

EXPLANATORY MEMORANDUM TO

THE CONSUMER CREDIT (EXEMPT AGREEMENTS) (AMENDMENT) ORDER 2008

2008 No. 645

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

2. Description

This Order amends the Consumer Credit (Exempt Agreements) Order 1989. It includes the Urban Regeneration Agency in the list of bodies in Part II of Schedule 1 to that Order, so that credit agreements entered into by the Agency under the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act) for the purpose of assisting first time buyers to purchase residential property are exempt from regulation under the Consumer Credit Act 1974 (the 1974 Act).

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Background

Section 16 of the 1974 Act provides that the Act shall not regulate consumer credit agreements where the creditor is a local authority or a body falling within one of the categories set out in section 16(1) and specified in an order made by the Secretary of State. One of the categories set out in section 16(1) is a body corporate named or specifically referred to in any public general Act (see section 16(1)(f)). The Urban Regeneration Agency satisfies this criterion, being a body corporate named in the 1993 Act. Under section 16(4) an exemption in relation to a particular body may be limited so as to apply only to agreements by the body of a specified description.

The Consumer Credit (Exempt Agreements) Order 1989 (S.I 1989/869) exempts certain types of consumer credit agreements from the scope of the 1974 Act. These include a qualified exemption for organisations entering into agreements secured by mortgages where the lenders are named bodies in the 1989 Order. One body that already has a named exemption for certain agreements that it enters into is the Commission for New Towns who, like the Urban Regeneration Agency, form part of English Partnerships.

5. Territorial Extent and Application

This instrument applies to the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The exemption will be in respect of consumer credit agreements entered into by the Urban Regeneration Agency (URA) in connection with the First Time Buyers Initiative, a scheme operated by English Partnerships on behalf of the Department for Communities and Local Government to help lower income earners own their own homes. Under the scheme, the URA, who are part of English Partnerships, provides financial assistance to first time buyers. The assistance is primarily in the form of a grant to the developer of the property which is being bought but on which the first time buyer pays a charge to the URA. The URA retains an interest in the property and is entitled to a share of future proceeds when it is re-sold.

7.2 The nature of the arrangements are such that they would fall within the scope of the Consumer Credit Act 1974 (the 1974 Act) as amended by the Consumer Credit Act 2006 (the 2006 Act), but for the fact that currently the 1974 Act does not apply to agreements where the amount of credit exceeds £25,000 – all URA agreements are for sums above that amount. However, with effect from 6th April 2008 this ceiling will be removed by virtue of a provision in the 2006 Act, with the result that agreements entered into by the URA will become subject to the 1974 Act unless granted an exemption. Accordingly it is proposed to include the URA as a named body under the 1989 Exemption Order to bring them on a par with the exemption that already exists for the Commission for New Towns.

8. Impact

8.1 The exemption will not impact upon the wider consumer credit community and an Impact Assessment has therefore not been prepared for this instrument. However, if the exemption is not in place by 6 April 2008, then the FTBI scheme will require wholesale amendment so as to ensure that credit agreements entered into in connection with it comply with the 1974 Act. This will have a number of implications, including the amendment of all current credit documentation used in the FTBI scheme to ensure compliance with the 1974 Act. A new credit agreement which complies with the Act would have to be used for all subsequent FTBI home purchases and other procedures put in place to ensure compliance by the URA with the 1974 Act.

8.2 If the requirements of the Act are not complied with then the credit agreements entered into by the URA will be seen as improperly executed. This would mean that the agreements would only be enforceable by obtaining a court order. Furthermore, transitional arrangements would need to be put in place in relation to those transactions where exchanges with individual buyers have been effected prior to 6 April 2008 but contractual completions will not occur until after that date. All of this would be particularly onerous for the URA and would cause major disruption to the scheme at a time when there is uncertainty in the housing market and first-time buyers are key to the market continuing to operate.

8.3 In coming to the decision to grant the named exemption, BERR consulted with OGDs, industry representative groups and housing organisations. All of the responses were in favour of granting the exemption and no-one considered that the granting of such an exemption would have a significantly adverse impact on the consumers participating in the scheme.

9. Contact

Iain Adlington at the Department for Business, Enterprise and Regulatory Reform - Tel: 0207 215 3806 or e-mail: iain.adlington@berr.gsi.gov.uk