

SCHEDULE 1

Article 3

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-authorized person, the FCA or, subject to subsection (7), the PRA;
 - (b) in any other case, the FCA.”.
- (6) After section 195A (contravention by relevant EEA firm, EEA UCITS or EEA AIFM of directive requirements: home state regulator primarily responsible for securing compliance) ^{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—

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- (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

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- 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

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- (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](#)).

PART 2

Amendments to secondary legislation

The Consumer Credit (Agreements) Regulations 1983

^{F13} 3.

Textual Amendments

F1 Sch. 1 para. 3 omitted (20.9.2015) by virtue of [The Mortgage Credit Directive \(Amendment\) Order 2015 \(S.I. 2015/1557\)](#), arts. 1(2), **2(5)**

The Financial Services and Markets (Regulated Activities) Order 2001

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

(2) In article 3(1) (interpretation) ^{M32}, in the definition of “home Member State”, after “capital requirements regulation” insert “, and, in relation to a mortgage intermediary, has the meaning given by Article 4(19) of the mortgages directive ”.

(3) In article 4 (specified activities: general) ^{M33} after paragraph (4A) insert—

“(4B) Where—

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

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

(4) In article 25A (arranging regulated mortgage contracts) ^{M34}—

(a) after paragraph (2) insert—

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

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

(5) In article 29 (arranging deals with or through authorised persons) ^{M35}—

(a) in paragraph (1) for “25A(1) and (2)” substitute “ 25A(1), (2) and (2A) ”; and

(b) in paragraph (3) after “article 4(4)” insert “ and (4B) ”.

(6) In article 36 (other exclusions) ^{M36}, after paragraph (2) insert—

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

(7) For article 36E ^{M37} (activities in relation to certain agreements relating to land) substitute—

“Activities in relation to certain agreements relating to land

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

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

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

(a) enter into such an agreement as lender or home purchase provider (as the case may be), or

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

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

(8) In article 36G (other exclusions) ^{M38} for “the exclusion in article 72A (information society services) and the exclusion in article 72G (local authorities)” substitute “ the exclusions in articles 72A (information society services), 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms) ”.

(9) After article 53D (advising on regulated sale and rent back agreements) ^{M39} insert—

“Advising on regulated credit agreements for the acquisition of land

53DA.—(1) Advising a person (“P”) is a specified kind of activity if—

(a) the advice is given to P in P’s capacity as a recipient of credit, or potential recipient of credit, under a regulated credit agreement;

(b) P intends to use the credit to acquire or retain property rights in land or in an existing or projected building; and

(c) the advice consists of the provision of personal recommendations to P in respect of one or more transactions relating to regulated credit agreements.

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

(10) In article 54 (advice given in newspapers etc.) ^{M40}—

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

(b) after paragraph (1)(b)(v) insert—

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

(11) In article 54A (advice given in the course of administration by an authorised person) ^{M41}, after paragraph (4) insert—

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

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

- (b) anything A does in connection with the administration of a regulated credit agreement in circumstances falling within article 60I(b).”.
- (12) In article 55 (other exclusions) ^{M42}, in paragraph (2)—
- (a) for “53C and 53D” substitute “ 53C, 53D and 53DA ”; and
 - (b) for “and 72G (local authorities)” substitute “ , 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms) ”.
- (13) In article 60C (exempt agreements: exemptions relating to the nature of the agreement) ^{M43}, in paragraph (2) for “a regulated home purchase plan” substitute “ if it is of a type described in article 61A(1) or (2) (mortgage contracts which are not regulated mortgage contracts) ”.
- (14) In article 60D (exempt agreements: exemption relating to the purchase of land for non-residential purposes), after paragraph (3) insert—
- “(4) This article does not apply to an agreement of the type described in Article 3(1)(b) of the mortgages directive.”.
- (15) In article 60E (exempt agreements: exemptions relating to the nature of the lender)—
- (a) in paragraph (2) for “A relevant credit agreement” substitute “ Subject to article 60HA, a relevant credit agreement ”; and
 - (b) in paragraph (5) for “A relevant credit agreement” substitute “ Subject to article 60HA, a relevant credit agreement ”.
- (16) In article 60F (exempt agreements: exemptions relating to the number of repayments to be made), in paragraph (4) for “A credit agreement” substitute “ Subject to article 60HA, a credit agreement ”.
- (17) In article 60G (exempt agreements: exemptions relating to the total charge for credit)—
- (a) in paragraph (2)—
 - (i) after sub-paragraph (a) omit “and”; and
 - (ii) after sub-paragraph (b) insert—

“, and

(c) paragraph (2A) applies to the agreement.”;
 - (b) after paragraph (2) insert—

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

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

- (d) in paragraph (4) for “A credit agreement” substitute “ Subject to paragraph (8), a credit agreement ”;
- (e) in paragraph (6) for “paragraph (5)” substitute “ paragraphs (5) and (8) ”;
- (f) after paragraph (7) insert—
 - “(8) A credit agreement of a type described in Article 3(1) of the mortgages directive is an exempt agreement pursuant to paragraph (3) or (4) only if—
 - (a) the agreement meets the general interest test;
 - (b) the borrower receives timely information on the main features, risks and costs of the agreement at the pre-contractual stage; and
 - (c) any advertising of the agreement is fair, clear and not misleading.”.
- (18) In article 60H (exempt agreements: exemptions relating to the nature of the borrower)—
 - (a) the existing text becomes paragraph (1);
 - (b) in paragraph (1)—
 - (i) for “A credit agreement” substitute “ Subject to article 60HA, a credit agreement ”; and
 - (ii) for sub-paragraph (b)(ii) substitute—
 - “(ii) for credit which exceeds £60,260 and is for a purpose other than—
 - (aa) the renovation of residential property, or
 - (bb) to acquire or retain property rights in land or in an existing or projected building,”; and
 - (c) after paragraph (1) insert—
 - “(2) Where a credit agreement would be an exempt agreement pursuant to this article but for paragraph (1)(b)(ii)(bb) or article 60HA, the FCA may treat the agreement as an exempt agreement except for the purpose of the application of the requirements of the mortgages directive.”.
- (19) After article 60H insert—

“Exempt agreements: exemptions not permitted under the mortgages directive

- 60HA.**—(1) A credit agreement is not an exempt agreement pursuant to article 60E(2) or (5), 60F(4) or 60H(1) if—
- (a) the agreement is of a type described in Article 3(1) of the mortgages directive, and
 - (b) paragraph (2) does not apply.
- (2) This paragraph applies if—
- (a) the agreement is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;
 - (b) the agreement is a bridging loan within the meaning of Article 4(23) of that directive; or
 - (c) the agreement is a restricted public loan in respect of which—
 - (i) the borrower receives timely information on the main features, risks and costs at the pre-contractual stage; and
 - (ii) any advertising is fair, clear and not misleading.
- (3) In paragraph (2)(c) “restricted public loan” means a credit agreement that is—
- (a) offered to a particular class of borrower and not offered to the public generally;

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- (b) offered under an enactment with a general interest purpose; and
- (c) provided on terms which are more favourable to the borrower than those prevailing on the market, because it meets one of the following conditions—
 - (i) it is interest free;
 - (ii) the rate of interest is lower than that prevailing on the market; or
 - (iii) the rate of interest is no higher than that prevailing on the market but the other terms on which credit is provided are more favourable to the borrower.”.

