the requirements around pre-contractual disclosure, respondents suggested that these be adapted so that it was more straightforward to carry across the approach used for owner-occupiers.

4.20 There were also a number of concerns driven by the fact that the legislation was drafted with the MCD language as a template rather than more established terminology for mortgage regulation, to ensure that the framework went no further than required. This meant that some terms were used, such as 'advice', which has the specific meaning of regulated advice. Firms wanted clarity that the word was not being used in the same way in the buy-to-let framework, so that the concept of regulated advice, which is not required by the MCD, was introduced. In addition, a number of lenders were concerned that the different use of language implied an expectation that lenders would need to do something different to meet similar requirements in the consumer buy-to-let framework and FCA regulation. Where appropriate, lenders were understandably keen to use existing processes designed to comply with FCA rules in order to meet the requirements of the legislative framework for consumer buy-to-let.

Government response

4.21 The framework is based closely on the requirements set out in the MCD itself, which is designed with lending to owner-occupiers in mind and is not tailored to the UK market. Comments from respondents were therefore helpful in allowing the government to ensure that the right adjustments are made so that this works for the UK consumer buy-to-let market.

4.22 In response to feedback the government has made a number of changes to its proposed appropriate framework for consumer buy-to-let. These include some changes to the language around affordability tests, to better reflect how these are conducted in a buy-to-let context. The definition of a foreign currency loan has also been adapted in the government's framework for buy-to-let to reflect the different basis of the affordability assessment. The government has also made some changes to the requirements for pre-contractual disclosures, to meet industry's concerns in these areas. On knowledge and competency, the government has not made any changes to the drafting. While we recognise firms' concerns, the existing wording has the advantage of providing firms with flexibility, by only requiring appropriate standards. The government was reluctant to impose rigid standards that may not work for all firms. Instead firms should assess what requirements are appropriate for relevant staff involved in consumer buy-to-let, and put in place measures to ensure that these standards are met. This flexibility is akin to how the FCA is proposing to apply these MCD requirements to regulated mortgage firms.

4.23 The government understands lenders' concerns about how the language in the appropriate framework for consumer buy-to-let differs from that otherwise used in mortgage regulation. However, to avoid gold plating, the government has sought to use MCD language rather than

seek to mirror existing UK regulatory language. But the government is clear that for this reason, lenders should interpret the language in the appropriate framework legislation in line with its natural meaning, rather than in the context of regulated mortgages. This includes words such as 'advice', where the appropriate framework includes some high level requirements for those sales where advisory services are provided, but does not refer to regulated advice.

4.24 Similarly, the government recognises that there are also a number of instances where the language used to describe a particular requirement in the buy-to-let framework, which is also a requirement under FCA regulation, will differ. Where this is the case, firms should be aware that from March 2016 the FCA rules will meet the MCD requirements, which are the same requirements that are essentially copied out into legislation in the buy-to-let framework. A particular example of this is around the requirements for early repayment charges, where an approach which is MCOB-compliant will also be compliant with the government's appropriate framework.

Question 6(b): What are your views on the proposed approach to the supervision and enforcement of the appropriate framework for buy-to-let mortgage lending to consumers?

4.25 Feedback on this question was broadly positive, although there was a recognition that much depended on the supervisory approach taken by the FCA, including their forthcoming consultation document on this. While most firms welcomed the use of a borrower declaration to evidence that a mortgage was for business purposes and did not need to be subject to the consumer buy-to-let requirements, there were some concerns about perceived duties on them to confirm that such a declaration was accurate. Other respondents argued that a declaration could be open to misuse, fearing that some borrowers would feel pressurised into signing it.

4.26 There was widespread agreement that entry onto the register for buy-to-let lenders and intermediaries should be very straightforward for firms who were already FCA authorised. Some respondents went further and expressed the view that the register should only be open to firms with an existing FCA authorisation. From an intermediary perspective, there was also a view that entries on the register should be at a firm rather than an individual level.

Government response

4.27 The government has broadly maintained the approach set out in the consultation document to supervision and enforcement of the appropriate framework for buy-to-let mortgage lending to consumers.

4.28 On the use of the declaration, the legislation does not require the lender to demonstrate the veracity of the statement by the borrower. However, the firm may not rely on the statement if they know, or have reason to suspect, it to be untrue. Such knowledge or suspicion could only be on the basis of information available to the firm, and the legislation does not place a duty on the lender to introduce particular processes to demonstrate that they have conducted checks of the declaration. While the government recognises concerns that the use of a declaration of this nature can lead to incorrect declarations, this mechanism is established practice in the context of consumer credit and the government believes it is an important part of a pragmatic implementation of the requirements set out in the MCD.

Question 7: What would you expect the costs and benefits to be of the introduction of an appropriate framework for buy-to-let mortgage lending to consumers?

4.29 On this question, most respondents explained that this was difficult to estimate because it involved the application of a regulatory framework to a new area of mortgage lending. The consensus was that the framework would apply to a minority of applications but for those affected the cost impact could be meaningful.

