

STATUTORY INSTRUMENTS

2015 No. 910

The Mortgage Credit Directive Order 2015

PART 4

Transitional Provisions

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

27.—(1) Any person who immediately before 21st March 2016 had permission under Part 4A of the Act to carry on an activity of the kind specified by article 25A, 36A, [^{F1}53A,] 60B or 61 of the Regulated Activities Order is, from 21st March 2016, to be treated as having a Part 4A permission to carry on an activity of the kind specified by that article of the Regulated Activities Order as amended by this Order.

(2) Paragraph (1) does not affect the ability of the FCA or the PRA to vary or cancel a Part 4A permission under the Act.

F1 Word in art. 27(1) inserted (20.9.2015) by [The Mortgage Credit Directive \(Amendment\) Order 2015 \(S.I. 2015/1557\)](#), arts. 1(2), **2(3)**

Transitional provision: agreements before 21st March 2016

[^{F2}**28.** Where a credit agreement is entered into before 21st March 2016 and a further agreement relating to the same credit is to be entered into before the borrower is to be entitled to the credit, the following enactments do not apply to the agreements until immediately after the later agreement has been entered into—

- (a) this Order;
- (b) paragraphs (3) to (5) of article 2 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.3) Order 2015; and
- (c) articles 2(3), (4), (7), (8), (10)(b), (11), (12), (14) to (16) and (18) to (21), 3, 4 and 6(4) and (5) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016.]

F2 Art. 28 substituted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2016 \(S.I. 2016/392\)](#), art. 1(2)(3)(c), **8(4)** (with Pt. 5)

Transitional provision: consumer credit back book mortgage contracts

29.—(1) This article applies to a consumer credit back book mortgage contract [^{F3}other than one in relation to which the Consumer Credit Act 1974 applies as described in article 31(2)] .

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(2) If the contract would be enforceable against the borrower only on an order of the court as a result of the application of any provision of the Consumer Credit Act 1974 ^{F4} specified in paragraph (3), but for the amendments to legislation made by this Order, the contract is enforceable against the borrower only on an order of the court, and section 127 of the Consumer Credit Act 1974 (enforcement orders in cases of infringement) ^{F5} applies in respect of the contract.

(3) The provisions of the Consumer Credit Act 1974 specified by this paragraph are—

- (a) section 55(2) (disclosure of information) ^{F6},
- (b) section 61B(3) (duty to supply copy of overdraft agreement) ^{F7},
- (c) section 65(1) (improperly executed agreements),
- (d) section 105(7)(a) or (b) (improperly executed security instruments),
- (e) section 111(2) (failure to serve copy of notice on surety).

(4) If the contract would be void, or part of the contract would be void, as a result of the application of section 56(3) of the Consumer Credit Act 1974 (antecedent negotiations), but for the amendments to legislation made by this Order, the contract, or that part of the contract, is void.

(5) If a creditor would not be entitled to enforce a contract as a result of a failure to comply with a provision of the Consumer Credit Act 1974 specified in paragraph (6) but for the amendments to legislation made by this Order, then for the purposes only of correcting the failure to comply with the relevant provision of the Consumer Credit Act 1974, the contract is treated as if it were a regulated agreement and the creditor may enforce the contract only if the creditor has corrected the failure to comply.

(6) The provisions of the Consumer Credit Act 1974 specified in this paragraph are—

- (a) section 77(1) (duty to give information to debtor under fixed-sum credit agreement) ^{F8},
- (b) section 77A(1) (statements to be provided in relation to fixed-sum credit agreements) ^{F9},
- (c) section 78(1) (duty to give information to debtor under running-account credit agreement) ^{F10},
- (d) section 85(1) (duty on issue of new credit-tokens),
- (e) section 97(1) (duty to give information about early repayment) ^{F11}.

(7) If a creditor would not be entitled to enforce a contract because a period of non-compliance applies to the contract under section 86D of the Consumer Credit Act 1974 (failure to give notice of sums in arrears) ^{F12}, but for the amendments to legislation made by this Order, then for the purposes only of bringing the period of non-compliance to an end, the contract is treated as if it were a regulated agreement and the creditor may enforce the contract only if the period of non-compliance has ended.

(8) If a creditor would not be entitled to enforce a contract because section 86E(5) of the Consumer Credit Act 1974 (notice of default sums) ^{F13} applies, but for the amendments to legislation made by this Order, then the creditor may enforce the contract only if the creditor has given the notice required by section 86E to the borrower.

(9) If a creditor would not be entitled to enforce the security provided in relation to a contract as a result of a failure to comply with a provision of the Consumer Credit Act 1974 specified in paragraph (10) but for the amendments to legislation made by this Order, then for the purposes only of correcting the failure to comply with the relevant provision of the Consumer Credit Act 1974, the contract is treated as if it were a regulated agreement and the creditor may enforce the security only if the creditor has corrected the failure to comply.