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

(21) In article 61 (regulated mortgage contracts) ^{M44}—

- (a) in paragraph (3)(a)—
 - (i) for paragraphs (i) to (iii) substitute—
 - “(i) the contract is one under which a person (“the lender”) provides credit to an individual or to trustees (“the borrower”);
 - (ii) the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land in the EEA;
 - (iii) at least 40% of that land is used, or is intended to be used—
 - (aa) in the case of credit provided to an individual, as or in connection with a dwelling; or
 - (bb) in the case of credit provided to a trustee which is not an individual, as or in connection with a dwelling by an individual who is a beneficiary of the trust, or by a related person”; and
 - (ii) in the wording after paragraph (iii) for “is a regulated home purchase plan” substitute “ falls within article 61A(1) or (2) ”;
 - (b) for paragraph (4)(a) substitute—
 - “(a) “mortgage” includes a charge and (in Scotland) a heritable security;”; and
 - (c) in paragraph (4)—
 - (i) after sub-paragraph (c) omit “and”; and
 - (ii) omit sub-paragraph (d).

(22) After article 61 insert—

“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;
- (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;

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- (b) the borrower receives timely information on the main features, risks and costs of the contract at the pre-contractual stage; and
 - (c) any advertising of the contract is fair, clear and not misleading.
- (3) For the purposes of this article, if an agreement includes a declaration which—
- (a) is made by the borrower, and
 - (b) includes—
 - (i) a statement that the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower,
 - (ii) a statement that the borrower understands that the borrower will not have the benefit of the protection and remedies that would be available to the borrower under the Act if the agreement were a regulated mortgage contract under the Act, and
 - (iii) a statement that the borrower is aware that if the borrower is in any doubt as to the consequences of the agreement not being regulated by the Act, then the borrower should seek independent legal advice,

the agreement is to be presumed to have been entered into by the borrower wholly or predominantly for the purposes specified in sub-paragraph (b)(i) unless paragraph (4) applies.

- (4) This paragraph applies if, when the agreement is entered into—
- (a) the lender (or, if there is more than one lender, any of the lenders), or
 - (b) any person who has acted on behalf of the lender (or, if there is more than one lender, any of the lenders) in connection with the entering into of the agreement,

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

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

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

- (6) For the purposes of this article—
- “borrower” and “lender” have the meaning set out in article 61(3) (regulated mortgage contracts);

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

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

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

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

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

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

- (a) less than 40% of the land subject to the mortgage is used, or intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a related person; and
- (b) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower;

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

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

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

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

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

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

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

- (a) that person's spouse or civil partner;

- (b) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or
 - (c) that person's parent, brother, sister, child, grandparent or grandchild;
- “second charge business loan” is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—
- (a) the lender provides the borrower with credit exceeding £25,000;
 - (b) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and
 - (c) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.”.
- (23) In article 63A (other exclusions) ^{M45} for “and 72G (local authorities)” substitute “ , 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms) ”.
- (24) In article 66 (trustees, nominees and personal representatives) ^{M46}—
- (a) in paragraph (2) for “25A(1) and (2)” substitute “ 25A(1), (2) and (2A) ”;
 - (b) in paragraph (6) for “53C and 53D” substitute “ 53C, 53D and 53DA ”; and
 - (c) in paragraph (8) after “article 4(4A)” insert “ and (4B) ”.
- (25) In article 67 (activities carried on in the course of a profession or non-investment business) ^{M47}—
- (a) in paragraph (1) for “53C and 53D” substitute “ 53C, 53D and 53DA ”; and
 - (b) in paragraph (3) for “4(4) and (4A)” substitute “ 4(4), (4A) and (4B) ”.
- (26) In article 72 (overseas persons) ^{M48}—
- (a) in paragraph (5A) after “25A(1)(a),” insert “ 25A(2A), ”; and
 - (b) after paragraph (9) insert—
 - “(10) Paragraphs (5A) and (5C) do not apply where the overseas person is a mortgage intermediary whose home Member State is the United Kingdom.”.
- (27) In article 72G (local authorities) ^{M49}—
- (a) in paragraph (3)—
 - (i) for “25A” substitute “ 25A(1)(b), 25A(2) ”; and
 - (ii) omit “53A,” and “61,”;
 - (b) after paragraph (3) insert—
 - “(3A) There is excluded from article 25A(1)(b) and (2) any activity which is carried on by a company which is a wholly-owned subsidiary of a local authority.
 - (3B) There is excluded from articles 25A(1)(a) and (2A), 53A, 53DA and 61 any activity which is carried on by a local authority, or a company which is a wholly-owned subsidiary of a local authority, in so far as the contract is—
 - (a) of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;
 - (b) a bridging loan; or
 - (c) a restricted public loan in relation to which the requirements of paragraph (6) are met.”;
 - (c) for paragraph (4) substitute—
 - “(4) There is excluded from article 60B—

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- (a) any activity which is carried on by a local authority, the purpose of which is other than to acquire or retain property rights in land or in an existing or projected building, in so far as the credit agreement is of a kind to which the consumer credit directive does not apply by virtue of Article 2(2) of that directive;
- (b) any activity which is carried on by a local authority, the purpose of which is to acquire or retain property rights in land or in an existing or projected building, in so far as the credit agreement meets one of the following conditions—
 - (i) it is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;
 - (ii) it is a bridging loan; or
 - (iii) it is a restricted public loan in relation to which the requirements of paragraph (6) are met.”; and
- (d) after paragraph (5) insert—
 - “(6) The requirements of this paragraph are that—
 - (a) the borrower receives timely information on the main features, risks and costs of the loan at the pre-contractual stage; and
 - (b) any advertising of the loan is fair, clear and not misleading.
 - (7) In this article—
 - “bridging loan” has the meaning given by Article 4(23) of the mortgages directive;
 - “borrower” means a person receiving credit;
 - “consumer credit directive” means Directive [2008/48/EC](#) of the European Parliament and of the Council of 23rd April 2008 on credit agreements for consumers and repealing Council Directive [87/102/EC](#)^{M50};
 - “credit” includes a cash loan and any other form of financial accommodation;
 - “restricted public loan” means credit that is—
 - (a) offered to a particular class of borrower and not offered to the public generally;
 - (b) offered under an enactment with a general interest purpose; and
 - (c) provided on terms which are more favourable to the borrower than those prevailing on the market, because the credit meets one of the following conditions—
 - (i) it is interest free;
 - (ii) the rate of interest is lower than that prevailing on the market; or
 - (iii) the rate of interest is no higher than that prevailing on the market but the other terms on which the credit is provided are more favourable to the borrower; and
 - “wholly-owned subsidiary” has the same meaning as in section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006 ^{M51} and, for the purposes of this definition, a local authority is to be treated as a body corporate.”.
- (28) After article 72H (insolvency practitioners) ^{M52} insert—

“Registered consumer buy-to-let mortgage firms

72I.—(1) There is excluded from articles 25A, 36A, 53A, 53DA, 60B and 61 any consumer buy-to-let mortgage business carried on by a registered consumer buy-to-let mortgage firm.

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

Marginal Citations

- M32** Article 3 was amended by S.I. 2006/3384 and 2013/3115; there are other amendments to article 3 but none is relevant to this Order.
- M33** Article 4 was amended by S.I. 2003/1476, 2006/3384, 2009/1389, 2013/1773 and 1881 and 2014/1292.
- M34** Article 25A was inserted by S.I. 2003/1475.
- M35** Article 29 was amended by S.I. 2003/1476, 2006/2383 and 3384 and 2009/1342.
- M36** Article 36 was amended by S.I. 2002/1776, 2003/1475 and 1476, 2006/2383 and 3384, 2009/1342, 2013/1773 and 2014/366.
- M37** Article 36E was inserted by S.I. 2013/1881.
- M38** Article 36G was amended by S.I. 2013/1881 and amended by S.I. 2014/366.
- M39** Article 53D was inserted by S.I. 2009/1342.
- M40** Article 54 was amended by S.I. 2003/1475 and 1476, 2006/2383, 2009/1342 and 2013/472.
- M41** Article 54A was inserted by S.I. 2003/1475 and subsequently amended by S.I. 2006/2383 and 2009/1342.
- M42** Article 55 was amended by S.I. 2002/1776, 2003/1475 and 1476, 2006/2383, 2009/1342, 2013/1773 and 2014/366.
- M43** Chapter 14A (articles 60B to 60M) was inserted by S.I. 2013/1881. Articles 60C to 60G and 60K were subsequently amended by S.I. 2014/366.
- M44** Article 61 was amended by S.I. 2001/3544, 2005/2114, 2006/2383 and 2010/2960.
- M45** Article 63A was inserted by S.I. 2002/1776, substituted by S.I. 2003/1475 and subsequently amended by S.I. 2013/1773 and 2014/366.
- M46** Article 66 was amended by S.I. 2003/1475 and 1476, 2005/593, 2006/2383 and 3384, 2009/1342.
- M47** Article 67 was amended by S.I. 2001/3544, 2003/1475 and 1476, 2006/2383 and 3384 and 2009/1342.
- M48** Article 72 was amended by S.I. 2003/1475 and 1476, 2006/2383 and 3384, 2009/1342 and 2013/504.
- M49** Article 72G was inserted by S.I. 2014/366.
- M50** OJ L 133 22.5.2008, p.66.
- M51** 2006 c. 46.
- M52** Article 72H was inserted by S.I. 2014/366.

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

5.—(1) Paragraph 48 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001^{M53} is amended as follows.

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

(3) After sub-paragraph (1) insert—

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

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

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

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- (a) the borrower receives timely information on the main features, risks and costs of the loan at the pre-contractual stage; and
 - (b) any advertising of the loan is fair, clear and not misleading.”.
- (4) In sub-paragraph (2)—
- (a) omit paragraphs (d) (Scottish Homes) and (f) (Communities Scotland);
 - (b) after paragraph (g) insert—
 - “(h) except for the purposes of sub-paragraph (1)(a), the Scottish Ministers;
 - (i) except for the purposes of sub-paragraph (1)(a), the Welsh Ministers.”.
- (5) After sub-paragraph (2) insert—
- “(3) Except for the purposes of sub-paragraph (1)(a), “relevant housing body” also includes a wholly-owned subsidiary of a body listed in sub-paragraph (2)(a), (aa), (b), (ca), (h) or (i).
 - (4) In this paragraph—
 - “bridging loan” has the meaning given by Article 4(23) of the mortgages directive;
 - “borrower” means a person receiving credit;
 - “credit” includes a cash loan and any other form of financial accommodation;
 - “restricted public loan” means credit that is—
 - (a) offered to a particular class of borrower and not offered to the public generally;
 - (b) offered under an enactment with a general interest purpose; and
 - (c) provided on terms which are more favourable to the borrower than those prevailing on the market, because it meets one of the following conditions—
 - (i) it is interest free;
 - (ii) the rate of interest is lower than that prevailing on the market; or
 - (iii) the rate of interest is no higher than that prevailing on the market but the other terms on which credit is provided are more favourable to the borrower; and
 - “wholly-owned subsidiary” has the same meaning as in section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006 and, for the purposes of this definition, a relevant housing body is to be treated as a body corporate.”.

Marginal Citations

M53 [S.I. 2001/1201](#). Paragraph 48 of the Schedule was substituted by [S.I. 2003/1675](#) and subsequently amended by [S.I. 2005/592](#), 2006/2383, 2008/2831, 2009/1342, 2010/671, 2011/1626 and 2012/641 and 700.

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

6.—(1) The Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001 ^{M54} are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation) ^{M55}, after the definition of “relevant management company” insert—

““relevant mortgage intermediary” means a mortgage intermediary falling within paragraph 5(i) of Schedule 3 to the Act which is providing all or part of the credit intermediation activities set out in

Article 4(5) of the mortgages directive or which is providing advisory services (as defined in Article 4(21) of the mortgages directive) in the United Kingdom;”.

- (3) In regulation 2 (persons not to be regarded as relevant persons) ^{M56}—
- (a) after sub-paragraph (1)(d) omit “and”;
 - (b) after sub-paragraph (1)(e) insert—
“; and
 - (f) any relevant mortgage intermediary.”; and
 - (c) in paragraph (2) for “(b) and (c)” substitute “ (b), (c) and (f) ”.
- (4) In regulation 3 (persons who may elect to participate) ^{M57}—
- (a) after sub-paragraph (1)(c) omit “and”; and
 - (b) after sub-paragraph (1)(d) insert—
“; and
 - (e) any relevant mortgage intermediary which has established a branch in the United Kingdom in exercise of an EEA right and which is not an investment firm, a credit institution or an insurance intermediary.”.
- (5) In regulation 4 (persons in respect of whom inspection under section 224 does not apply) ^{M58}—
- (a) after paragraph (d) omit “and”; and
 - (b) after paragraph (e) insert—
“; and
 - (f) any relevant mortgage intermediary.”.

Marginal Citations

M54 S.I. 2001/1783.

M55 Regulation 1 was amended by S.I. 2003/1476 and 2066, 2011/1613 and 2013/1773 and 3115.

M56 Regulation 2 was amended by S.I. 2003/1476 and 2066, 2011/1613 and 2013/1773.

M57 Regulation 3 was amended by S.I. 2003/1476 and 2066 and 2013/1773.

M58 Regulation 4 was amended by S.I. 2003/1476 and 2066 and 2013/1773.

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

7.—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 ^{M59} are amended as follows.

- (2) In regulation 2(1) (descriptions of business for which appointed representatives are exempt) ^{M60}, after sub-paragraph (cc) insert—
“(cca) an activity of the kind specified by article 53DA of that Order (advising on regulated credit agreements for the acquisition of land);”.
- (3) In regulation 3(3) (requirements applying to contracts between authorised persons and appointed representatives) ^{M61}—
- (a) after sub-paragraph (a)(ii) omit “or”;
 - (b) in sub-paragraph (b)(ii) for “with other counterparties.” substitute—
“with other counterparties; or
 - (c) gives advice (in circumstances constituting the carrying on of an activity of the kind specified by article 53DA of that Order) which consists of the provision of

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personal recommendations to a person in respect of one or more transactions with other counterparties.”.

Marginal Citations

M59 S.I. 2001/1217.

M60 Regulation 2(1) was amended by S.I. 2001/2508, 2003/1475 and 1476, 2004/453 and 2737, 2006/2383, 2012/1906, 2013/1881 and 2014/206

M61 Regulation 3(3) was inserted by S.I. 2003/1475.

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

8.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001^{M62} are amended as follows.

(2) In regulation 2 (interpretation)^{M63}—

(a) after the definition of “markets in financial instruments directive information” insert—
““mortgages directive information” means confidential information received by the FCA or the PRA in the course of discharging its functions as a competent authority under the mortgages directive;”; and

(b) in the definition of “single market restrictions”, after paragraph (ga) insert—
“(gb) Articles 5(2) and 36 of the mortgages directive;”.

(3) In regulation 9 (disclosure by regulators or regulator workers to certain other persons)^{M64}—

(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.”.

Marginal Citations

M62 S.I. 2001/2188.

M63 In regulation 2 the definition of “markets in financial instruments directive information” was inserted by S.I. 2006/3413 and was subsequently amended by S.I. 2010/2628 and 2013/472 and 3115. The definition of “single market restrictions” was inserted by S.I. 2012/916 and was subsequently amended by S.I. 2013/504, 1773 and 3115. There are other amendments to regulation 2 but none is relevant to this Order.

M64 Regulation 9 was amended by S.I. 2003/693, 2004/3379, 2006/3413, 2007/3255, 2010/2628, 2011/1613, 2012/916, 2013/472, 504, 1773 and 3115.

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

9.—(1) The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001^{M65} are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)^{M66} 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)^{M67} 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)^{M68} 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)^{M69} 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 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

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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) ^{M70} insert—

“EEA mortgage 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 34(2) of the mortgages directive applies; and
- (b) the appropriate UK regulator has informed the home state regulator that it intends to direct that the qualification for authorisation given to the EEA mortgage intermediary under Schedule 3 is cancelled.

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

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

(7) After regulation 17A (full-scope UK AIFM: changes to branch details or services) ^{M71} insert—

“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.”.

Marginal Citations

- M65** S.I. 2001/2511.
- M66** Regulation 1(2) was amended by S.I. 2002/765, 2003/1473 and 2066, 2006/3385, 2007/763, 2011/99 and 2013/642.
- M67** Regulation 2 was amended by S.I. 2002/765, 2003/2066, 2004/1862, 2006/3385, 2011/99 and 2013/642, 1773, 1797 and 3115.
- M68** Regulation 3 was amended by S.I. 2003/1473 and 2066, 2004/1862, 2006/3385 and 2013/642, and 1773.
- M69** Regulation 7A was inserted by S.I. 2013/1773.
- M70** Regulation 9 was amended by S.I. 2013/642.
- M71** Regulation 17A was inserted by S.I. 2013/1773 and amended by S.I. 2013 1797.

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

10.—(1) The Financial Services and Markets Act 2000 (Gibraltar) Order 2001^{M72} is amended as follows.

- (2) In article 2 (exercise of deemed passport rights by Gibraltar-based firms)^{M73}—
- (a) after paragraph (3D) insert—
- “(3E) A Gibraltar-based firm falling within paragraph 5(i) of Schedule 3 is to be treated as having an entitlement, corresponding to its EEA right deriving from the mortgages directive, to establish a branch or provide services in the United Kingdom.”;
- (b) in paragraph (4)—
- (i) for “and (3D)” substitute “, (3D) and (3E) ”;
- (ii) for “and (h)” substitute “, (h) and (i) ”;
- (c) in paragraph (5) for “or (3D)” in both places that it appears substitute “, (3D) or (3E) ”;
- (d) in paragraph (7) for “or (3D)” substitute “, (3D) or (3E) ”; and
- (e) in paragraph (8)—
- (i) in sub-paragraph (a), for “section 194A(7) has” substitute “ sections 194A(7) and 194C(6)^{M74} have ”;
- (ii) in sub-paragraph (b), for “section 195A(11) is” substitute “ sections 195A(11) and 195B(10)^{M75} are ”.
- (3) In article 3 (EEA firms satisfying conditions under Gibraltar law)^{M76}, in paragraph (3) for “(7A)” substitute “ (7B) ”.

Marginal Citations

- M72** S.I. 2001/3084.
- M73** Article 2 was amended by S.I. 2005/1, 2006/1805, 2007/2932 and 3254, 2012/2017, 2013/472 and 3115 and 2014/1292.
- M74** Section 194C is inserted by this Order.
- M75** Section 195B is inserted by this Order.
- M76** Article 3 was amended by S.I. 2007/3254 and 2014/1292.

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The Consumer Credit (Disclosure of Information) Regulations 2004

11. In regulation 2 of the Consumer Credit (Disclosure of Information) Regulations 2004 ^{M77} (agreements to which these regulations apply), in sub-paragraph (1)(c) after “£60,260” insert “ other than residential renovation agreements ”.

Marginal Citations

M77 [S.I. 2004/1481](#). Regulation 2 was substituted by [S.I. 2010/1010](#), as amended by [S.I. 2011/1969](#).

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

12.—(1) Schedule 1 to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 ^{M78} is amended as follows.

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

“Advising on certain relevant consumer credit relating to land

10BAA. Advising a person is a controlled activity if the advice—

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

(3) In paragraph 28 (interpretation) for the definition of “relevant credit agreement” substitute—
““relevant credit agreement” means a credit agreement (within the meaning given by article 60B of the Regulated Activities Order) other than—

- (a) a regulated mortgage contract or a regulated home purchase plan (within the meaning of that Order); or
- (b) a buy-to-let mortgage contract as defined in article 4 of the Mortgage Credit Directive Order 2015;”.

Marginal Citations

M78 [S.I. 2005/1529](#). Paragraph 10BA was inserted by [S.I. 2013/1881](#) and amended by [S.I. 2014/366](#). In paragraph 28 the definition of “relevant credit agreement was inserted by [S.I. 2013/1881](#) and amended by [S.I. 2014/366](#).

The Consumer Credit (Disclosure of Information) Regulations 2010

13. In regulation 2 of the Consumer Credit (Disclosure of Information) Regulations 2010 ^{M79} (agreements to which these regulations apply), in sub-paragraphs (3)(a) and (4)(a) after “£60,260” insert “ unless it is a residential renovation agreement ”.

Marginal Citations

M79 [S.I. 2010/1013](#). Regulation 2 was amended by [S.I. 2013/1881](#).

The Consumer Credit (Agreements) Regulations 2010

14.—(1) The Consumer Credit (Agreements) Regulations 2010^{M80} are amended as follows.

(2) In regulation 2 (agreements to which these regulations apply)^{M81}, in sub-paragraph (3)(b) after “£60,260” insert “ other than a residential renovation agreement ”.

(3) In Schedule 1 (information to be included in regulated consumer credit agreements)^{M82}, in paragraph 25 in the second column after “£60,260” insert “ other than a residential renovation agreement ”.

Marginal Citations

M80 [S.I. 2010/1014](#).

M81 [Regulation 2](#) was amended by [S.I. 2010/1969](#) and 2013/1881.

M82 [Schedule 1](#) was amended by [S.I. 2010/1969](#), 2012/2798, 2013/1881 and 2014/366.

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

15.—(1) Article 58 (duration of interim permission) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013^{M83} is amended as follows.

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

(3) After paragraph (1) insert—

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

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

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

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

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

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

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

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

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

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

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

Marginal Citations

M83 S.I. 2013/1881. Article 58 was amended by S.I. 2014/208, 366, 506 and 2632.

SCHEDULE 2

Article 18

Requirements for registered consumer buy-to-let mortgage firms

Conditions applicable to creditors 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 creditor or credit intermediary must act honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers.

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

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

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

(4) When establishing and applying remuneration policies for their staff responsible for the assessment of creditworthiness, creditors must comply with the following principles in a way and to

the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities—

- (a) the remuneration policy must be consistent with and promote sound and effective risk management and must not encourage risk-taking that exceeds the level of tolerated risk of the creditor;
- (b) the remuneration policy must be in line with the business strategy, objectives, values and long-term interests of the creditor, and must incorporate measures to avoid conflicts of interest, in particular by providing that remuneration is not contingent on the number or proportion of applications accepted.

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

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

- (a) the manufacturing, offering or granting of consumer buy-to-let mortgage contracts,
- (b) acting as a credit intermediary in relation to consumer buy-to-let mortgage contracts, or
- (c) the provision of advisory services in respect of consumer buy-to-let mortgage contracts.

(2) The appropriate level of knowledge and competence referred to in sub-paragraph (1) must include at least—

- (a) appropriate knowledge of consumer buy-to-let mortgage contracts and the ancillary services typically offered with them;
- (b) appropriate knowledge of the laws relating to consumer buy-to-let mortgage contracts, in particular consumer protection;
- (c) appropriate knowledge and understanding of the process for purchasing land;
- (d) appropriate knowledge of security valuation;
- (e) appropriate knowledge of the organisation and functioning of land registers;
- (f) appropriate knowledge of the market in the United Kingdom for consumer buy-to-let mortgage business;
- (g) appropriate knowledge of business ethics standards;
- (h) appropriate knowledge of the consumer creditworthiness assessment process or, where applicable, competence in assessing consumers' creditworthiness; and
- (i) an appropriate level of financial and economic competency.

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*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 creditor must not offer or sell a consumer buy-to-let mortgage contract in a package with other distinct financial products or services where that mortgage contract is not made available to the borrower separately.

(2) A creditor may request the borrower or a related person to—

- (a) open or maintain a payment or savings account where the only purpose of such an account is to accumulate capital to repay the credit, to service the credit, to pool resources to obtain the credit, or to provide additional security for the creditor in the event of default;
- (b) purchase or keep an investment product or a private pension product, where such product which primarily offers the investor an income in retirement serves also to provide additional security for the creditor in the event of default or to accumulate capital to repay the credit, to service the credit or to pool resources to obtain the credit; or
- (c) conclude a separate [^{F2}buy-to-let mortgage contract] in conjunction with a shared-equity [^{F2}buy-to-let mortgage contract] to obtain the credit.

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

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

Textual Amendments

F2 Words in Sch. 2 para. 4(2)(c) substituted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), **8(1)(a)(2)**; 2020 c. 1, Sch. 5 para. 1(1)

General information

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

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

- (a) the name and address of the creditor;
- (b) the purposes for which the credit provided under the consumer buy-to-let mortgage contract may be used;
- (c) the form of any security, including, where applicable, the possibility for it to be located [^{F3}outside the United Kingdom];
- (d) the possible duration of the consumer buy-to-let mortgage contract;
- (e) the types of available borrowing rate, indicating whether fixed or variable or both, with a short description of the characteristics of a fixed and variable rate, including related implications for the borrower;

- (f) where foreign currency loans are available, an indication of the foreign currency or currencies, including an explanation of the implications for the borrower where the consumer buy-to-let mortgage contract is denominated in a foreign currency;
- (g) a representative example of the total amount of credit, the total cost of the credit to the borrower, the total amount payable by the borrower and the annual percentage rate of charge;
- (h) an indication of possible further costs not included in the total cost of the credit to the borrower, to be paid in connection with a consumer buy-to-let mortgage contract;
- (i) the range of different options available for reimbursing the credit to the creditor, including the number, frequency and amount of the regular repayment instalments;
- (j) where applicable, a clear and concise statement that compliance with the terms and conditions of the consumer buy-to-let mortgage contract does not guarantee repayment of the total amount of credit under that contract;
- (k) a description of the conditions directly relating to early repayment;
- (l) whether a valuation of the property is necessary and, where applicable, who is responsible for ensuring that the valuation is carried out, and whether any related costs arise for the borrower;
- (m) an indication of any ancillary services the borrower is obliged to acquire in order to obtain the consumer buy-to-let mortgage contract or to obtain it on the terms and conditions marketed and, where applicable, a clarification that the ancillary services may be purchased from a provider that is not the creditor; and
- (n) a general warning concerning possible consequences of non-compliance with the commitments linked to the consumer buy-to-let mortgage contract.

Textual Amendments

- F3** Words in Sch. 2 para. 5(2)(c) substituted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), 9; 2020 c. 1, Sch. 5 para. 1(1)

Pre-contractual information

6.—(1) A creditor and, where applicable, a credit intermediary must provide a borrower with a lending illustration on paper or another durable medium—

- (a) without undue delay after the borrower has given the necessary information on the borrower's needs, financial situation and preferences in accordance with paragraph 12; and
 - (b) in good time before the borrower is bound by any [^{F4}buy-to-let mortgage contract] or offer.
- (2) The lending illustration must include at least the following—
- (a) the name of the borrower;
 - (b) the date of issue of the lending illustration;
 - (c) the date until which the lending illustration remains valid;
 - (d) the name, address and telephone number of the creditor;
 - (e) where applicable, the name, address and telephone number of the credit intermediary;
 - (f) the amount of the loan required, including any charges added to the amount of the loan;
 - (g) the value of any property against which the loan is to be secured;
 - (h) the term of the consumer buy-to-let mortgage contract;

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- (i) a description of whether the consumer buy-to-let mortgage contract is to be provided on an interest-only basis, a repayment basis or a combination of the two;
- (j) the type of interest rate payable;
- (k) the interest rate payable including, if applicable, the initial interest rate and any reversionary rate;
- (l) the frequency and amount of each instalment and the number of instalments;
- (m) the overall cost of the consumer buy-to-let mortgage contract;
- (n) the annual percentage rate of charge;
- (o) where the [^{F5}buy-to-let mortgage contract] allows for variations in the interest rate, either—
 - (i) an illustration of how the annual percentage rate of charge might change in the event of an increase in the interest rate of 1%, and the resulting increase in the amount of each instalment; or
 - (ii) an additional annual percentage rate of charge which illustrates the possible risks for the borrower linked to a significant increase in the interest rate, including the possible increase in the amount of each instalment;
- (p) details of any early repayment charges;
- (q) a warning of the risk that interest rates may rise;
- (r) a warning of the risk that rental income may fall;
- (s) where applicable, a warning of the risk that the property may be repossessed if the borrower does not keep up with mortgage repayments;
- (t) where applicable, a warning of the risk of foreign currency loans; and
- (u) where it is an interest-only loan, a warning that the borrower will still owe the loan amount at the end of the term.

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

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

Textual Amendments

- F4** Words in Sch. 2 para. 6(1)(b) substituted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), **8(1)(a)(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Sch. 2 para. 6(2)(o) substituted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), **8(1)(a)(2)**; 2020 c. 1, Sch. 5 para. 1(1)

Information requirements concerning credit intermediaries

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

- (a) the name and address of the credit intermediary;
- (b) details of the register, the credit intermediary's registration number, where applicable, and the means for verifying such registration;
- (c) whether the credit intermediary is tied to or works exclusively for one or more creditors;

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- (d) if the credit intermediary is tied to or works exclusively for one or more creditors, the names of the creditors for which the credit intermediary is acting;
 - (e) if the credit intermediary meets the criteria set out in paragraph 13(5), a statement that the credit intermediary is independent;
 - (f) whether the credit intermediary offers advisory services;
 - (g) the fee, where applicable, payable by the borrower to the credit intermediary for its services or, where this is not possible, the method for calculating the fee;
 - (h) the procedures allowing borrowers or other interested parties to register complaints internally about credit intermediaries and, where appropriate, the means by which recourse to out-of-court complaint and redress procedures can be sought;
 - (i) where applicable, the existence of commissions or other inducements payable by the creditor or third parties to the credit intermediary for their services in relation to the contract; and
 - (j) either the amount of such commissions or other inducements or, where the amount is not known at the time of disclosure, a statement that the credit intermediary shall inform the borrower of the actual amount as part of the lending illustration referred to in paragraph 6.
- (2) Where the credit intermediary charges a fee to the borrower and additionally receives commission from the creditor or a third party, the credit intermediary must explain to the borrower whether or not the commission will be offset against the fee, either in part or in full.
- (3) The credit intermediary must inform the creditor of the fee, if any, payable by the borrower to the credit intermediary for its services.

Adequate explanations

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

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

Annual percentage rate of charge

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 paragraph 20.

Changes to legislation: There are currently no known outstanding effects for the
The Mortgage Credit Directive Order 2015. (See end of Document for details)

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

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

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

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

(6) In this paragraph—

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

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

“total cost of credit to the borrower” means all the costs which the borrower is required to pay in connection with the [F6buy-to-let mortgage contract] and which are known to the creditor, including the costs referred to in sub-paragraph (7) but excluding the costs referred to in sub-paragraph (8).

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

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

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

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

Textual Amendments

- F6** Words in Sch. 2 para. 9(6) substituted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), **8(1)(a)(2)**; 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

- C1** Sch. 2 para. 9(2)-(4): power to amend conferred (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), **14**; 2020 c. 1, Sch. 5 para. 1(1)

Creditworthiness assessment

Obligation to assess the creditworthiness of the borrower

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

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

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

(4) Where a creditor concludes a consumer buy-to-let mortgage contract with a borrower the creditor must not subsequently cancel or alter the contract to the detriment of the borrower on the grounds that the assessment of creditworthiness was incorrectly conducted, unless the borrower knowingly withheld or falsified information as described in paragraph 12.

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

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

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

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

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

Property valuation

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

Disclosure and verification of borrower information

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

- (a) any values provided to the creditor as part of its assessment of the property;
- (b) typical rental levels and rental demands within the property's locality;
- (c) the impact of future interest rate rises, rental voids and rental arrears and the ability of the borrower to meet payments should such pressures arise; and
- (d) typical letting costs.

(2) The information referred to in sub-paragraph (1) may include information obtained by the creditor from relevant internal or external sources, including one or more of the following—

- (a) the borrower;
- (b) any credit intermediary or [^{F7}relevant person] which obtained information during the credit application process; and
- (c) a calculation developed by the creditor to demonstrate that the estimated rental income from the property will exceed the interest payments due by an amount sufficient to cover the estimated other costs associated with the property and its rental.

(3) The information referred to in sub-paragraph (1) must be appropriately verified through reference to independently verifiable documentation when necessary.

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

(5) A creditor must specify in a clear and straightforward way at the pre-contractual phase the necessary information and independently verifiable evidence that the borrower needs to provide and the timeframe within which the borrower needs to provide the information.

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

(7) A creditor may seek clarification of the information received in response to a request for information referred to in sub-paragraph (5) where necessary to enable the assessment of creditworthiness.

(8) A creditor must not terminate a consumer buy-to-let mortgage contract on the grounds that the information provided by the borrower before the conclusion of the contract was incomplete, unless the borrower knowingly withheld or falsified the information.

(9) The creditor or credit intermediary must inform the borrower of the need to provide correct and complete information in response to a request referred to in sub-paragraph (5) and must warn the borrower that, where the creditor is unable to carry out an assessment of creditworthiness because the borrower chooses not to provide the information or verification necessary for an assessment of creditworthiness, the credit cannot be granted.

Textual Amendments

- F7** Words in Sch. 2 para. 12(2)(b) substituted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), **10**; 2020 c. 1, Sch. 5 para. 1(1)

Advisory services

Standards for advisory services

13.—(1) A creditor or credit intermediary must explicitly inform the borrower, in the context of a given transaction, whether advisory services are being or can be provided to the borrower.

(2) Before the provision of advisory services or, where applicable, the conclusion of a contract for the provision of advisory services, the creditor or credit intermediary must provide the borrower with the following information on paper or another durable medium—

- (a) whether the recommendation will be based on a consideration of only the creditor's or the credit intermediary's own product range or a consideration of a wide range of products from across the market; and
- (b) where applicable, the fee payable by the borrower for the advisory services or, where the amount cannot be ascertained at the time of disclosure, the method used for its calculation.

(3) The information referred to in sub-paragraph (2) may be provided to the borrower as part of the lending illustration under paragraph 6.

(4) Where a creditor or credit intermediary provides advisory services to a borrower, the creditor or credit intermediary must—

- (a) obtain the necessary information regarding the borrower's personal and financial situation, preferences and objectives so as to enable the recommendation of suitable consumer buy-to-let mortgage contracts;
- (b) base its recommendation on information that is up-to-date and takes into account reasonable assumptions as to risks to the borrower's situation over the term of the proposed agreement, including information on the typical rental levels and rental demands within the property's locality, the impact of future interest rate rises, rental voids, and rental arrears and typical letting costs;
- (c) act in the best interests of the borrower by—
 - (i) informing itself about the borrower's needs and circumstances; and
 - (ii) recommending suitable mortgages in accordance with paragraphs (a) and (b); and
- (d) give the borrower a record on paper or another durable medium of the recommendation provided.

(5) A creditor or credit intermediary must not use the term “independent advice” or “independent advisor” in the course of providing advisory services unless—

- (a) the creditor or credit intermediary considers a sufficiently large number of [^{F8}buy-to-let mortgage contracts] available on the market; and
- (b) if the number of creditors considered is less than a majority of the market, the creditor or credit intermediary is not remunerated for those advisory services by one or more creditors.

Textual Amendments

- F8** Words in Sch. 2 para. 13(5)(a) substituted (31.12.2020) by The Mortgage Credit (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/656), regs. 1(2), 8(1)(b)(2); 2020 c. 1, Sch. 5 para. 1(1)

Foreign currency loans and variable rate loans

Foreign currency loans

14.—^[F9](1) Where a borrower enters into a buy-to-let mortgage contract that is a foreign currency loan—

- (a) either the borrower must have a right to convert the contract into an alternative currency if conditions specified by the creditor are met, or the creditor must put in place other arrangements to limit the exchange risk to which the borrower is exposed under the contract; and
- (b) if sub-paragraph (4) applies, the creditor must give the borrower, on a regular basis, foreign currency risk warnings.]

(2) The creditor may specify the alternative currency referred to in sub-paragraph (1)(a), but it must be either—

- (a) the currency in which the borrower primarily receives income or holds assets from which the credit is to be repaid, as indicated at the time the most recent creditworthiness assessment in relation to the contract was made; or

^[F10](b) pounds sterling.]

(3) Where a borrower has a right to convert the contract into an alternative currency in accordance with sub-paragraph (1)(a), the exchange rate at which the conversion is carried out must be the market exchange rate applicable on the day of application for conversion, unless otherwise specified in the contract.

(4) This sub-paragraph applies if the value of—

- (a) the total amount payable by the borrower which remains outstanding; or
- (b) the regular instalments,

varies by more than 20% from what it would be if the exchange rate between the currency of the contract and sterling applicable at the time of the conclusion of the contract were applied.

(5) In this paragraph “foreign currency risk warning” means a warning, on paper or on another durable medium—

- (a) informing the borrower of a rise in the total amount payable by the borrower;
- (b) setting out, where applicable, the borrower's right to convert to an alternative currency and the conditions for doing so; and
- (c) explaining any other applicable mechanism for limiting the exchange rate risk to which the borrower is exposed.

Textual Amendments

F9 Sch. 2 para. 14(1) substituted (20.9.2015) by [The Mortgage Credit Directive \(Amendment\) Order 2015](#) (S.I. 2015/1557), arts. 1(2), **2(6)**

F10 Sch. 2 para. 14(2)(b) substituted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/656), regs. 1(2), **11**; 2020 c. 1, Sch. 5 para. 1(1)

Variable rate credits

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

- (a) make any indexes or reference rates used to calculate the borrowing rate clear, accessible, objective and verifiable by the borrower and the FCA; and

- (b) maintain historical records of indexes used by the creditor for calculating the borrowing rates.

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

Early repayment

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

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

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

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

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

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

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

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

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

Flexible and reliable markets

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

Information concerning changes in the borrowing rate

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

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

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

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

Arrears and possession

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

(2) Any charges that the creditor imposes on the borrower arising from the borrower's default must be no greater than is necessary to compensate the creditor for costs incurred by the creditor as a result of the default.

(3) Where the price obtained for the secured property affects the amount owed by the borrower under the contract, the creditor must take all reasonable steps to obtain the best possible price for the secured property.

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

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,

$$C_k$$

$$t_k$$

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

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

$$D_1$$

$$S_1$$

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,

$$C_k$$

$$t_k$$

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

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

$$D_1$$

$$S_1$$

- (2) The following remarks apply to the equation set out in sub-paragraph (1)—
- (a) the amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals;
 - (b) the starting date must be that of the first drawdown;
 - (c) intervals between dates used in the calculation must be expressed in years or in fractions of a year, where—
 - (i) a year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months; and
 - (ii) an equal month is presumed to have 30.41666 days regardless of whether or not it is a leap year;

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The Mortgage Credit Directive Order 2015. (See end of Document for details)

- (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 (

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

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.

Modifications etc. (not altering text)

C2 Sch. 2 para. 20(2): power to amend conferred (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), 14; 2020 c. 1, Sch. 5 para. 1(1)

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 borrower freedom of drawdown, the total amount of credit must be deemed to be drawn down immediately and in full.

(3) If a consumer buy-to-let mortgage contract provides different ways of drawdown with different charges or borrowing rates, the total amount of credit must be deemed to be drawn down at the highest charge and borrowing rate applied to the most common drawdown mechanism for this type of contract.

(4) If a consumer buy-to-let mortgage contract gives the borrower freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time, the amount of credit must be deemed to be drawn down on the earliest date provided for in the contract and in accordance with those drawdown limits.

(5) If different borrowing rates and charges are offered for a limited period or amount, the highest borrowing rate and charges must be deemed to be the borrowing rate and charges for the whole duration of the contract.

(6) For consumer buy-to-let mortgage contracts for which a fixed rate borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator or internal reference rate the calculation of the annual percentage rate of charge must be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculation of the annual percentage rate of charge, based on the value of the agreed indicator or internal reference rate at that time, but is not less than the fixed borrowing rate.

(7) If the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be—

- (a) in the case of [F¹¹buy-to-let mortgage contracts], 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 [F¹¹buy-to-let mortgage contracts] other than overdrafts, bridging loans, shared equity [F¹¹buy-to-let mortgage contracts], contingent liabilities or guarantees and open-ended [F¹¹buy-to-let mortgage contracts] as referred to in the assumptions set out in sub-paragraphs (10), (11), (12), (16) and (17)—

- (a) if the date or amount of a repayment of capital to be made by the borrower cannot be ascertained, it must be assumed that the repayment is made at the earliest date provided for in the [F¹²buy-to-let mortgage contract] and is for the lowest amount for which the [F¹¹buy-to-let mortgage contract] provides; and
- (b) if the interval between the date of initial drawdown and the date of the first payment to be made by the borrower cannot be ascertained, it must be assumed to be the shortest interval.

(9) Where the date or amount of a payment to be made by the borrower cannot be ascertained on the basis of the [F¹²buy-to-let mortgage contract] or the assumptions set out in sub-paragraphs (8), (10), (11), (12), (16) and (17) it must be assumed that the payment is made in accordance with the dates and conditions required by the creditor and, when these are unknown—

- (a) interest charges are paid together with the repayment of the capital;
- (b) non-interest charges expressed as a single sum are paid at the date of the conclusion of the [F¹²buy-to-let mortgage contract];
- (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 [F¹²buy-to-let mortgage contract] 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 [F¹²buy-to-let mortgage contract] and, if the duration of the [F¹²buy-to-let mortgage contract] 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 [F¹²buy-to-let mortgage contract], other than an overdraft facility and bridging loan, it must be assumed that—

- (a) for [F¹¹buy-to-let mortgage contracts] the purpose of which is to acquire or retain rights in immovable property, the credit is provided for a period of 20 years starting from the date

of the initial drawdown, and the final payment made by the borrower clears the balance of capital, interest and other charges, if any;

- (b) for [F11buy-to-let mortgage contracts] the purpose of which is not to acquire or retain rights in immovable property or which are drawn down by deferred debit cards or credit cards, the credit is provided for a period of 1 year starting from the date of the initial drawdown;
- (c) unless sub-paragraph (13) applies, the capital is repaid by the borrower in equal monthly payments, commencing one month after the date of the initial drawdown.

(13) This sub-paragraph applies in cases where the capital must be repaid only in full, in a single payment, within each payment period.

(14) If sub-paragraph (13) applies—

- (a) successive drawdowns and repayments of the entire capital by the borrower must be assumed to occur over the period of one year; and
- (b) interest and other charges must be applied in accordance with those drawdowns and repayments of capital and as provided for in the [F12buy-to-let mortgage contract].

(15) For the purposes of sub-paragraph (12), an open-ended [F12buy-to-let mortgage contract] is a [F12buy-to-let mortgage contract] 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 [F12buy-to-let mortgage contract] being the potential source of the contingent liability or guarantee; or
- (b) in the case of a rolling [F12buy-to-let mortgage contract] at the end of the initial period prior to the rollover of the agreement.

(17) In the case of a shared equity [F12buy-to-let mortgage contract]—

- (a) the payments by borrowers must be deemed to occur at the latest date or dates permitted under the [F12buy-to-let mortgage contract]; and
- (b) percentage increases in value of the immovable property which secures the shared equity [F12buy-to-let mortgage contract], and the rate of any inflation index referred to in [F13the contract], shall be assumed to be a percentage equal to the higher of the current [F14Bank of England] target inflation rate or the level of inflation rate in [F15the United Kingdom] at the time of conclusion of the [F12buy-to-let mortgage contract] or 0% if those percentages are negative.

[F16(18) In this paragraph “total amount of credit” has the meaning given in paragraph 9(6).]

Textual Amendments

- F11** Words in Sch. 2 para. 21 substituted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), **8(1)(b)(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in Sch. 2 para. 21 substituted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), **8(1)(a)(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in Sch. 2 para. 21(17)(b) substituted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), **8(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F14** Words in Sch. 2 para. 21(17) substituted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), **12(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F15** Words in Sch. 2 para. 21(17) substituted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), **12(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: There are currently no known outstanding effects for the
The Mortgage Credit Directive Order 2015. (See end of Document for details)

F16 Sch. 2 para. 21(18) inserted (31.12.2020) by The Mortgage Credit (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/656), regs. 1(2), **12(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C3 Sch. 2 para. 21: power to amend conferred (31.12.2020) by The Mortgage Credit (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/656), regs. 1(2), **14**; 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation:

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