4.30 Feedback from mortgage intermediaries, however, expected the impact to be relatively small as they expected that most intermediaries conducting such business already applied the same standards as for regulated mortgage contracts.

Government response

4.31 With the help of representatives of both first and second charge mortgage lenders as well as mortgage intermediaries, the government supplemented the information on costs and benefits received through consultation with some survey data. We have used all this information to set out our best estimate of £0 benefit and £18 million cost as a result of the introduction of this regulatory framework for consumer buy-to-let. However, the government's decision to remove broking on buy-to-let mortgages from the scope of the consumer credit regulated activity provides some offsetting benefit to firms.

4.32 Full details of these estimates are set out in the impact assessments published alongside this response document.

5 Further changes to the scope of FCA regulation

5.1 The major regulatory scope changes required to implement the MCD are to second charge and consumer buy-to-let mortgage lending. However, there are a number of further legislative adjustments required to ensure the scope of FCA regulation is aligned with that of the MCD.

Question 8(a): What are your views on the number of further changes the government is proposing to align the scope of FCA regulation with the MCD?

Question 8(b): What is your assessment of the impact of these changes on the UK mortgage market?

5.2 There was general agreement among respondents that the changes proposed did not cause significant difficulty, and would have a limited impact on the UK market. Generally this was either because the market for such activity didn't exist, or because the change proposed was small.

5.3 However, there were some concerns expressed about the changes to the regulation concerning the location of the property. In particular there were concerns that the changes might capture lending by foreign-based branches of UK lenders. If the changes were as far-reaching as feared, respondents thought they had the potential to cause significant disruption to the UK mortgage market.

5.4 Another comment received from some recipients was that there could be more information about the implications of such changes, in particular those that affected government schemes, and the changes that limit the application of some existing regulatory exemptions for mortgage firms.

Government response

5.5 The government was encouraged that the broad consensus, subject to some questions and clarifications, was that these changes would have a limited impact. On the particular concern about the impact of changes to the role of the location of the property in determining regulatory status, the government can confirm that section 418 of the Financial Services and Markets Act 2000 is unchanged by this legislation. There is no general rule that all activities in relation to land elsewhere in the EU are caught by FCA regulation and the FCA has issued detailed guidance on when such activities may be within the FCA's remit.

5.6 On the question of what existing government schemes may be affected by the changes to the legislation, as set out in the consultation, the government thinks that it is unlikely that the MCD would have an impact and has not identified any schemes which would need to be stopped, radically redesigned or become FCA regulated in response to the changes. However, this judgement is ultimately one for the responsible government body to make. HM Treasury has therefore made other relevant government departments aware of the changes, as well as the devolved administrations.

5.7 There are also some further changes that have been made to the wording of the legislation around the exemptions for lending by government bodies. In particular, the draft has been adjusted to be clearer and to make sure that all the relevant bodies are exempted going forward, for both first and second charge lending. As mentioned in the consultation document, the government has also proposed extending the existing exemption to the wholly-owned

subsidiaries of these bodies, except where feedback from the devolved administration affected was that they would prefer not to extend the exemption in this way.

5.8 Finally we have delivered on the request for more clarity on how some existing regulatory exemptions would be limited to comply with requirements in the MCD. The revised draft legislation has a number of changes in order to help firms understand these changes. These include a change to make it clear that lending to high net worth borrowers may continue to be exempt from FCA regulation, except in so far as such regulation is needed to meet the requirements of the MCD. As the MCD does not contain an exemption for lending to high net worth borrowers, a full exemption is no longer possible.

Amendments to the Financial Services and 6 Markets Act 2000

6.1 The government needs to make some changes to the Financial Services and Markets Act 2000 (FSMA) to implement the MCD. These are largely sections that are copied out from the MCD, and address the requirements around the maintenance of national registers for mortgage intermediaries and appointed representatives.

Question 9: Do you have any comments or concerns with the government's proposed changes to FSMA?

6.2 There were limited responses to this question. One respondent asked for clarification that the references to credit intermediary and appointed representative referred to the relevant firms and not the individuals employed.

Government response

6.3 The government can confirm that the references to credit intermediary and appointed representative refer to the firm rather than the individuals employed by such firms.

A List of respondents

Advertising Association
Association of British Credit Unions Ltd
Association of Finance Brokers
Association of Mortgage Intermediaries
Bank of Ireland
Barclays
Building Societies Association
Central Association of Agricultural Valuers
Competition and Markets Authority
Council of Letting Agents
Council of Mortgage Lenders
Coventry Building Society
Equity Release Council
Finance and Leasing Association
Financial Service Consumer Panel
Home Builders Federation
Institute of Practitioners in Advertising
Intermediary Mortgage Lenders Association
Leeds Building Society
Legal and General
TC Young LLP
Lloyds Bank
Money Advice Trust
National Landlords Association
Nationwide
Northern Ireland Co-ownership Housing Association Ltd.
Paragon
RadioCentre
Residential Landlords Association
Royal Institution of Chartered Surveyors
Scottish Association of Landlords
Trowers and Hamlins LLP
Virgin

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