(10) The provisions of the Consumer Credit Act 1974 specified in this paragraph are—

- (a) section 107(1) (duty to give information to surety under fixed-sum credit agreement) ^{F14},

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- (b) section 108(1) (duty to give information to surety under running-account credit agreement)^{F15},
 - (c) section 110(1) (duty to give information to debtor or hirer)^{F16}.
- (11) The following provisions of the Consumer Credit Act 1974 and regulations made under those provisions apply in respect of the contract as if the contract were a regulated agreement—
- (a) section 93 (interest not to be increased on default)^{F17},
 - (b) section 94 (right to complete payments ahead of time)^{F18},
 - (c) section 95 (rebate on early settlement)^{F19}.
- (12) Sections 140A to 140C of the Consumer Credit Act 1974 (unfair relationships)^{F20} apply to the contract as if section 140A(5) were omitted.
- (13) In this article “regulated agreement” means a regulated agreement within the meaning of section 8(3) of the Consumer Credit Act 1974^{F21}.

- F3** Words in [art. 29\(1\)](#) inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2016 \(S.I. 2016/392\)](#), [art. 1\(2\)\(3\)\(c\)](#), [8\(5\)](#) (with Pt. 5)
- F4** [1974 c.39](#).
- F5** Section 127 was amended by Schedule 4 to the [Consumer Credit Act 2006 \(c. 14\)](#) and by [S.I. 2010/1010](#).
- F6** Section 55(2) was substituted by [S.I. 2010/1010](#).
- F7** Section 61B was inserted by [S.I. 2010/1010](#).
- F8** Section 77(1) was amended by [S.I. 1998/997](#).
- F9** Section 77A(1) was inserted by section 6 of the [Consumer Credit Act 2006 \(c. 14\)](#) and subsequently substituted by [S.I. 2008/2826](#).
- F10** Section 78(1) was amended by [S.I. 1998/997](#).
- F11** Section 97(1) was amended by [S.I. 2010/1010](#).
- F12** Section 86D was inserted by section 11 of the Consumer Credit Act 2006.
- F13** Section 86E was inserted by section 12 of the Consumer Credit Act 2006.
- F14** Section 107 was amended by [S.I. 1998/997](#) and [S.I. 2008/1277](#).
- F15** Section 108 was amended by [S.I. 1998/997](#) and [S.I. 2008/1277](#).
- F16** Section 110 was amended by [S.I. 1998/997](#) and [S.I. 2008/1277](#).
- F17** Section 93 was amended by [S.I. 2013/1881](#).
- F18** Section 94 was amended by section 29 of the [Energy Act 2011 \(c. 16\)](#) and by [S.I. 2010/1010](#).
- F19** Section 95 was amended by [S.I. 2010/1010](#).
- F20** Sections 140A to 140C were inserted by sections 19 to 21 of the [Consumer Credit Act 2006 \(c. 14\)](#) and subsequently amended by [S.I. 2013/1881](#).
- F21** Section 8(3) was substituted by [S.I. 2013/1881](#).

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

30.—(1) A creditor or credit intermediary who is engaged in consumer buy-to-let mortgage business before 20th March 2014 is not required to comply with paragraph 3 of Schedule 2 (knowledge and competence requirements for staff) until 21st March 2017.

(2) In this article, the terms “creditor”, “credit intermediary” and “consumer buy-to-let mortgage business” have the meanings set out in article 4.

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Transitional provision: person subject to the Consumer Credit Act 1974 who chooses to adopt new rules before 21st March 2016

31.—(1) Paragraph (2) applies in relation to an agreement or proposed agreement where—

- (a) if made before 21st March 2016, the agreement would be a regulated consumer credit agreement;
- (b) if made on or after 21st March 2016, the agreement would not be a regulated consumer credit agreement;
- (c) [^{F22}neither the creditor nor any credit-broker has] acted in compliance or in purported compliance with any provision of [^{F23}Part 5] of the Consumer Credit Act 1974, or regulations made under that Part, in relation to the agreement or proposed agreement; and
- (d) before 21st March 2016, the creditor [^{F24}or any credit-broker] acts in compliance or in purported compliance with rules made by the FCA that would apply in relation to the agreement or proposed agreement from 21st March 2016.

(2) From the date on which the creditor [^{F25}or any credit-broker] first acts in compliance or purported compliance with such rules, the Consumer Credit Act 1974 applies in relation to the agreement or proposed agreement as if the amendments to legislation made by paragraphs 2 and 4 of Schedule 1 (amendments to the Consumer Credit Act 1974 and the Regulated Activities Order) had come into force.

(3) In this article—

[^{F26}“credit-broker” has the meaning given in section 189(1) of the Consumer Credit Act 1974;]
 “creditor” means a creditor within the meaning of section 8(1) of the Consumer Credit Act 1974 ^{F27}; and
 “regulated consumer credit agreement” means a regulated agreement within the meaning of section 8(3) of the Consumer Credit Act 1974.

- F22** Words in art. 31(1)(c) substituted (20.9.2015) by [The Mortgage Credit Directive \(Amendment\) Order 2015 \(S.I. 2015/1557\)](#), arts. 1(2), **2(4)(a)(i)**
- F23** Words in art. 31(1)(c) substituted (20.9.2015) by [The Mortgage Credit Directive \(Amendment\) Order 2015 \(S.I. 2015/1557\)](#), arts. 1(2), **2(4)(a)(ii)**
- F24** Words in art. 31(1)(d) inserted (20.9.2015) by [The Mortgage Credit Directive \(Amendment\) Order 2015 \(S.I. 2015/1557\)](#), arts. 1(2), **2(4)(b)**
- F25** Words in art. 31(2) inserted (20.9.2015) by [The Mortgage Credit Directive \(Amendment\) Order 2015 \(S.I. 2015/1557\)](#), arts. 1(2), **2(4)(b)**
- F26** Words in art. 31(3) inserted (20.9.2015) by [The Mortgage Credit Directive \(Amendment\) Order 2015 \(S.I. 2015/1557\)](#), arts. 1(2), **2(4)(c)**
- F27** Section 8(1) was amended by section 2 of the Consumer Credit Act 2006.

[^{F28}Transitional provision: first charge mortgages entered into before 31st October 2004 which are regulated credit agreements immediately before 21st March 2016

31A.—(1) This article applies to an agreement—

- (a) entered into before 31st October 2004,
- (b) which is a consumer credit back book mortgage contract, and
- (d) under which the mortgage securing the borrower’s obligation to repay is a first charge mortgage.

(2) Until the relevant date—

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- (a) the agreement continues to be a regulated credit agreement within the meaning of article 60B(3) of the Regulated Activities Order,
 - (b) making arrangements for a person to vary the terms of the agreement is not a regulated activity pursuant to article 25A(1) of the Regulated Activities Order,
 - (c) advising a person on the merits of varying the terms of the agreement is not a regulated activity pursuant to article 53A(1) of the Regulated Activities Order,
 - (d) administering the agreement is not a regulated activity pursuant to article 61(2)(b) of the Regulated Activities Order,
 - (e) the agreement continues to be a regulated agreement within the meaning of section 8(1) of the Consumer Credit Act 1974, and
 - (f) article 29 (transitional provision: consumer credit back book mortgage contracts) does not apply to the agreement.
- (3) Article 60C(2)(c) of the Regulated Activities Order applies to the agreement as if the reference to 21st March 2016 were a reference to the relevant date.
- (4) In this article “the relevant date” means the earlier of—
- (a) the date on which the lender first acts in respect of the agreement in compliance or purported compliance with rules made by the FCA which apply to regulated mortgage contracts and which are different from rules made by the FCA which apply to regulated credit agreements;
 - (b) the date which the lender notifies in writing to the borrower as being the date from which the lender will act in respect of the agreement in compliance with rules made by the FCA which apply to regulated mortgage contracts; or
 - (c) 21st March 2017.]

F28 Art. 31A inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), 8(6) (with Pt. 5)

FCA power to direct timing of applications for permission and registration

- 32.**—(1) This article applies to an application made before 21st September 2015 for—
- (a) a Part 4A permission or a variation of a Part 4A permission in relation to an activity of the kind specified by—
 - (i) article 53A ^{F29} of the Regulated Activities Order (advising on regulated mortgage contracts),
 - (ii) article 25A ^{F30} (arranging regulated mortgage contracts) or 61 ^{F31} (entering into and administering regulated mortgage contracts) of the Regulated Activities Order as amended by this Order, or
 - (iii) article 53DA of the Regulated Activities Order (advising on regulated credit agreements for the acquisition of land) as inserted by this Order; or
 - (b) entry on the register of consumer buy-to-let mortgage firms under article 8 of this Order (register of consumer buy-to-let mortgage firms).
- (2) The application may not be made before such date (“the opening date”) as the FCA may direct.
- (3) Directions given under paragraph (2) may—
- (a) relate to different categories of applications;
 - (b) set different opening dates for different categories of applications;

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- (c) be amended by the FCA by further direction.
- (4) An application made before the opening date is to be treated as if it had not been made.

F29 Article 53A was inserted by [S.I. 2003/1475](#).

F30 Article 25A was inserted by [S.I. 2003/1475](#).

F31 Article 61 was amended by [S.I. 2001/3544](#), 2005/2114, 2006/2383 and 2010/2960.

Changes to legislation:

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- Order revoked by [2023 c. 29 Sch. 1 Pt. 2](#)