

SCHEDULE 1

Amendments to legislation

PART 1

Amendments to primary legislation

The Financial Services and Markets Act 2000

1.—(1) The Act is amended as follows.

(2) In section 39 (exemption of appointed representatives) ^{M1}—

(a) after subsection (1) insert—

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

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

(c) after subsection (1B) insert—

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

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

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

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

(ii) to which the mortgages directive applies,

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

(1BB) The requirements of this subsection are—

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

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

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

(3) In section 55J (variation or cancellation on initiative of regulator) ^{M2}, after subsection (6A) insert—

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

(a) during a period of at least six months, the person has not carried on a relevant mortgage activity;

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- (b) the person obtained the Part 4A permission to carry on a relevant mortgage activity by making a false statement or by any other irregular means;
 - (c) the person no longer meets the conditions which the person was, in accordance with Chapter 11 of the mortgages directive, required to meet in order to be granted a Part 4A permission to carry on a relevant mortgage activity; or
 - (d) the person has seriously or systematically infringed any provision made by or under this Act which implements the operating conditions for mortgage intermediaries set out in the mortgages directive.
- (6C) In subsection (6B) “relevant mortgage activity” means—
- (a) an activity of a kind specified in article 25A (arranging regulated mortgage contracts), article 53A (advising on regulated mortgage contracts) or article 53DA (advising on regulated credit agreements the purpose of which is to acquire land) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, or
 - (b) an activity of a kind specified in article 36A of that Order (credit broking) which is referred to in Article 33(1)(a) of the mortgages directive.”.
- (4) In section 137R (financial promotion rules) ^{M3}, in subsection (5)(b)—
- (a) at the end of sub-paragraph (ii), omit “or”, and
 - (b) at the end of sub-paragraph (iii) insert—
- “or
- (iv) Articles 10 and 11 of the mortgages directive,”.
- (5) After section 194B (contravention by relevant EEA firm of requirement in capital requirements directive or capital requirements regulation) ^{M4} insert—

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

- (1) In this section “relevant EEA firm” means an EEA firm falling within paragraph 5(i) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the mortgages directive.
- (2) This section applies if —
- (a) a relevant EEA firm has a branch in the United Kingdom; and
 - (b) the appropriate regulator ascertains that the firm has contravened, or is contravening, a requirement to which Article 34(2) of the mortgages directive applies.
- (3) The appropriate regulator must give the firm written notice which—
- (a) requires the relevant EEA firm to put an end to the contravention;
 - (b) states that the appropriate regulator's power of intervention will become exercisable in relation to the firm if the firm continues the contravention; and
 - (c) indicates any requirements that the appropriate regulator proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.
- (4) The appropriate regulator may exercise its power of intervention in respect of the relevant EEA firm if—
- (a) a reasonable time has expired since the giving of the notice under subsection (3);
 - (b) the firm has failed to put an end to the contravention within that time; and

- (c) the appropriate regulator has informed the firm's home state regulator of its intention to exercise its power of intervention in respect of the firm.
- (5) Subsection (4) applies whether or not the appropriate regulator's power of intervention is also exercisable as a result of section 194.
- (6) If the appropriate regulator exercises its power of intervention in respect of a relevant EEA firm by virtue of subsection (4), it must at the earliest opportunity inform the firm's home state regulator and the Commission of—
 - (a) the fact that the appropriate regulator has exercised that power in respect of the firm; and
 - (b) any requirements it has imposed on the firm in exercise of the power.
- (7) Subsection (3) is not to be regarded as requiring the PRA to take action in relation to the contravention of a requirement falling within subsection (2)(b) in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (3) in relation to that requirement.
- (8) In this section “appropriate regulator” means—
 - (a) where the relevant EEA firm is a PRA-authorised person, the FCA or, subject to subsection (7), the PRA;
 - (b) in any other case, the FCA.”.
- (6) After section 195A (contravention by relevant EEA firm, EEA UCITS or EEA AIFM of directive requirements: home state regulator primarily responsible for securing compliance) ^{M5} insert—

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

- (1) In this section “relevant EEA firm” means an EEA firm falling within paragraph 5(i) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the mortgages directive.
- (2) This section applies if—
 - (a) a relevant EEA firm has a branch, or is providing services, in the United Kingdom; and
 - (b) the appropriate regulator has clear and demonstrable grounds for concluding that the firm has contravened, or is contravening, a requirement to which Article 34(4) of the mortgages directive applies.
- (3) The appropriate regulator must notify the relevant EEA firm's home state regulator of the situation mentioned in subsection (2).
- (4) The notice under subsection (3) must—
 - (a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the relevant EEA firm puts an end to the contravention;
 - (b) state that the appropriate regulator's powers of intervention are likely to become exercisable in relation to the relevant EEA firm if it continues the contravention; and
 - (c) indicate any requirements that the appropriate regulator proposes to impose on the relevant EEA firm in exercise of its power of intervention in the event of the power becoming exercisable.
- (5) The appropriate regulator may exercise its power of intervention in respect of the relevant EEA firm if—

- (a) a period of one month beginning with the date on which it gave the notification referred to in subsection (3) has expired, and
 - (b) conditions A to C are satisfied.
- (6) Condition A is that—
- (a) the home state regulator of the relevant EEA firm has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or
 - (b) any measures taken by the home state regulator have proved inadequate for that purpose.
- (7) Condition B is that the relevant EEA firm is acting in a manner which is clearly prejudicial to the interests of consumers in the United Kingdom or to the orderly functioning of the markets.
- (8) Condition C is that the appropriate regulator has informed the home state regulator of the relevant EEA firm of its intention to exercise its powers of intervention in respect of the firm.
- (9) Subsection (5) applies whether or not the appropriate regulator's power of intervention is also exercisable as a result of section 194 or 195.
- (10) If the appropriate regulator exercises its power of intervention in respect of the relevant EEA firm by virtue of subsection (5), it must inform the Commission and EBA, without undue delay, of—
- (a) the fact that the appropriate regulator has exercised that power in respect of that firm; and
 - (b) any requirements it has imposed on the firm in exercise of the power.
- (11) If circumstances exist which enable the appropriate regulator to exercise its power of intervention under subsection (5), the appropriate regulator may refer the matter to EBA (and EBA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24th November 2010 establishing a European Supervisory Authority (European Banking Authority) ^{M6}).
- (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-authorised person, the FCA or, subject to subsection (12), the PRA;
 - (b) in any other case, the FCA.”.
- (7) In section 347 (the record of authorised persons etc.) ^{M7}—
- (a) in subsection (1)—
 - (i) at the end of paragraph (ha), omit “and”; and
 - (ii) after paragraph (ha) insert—

“(hb) appointed representative to whom subsection (2B) applies; and”;
 - (b) in subsection (2), after paragraph (h) insert—
 - “(i) in the case of a mortgage intermediary—
 - (i) the names of the persons within the management who are responsible for the activities specified by article 25A (arranging regulated mortgage contracts), article 36A (credit broking), article 53A (advising on regulated mortgage contracts) and article 53DA (advising on regulated credit agreements the

- purpose of which is to acquire land) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and
- (ii) whether the mortgage intermediary is a tied mortgage intermediary or not;
- (j) in the case of an appointed representative to whom subsection (2B) applies, the name of the mortgage intermediary on whose behalf the appointed representative acts;”;
- (c) after subsection (2A) insert—
- “(2B) This subsection applies to an appointed representative to whom section 39(1BA) applies or to whom that subsection would apply if the requirements of section 39(1BB) were not met.”;
- (d) after subsection (4) insert—
- “(4A) If the FCA cancels or varies the Part 4A permission of a mortgage intermediary and as a result the person to whom the entry relates no longer has a Part 4A permission to carry on a relevant mortgage activity within the meaning of section 55J(6C), the FCA must delete mention of such permission from the record without undue delay.”.
- (8) In section 417(1) (definitions) ^{M8} in the appropriate places insert—
- ““mortgage creditor” means a creditor as defined in Article 4(2) of the mortgages directive;
- “mortgage intermediary” means a credit intermediary as defined in Article 4(5) of the mortgages directive or a person providing advisory services as defined in Article 4(21) of the mortgages directive;
- “tied mortgage intermediary” means a tied credit intermediary as defined in Article 4(7) of the mortgages directive;”.
- (9) In section 425(1)(a) (expressions relating to authorisation elsewhere in the single market) ^{M9}, after ““markets in financial instruments directive”,” insert ““mortgages directive”, ”.
- (10) In Schedule 3 to the Act (EEA passport rights)—
- (a) in paragraph 1 (the single market directives) ^{M10}—
- (i) at the end of paragraph (f) omit “and”; and
- (ii) after paragraph (g) insert—
- “; and
- (h) the mortgages directive.”;
- (b) after paragraph 4E (definition of the alternative investment managers directive) ^{M11} insert—

