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## STATUTORY INSTRUMENTS

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# 2015 No. 910

## The Mortgage Credit Directive Order 2015

### PART 4

#### Transitional Provisions

##### **Transitional provision: consumer credit back book mortgage contracts**

**29.**—(1) This article applies to a consumer credit back book mortgage contract.

(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 <sup>M1</sup> 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) <sup>M2</sup> 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) <sup>M3</sup>,
- (b) section 61B(3) (duty to supply copy of overdraft agreement) <sup>M4</sup>,
- (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) <sup>M5</sup>,
- (b) section 77A(1) (statements to be provided in relation to fixed-sum credit agreements) <sup>M6</sup>,
- (c) section 78(1) (duty to give information to debtor under running-account credit agreement) <sup>M7</sup>,
- (d) section 85(1) (duty on issue of new credit-tokens),
- (e) section 97(1) (duty to give information about early repayment) <sup>M8</sup>.

(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)<sup>M9</sup>, 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)<sup>M10</sup> 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)<sup>M11</sup>,
- (b) section 108(1) (duty to give information to surety under running-account credit agreement)<sup>M12</sup>,
- (c) section 110(1) (duty to give information to debtor or hirer)<sup>M13</sup>.

(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)<sup>M14</sup>,
- (b) section 94 (right to complete payments ahead of time)<sup>M15</sup>,
- (c) section 95 (rebate on early settlement)<sup>M16</sup>.

(12) Sections 140A to 140C of the Consumer Credit Act 1974 (unfair relationships)<sup>M17</sup> 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<sup>M18</sup>.

#### Marginal Citations

- M1** 1974 c.39.
- M2** Section 127 was amended by Schedule 4 to the [Consumer Credit Act 2006 \(c. 14\)](#) and by [S.I. 2010/1010](#).
- M3** Section 55(2) was substituted by [S.I. 2010/1010](#).
- M4** Section 61B was inserted by [S.I. 2010/1010](#).
- M5** