
STATUTORY INSTRUMENTS

2019 No. 632

The Financial Services and Markets Act 2000
(Amendment) (EU Exit) Regulations 2019

PART 2

Amendments to the Act

CHAPTER 17

Part 29 of the Act: interpretation of the Act

Mortgage agreements etc

89. After section 423 insert—

“Mortgage agreements etc

423A.—(1) In this Act—

“mortgage agreement” means an agreement to which subsection (2) applies, but to which subsection (3) does not apply, under which a mortgage creditor grants or promises to grant, to a consumer, a credit in the form of a deferred payment, loan or other similar financial accommodation;

“mortgage creditor” means a person who grants or promises to grant—

- (a) in the course of the person’s trade, business or profession, and
- (b) under an agreement to which subsection (2) applies but to which subsection (3) does not apply,

credit in the form of a deferred payment, loan or other similar financial accommodation;

“mortgage intermediary” means a person who, in the course of the person’s trade, business or profession, and acting neither as a mortgage creditor or notary nor in an introductory capacity, does any of the following for any agreed form of financial consideration—

- (a) presenting or offering mortgage agreements to consumers;
- (b) assisting consumers by undertaking preparatory work or other pre-contractual administration in respect of mortgage agreements (otherwise than as referred to in paragraph (a));
- (c) concluding mortgage agreements with consumers on behalf of mortgage creditors;

“tied mortgage intermediary” means a mortgage intermediary who acts on behalf of and under the full and unconditional responsibility of—

- (a) only one mortgage creditor,

- (b) only one group of mortgage creditors, or
 - (c) a number of mortgage creditors or groups of mortgage creditors which does not represent the majority of the market.
- (2) This subsection applies to the following agreements—
- (a) an agreement secured by a mortgage on, or (in Scotland) a heritable security over, residential immovable property, or by any other charge or right over or related to such property;
 - (b) an agreement the purpose of which is to acquire or retain property rights in land or in an existing or projected building.
- (3) This subsection applies to the following agreements—
- (a) an agreement under which the creditor—
 - (i) contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the future sale of a residential immovable property or a right relating to residential immovable property, and
 - (ii) will not seek repayment of the credit until the occurrence of one or more specified life events of the consumer, unless the consumer breaches contractual obligations so as to allow the creditor to terminate the agreement;
 - (b) an agreement under which credit is granted by an employer to its employees as a secondary activity where the agreement is offered free of interest or at an annual rate lower than that prevailing on the market and not offered to the public generally;
 - (c) an agreement under which credit is granted free of interest and without any other charges except those that recover costs directly related to the securing of the credit;
 - (d) an agreement in the form of an overdraft facility under which the credit has to be repaid within one month;
 - (e) an agreement which is the outcome of a settlement reached in or before a court or other statutory authority;
 - (f) an agreement which—
 - (i) relates to the deferred payment, free of charge, of an existing debt, and
 - (ii) is not secured by a mortgage, by another comparable security commonly used in the United Kingdom on residential immovable property or by a right related to residential immovable property.
- (4) In this section—
- “acting in an introductory capacity” means merely introducing (directly or indirectly) a consumer to a mortgage creditor or mortgage intermediary;
- “annual rate” means the total cost to the borrower expressed as an annual percentage of the total amount of credit;
- “consumer” means an individual who is acting for purposes outside those of any trade, business or profession carried on by the individual;
- “group of mortgage creditors” means a group of mortgage creditors that are to be consolidated for the purposes of drawing up consolidated accounts in accordance with—

- (a) the requirements of Part 15 of the Companies Act 2006, if the parent undertaking (within the meaning of that Act) is a company, or
- (b) if it is not, the legal requirements that apply to the drawing up of consolidated accounts for the parent undertaking;

“specified” means specified in rules made by the FCA.

- (5) A reference in this section to any immovable property, land or building—
 - (a) in relation to an agreement entered into before exit day, is a reference to any immovable property, land or building in the United Kingdom or within the territory of an EEA State;
 - (b) in relation to an agreement entered into on or after exit day, is a reference to any immovable property, land or building in the United Kingdom.”.