“The mortgages directive

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

- (c) in paragraph 5 (EEA firm) ^{M12}—
- (i) at the end of paragraph (g) omit “or”; and
- (ii) after paragraph (h) insert—
- “; or

- (i) a mortgage intermediary which is admitted (in accordance with Article 29(1) of the mortgages directive) by its home state regulator to carry out all or part of the credit intermediation activities set out in Article 4(5) of that directive or to provide advisory services (as defined in Article 4(21) of that directive).”;
- (d) in paragraph 5A(a) (definition of relevant office for EEA firm) ^{M13} after “sub-paragraph (e)” insert “ or (i) ”;
- (e) in paragraph 7A(a) (definition of relevant office for EEA right) ^{M14} after “insurance mediation directive” insert “ or the mortgages directive ”;
- (f) in paragraph 13 (establishment) ^{M15}—
 - (i) in sub-paragraph (1)—
 - (aa) for “(f) or (h)” substitute “ (f), (h) or (i) ”;
 - (bb) in paragraph (c) omit “and”;
 - (cc) after paragraph (d) insert—
 - “; and
 - (e) in the case of a firm falling within paragraph 5(i)—
 - (i) its home state regulator has informed it that the consent notice has been sent to the appropriate UK regulator, and
 - (ii) one month has elapsed beginning with the date on which the firm's home state regulator informed the firm that the consent notice has been sent to the appropriate UK regulator.”;
 - (ii) in sub-paragraph (2)(b) for “or (h)” substitute “ , (h) or (i) ”;
 - (iii) after sub-paragraph (3) insert—
 - “(3A) If the appropriate UK regulator has received a consent notice in respect of a firm that falls within paragraph 5(i), it must—
 - (a) notify the firm of the applicable provisions (if any); and
 - (b) use the information received from the firm's home state regulator to enter the necessary information into the record maintained by the FCA by virtue of section 347(1).
 - (3B) A notice under sub-paragraph (3A)(a) must be given before the end of the period of two months beginning with the day on which the appropriate UK regulator received the consent notice.”;
- (g) in paragraph 14 (services) ^{M16}—
 - (i) in sub-paragraphs (1)(b) and (1)(c) for “or (h)” substitute “ , (h) or (i) ”;
 - (ii) in sub-paragraph (1)(d) after “paragraph 5(e)” insert “ or (i) ”;
 - (iii) after sub-paragraph (3) insert—
 - “(3ZA) If the appropriate UK regulator has received a relevant notice in respect of a firm that falls within paragraph 5(i), it must use the information received from the firm's home state regulator to enter the necessary information into the record maintained by the FCA by virtue of section 347(1).”;
- (h) in paragraph 19 (establishment) ^{M17}—
 - (i) in sub-paragraph (5)(a) after “the insurance mediation directive” insert “ or the mortgages directive ”;

- (ii) after sub-paragraph (7BC) insert—

“(7BD) If the firm's EEA right derives from the mortgages directive and the first condition is satisfied, the appropriate UK regulator must give a consent notice to the host state regulator within one month beginning with the date on which it received the firm's notice of intention.”; and
- (iii) after sub-paragraph (11) insert—

“(11A) If the firm's EEA right derives from the mortgages directive, the appropriate UK regulator must give the written notice referred to in sub-paragraph (11) at the same time as it gives the consent notice to the host state regulator in accordance with sub-paragraph (7BD).”;
- (i) in paragraph 20 (services) ^{M18}—
 - (i) in sub-paragraph (3) after “the markets in financial instruments directive” insert “, the mortgages directive ”;
 - (ii) after sub-paragraph (4BA) insert—

“(4BB) If the firm's EEA right derives from the mortgages directive it must not provide the services to which its notice of intention relates until one month, beginning with the date on which it receives the notice under sub-paragraph (4), has elapsed.”;
- (j) in paragraph 20ZA (information for host state regulator) ^{M19} after sub-paragraph (3) insert—

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

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

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

 - (a) the date of the direction given in accordance with section 33(2) withdrawing the firm's status as an authorised person, or
 - (b) the date on which the variation of the Part 4A permission takes effect.”;
 - (k) in paragraph 21 (offence relating to exercise of passport rights) ^{M20} in sub-paragraph (1) (b) for “or (4B)” substitute “, (4B) or (4BB) ”; and
 - (l) in paragraph 25 (information to be included in the public record) ^{M21} after “insurance mediation directive” insert “ or the mortgages directive ”.

Marginal Citations

- M1** Section 39 was amended by section 10 of, and paragraph 5 of Schedule 18 to, the [Financial Services Act 2012 \(c. 21\)](#) and by [S.I. 2007/126](#) and [2013/3115](#).
- M2** Section 55J was substituted, together with the rest of Part 4A, for the original Part IV, by section 11 of the Financial Services Act 2012 and was subsequently amended by [S.I. 2013/1773](#) and [3115](#).
- M3** Section 137R was substituted (together with the rest of Part 9A) for the original Part X by section 24 of the [Financial Services Act 2012 \(c. 21\)](#).
- M4** Section 194B was inserted by [S.I. 2013/3115](#).

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- M5** Section 195A was inserted by S.I. 2007/126, substituted by S.I. 2011/1613 and then subsequently amended by paragraph 35 of Schedule 4 to the Financial Services Act 2012 (c. 21) and by S.I. 2012/916 and 2013/1773 and 1797.
- M6** OJ L 331 15.12.2010, p.12.
- M7** Section 347 was amended by paragraph 16 of Schedule 12 to the Financial Services Act 2012 (c. 21), section 34 of, and paragraph 11 of Schedule 3 to, the Financial Services (Banking Reform) Act 2015 (c. 33) and S.I. 2007/126 and 2013/1388.
- M8** Section 417(1) was amended by paragraph 16 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16), section 964 of the Companies Act 2006 (c. 46), section 174 of the Banking Act 2009 (c. 1), paragraph 31 of Schedule 2 to the Financial Services Act 2010 (c. 28), section 48 of the Financial Services Act 2012 (c. 21), section 4 of the Financial Services (Banking Reform) Act 2013 (c. 33) and paragraph 71 of Schedule 4 to the Co-operative and Community Benefit Societies Act 2014 (c. 14), and by S.I. 2002/1775, 2005/1433, 2007/126, 2009/1941, 2010/22, 2012/916, 1809, 1906 and 2554, 2013/504, 1773 and 3115 and 2014/2879.
- M9** Section 425(1) was amended by S.I. 2003/2066, 2004/3379, 2006/2975, 2007/126 and 3253, 2012/1906 and 2013/1773 and 3115.
- M10** Paragraph 1 was amended by S.I. 2000/2952, 2003/1473 and 2066, 2007/126 and 3253, and 2013/1773 and 3115.
- M11** Paragraph 4E was inserted by S.I. 2013/1773.
- M12** Paragraph 5 was amended by S.I. 2003/1473 and 2066, 2004/3379, 2006/3221, 2007/126 and 3253, 2011/1613, 2012/1906, and 2013/1773, 1797 and 3115.
- M13** Paragraph 5A was inserted by S.I. 2003/1473 and amended by S.I. 2013/1773.
- M14** Paragraph 7A was inserted by S.I. 2003/1473 and amended by S.I. 2013/1773 and 1797.
- M15** Paragraph 13 was amended by paragraph 2 of Schedule 4 to the Financial Services Act 2012 (c. 21) and by S.I. 2003/1473 and 2066, 2007/126, 2012/1906 and 2013/1773.
- M16** Paragraph 14 was amended by paragraph 3 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2003/1473 and 2066, 2007/126, 2012/1906, and 2013/1773 and 1797.
- M17** Paragraph 19 is amended by paragraph 10 of Schedule 4 to the Financial Services Act 2012 (c. 21) and by S.I. 2003/1473 and 2066, 2007/126 and 3253, 2011/1613, 2012/916 and 1906, and 2013/1773, 1797 and 3115.
- M18** Paragraph 20 is amended by paragraph 11 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2001/1376, 2003/1473 and 2066, 2007/126 and 3253, 2011/1613, 2012/1906, and 2013/1773, 1797 and 3115.
- M19** Paragraph 20ZA was inserted by S.I. 2011/1613 and was subsequently amended by paragraph 13 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2013/3115.
- M20** Paragraph 21 was amended by S.I. 2003/1473.
- M21** Paragraph 25 was inserted by S.I. 2003/1473 and was subsequently amended by paragraph 18 of Schedule 4 to the Financial Services Act 2012.

The Consumer Credit Act 1974

- 2.—(1) The Consumer Credit Act 1974 ^{M22} is amended as follows.
- (2) In section 8 (consumer credit agreements) for subsection (3) ^{M23} substitute—
- “(3) A consumer credit agreement is a regulated credit agreement within the meaning of this Act if it—
- (a) is a regulated credit agreement for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order; and
 - (b) is not an agreement of the type described in Article 3(1)(b) of Directive 2014/17/ EU of the European Parliament and of the Council of 4th February 2014 on credit agreements for consumers relating to residential immovable property.”.

(3) In section 55C ^{M24} (copy of draft consumer credit agreement), in subsection (4)(c), after “£60,260” insert “ and which is not a residential renovation agreement ”.

(4) In section 60 ^{M25} (form and content of agreements), in subsection (5)(c), after “£60,260” insert “ and which is not a residential renovation agreement ”.

(5) In section 61A ^{M26} (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 ^{M27} (withdrawal from consumer credit agreement), in subsection (14)(a), after “£60,260” insert “ , other than a residential renovation agreement ”.

(7) In section 75A ^{M28} (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 ^{M29} (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 ^{M30} (definitions), in subsection (1), after the definition of “representation” insert—

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

- (a) which is unsecured; and
- (b) the purpose of which is the renovation of residential property, as described in Article 2(2a) of Directive [2008/48/EC](#) of the European Parliament and of the Council of 23rd April 2008 on credit agreements for consumers ^{M31} ”.

Marginal Citations

M22 [1974 c.39](#).

M23 Subsection (3) was substituted by [S.I. 2013/1881](#).

M24 [Section 55C](#) was inserted by [S.I. 2010/1010](#) and subsequently amended by [S.I. 2013/1881](#).

M25 [Section 60](#) was amended by paragraph 6 of Schedule 25 to the [Enterprise Act 2002 \(c. 40\)](#) and by [S.I. 2010/1010](#) and 2013/1881 and 1882.

M26 [Section 61A](#) was inserted by [S.I. 2010/1010](#) and subsequently amended by [S.I. 2013/1881](#).

M27 [Section 66A](#) was inserted by [S.I. 2010/1010](#).

M28 [Section 75A](#) was inserted by [S.I. 2010/1010](#) and subsequently amended by [S.I. 2013/1881](#).

M29 [Section 77B](#) was inserted by [S.I. 2010/1010](#) and subsequently amended by section 27 of the [Energy Act 2011 \(c. 16\)](#) and by [S.I. 2013/1881](#) and 2014/436.

M30 There are amendments to section 189 but none is relevant to this Order.

M31 OJ L 133, 22.5.2008, p. 66; [Article 2\(2a\)](#) was inserted by article 46 of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property (OJ L 60, 28.2.2014, p.34).

Changes to legislation:

There are currently no known outstanding effects for the The Mortgage Credit Directive Order 2015, PART 1.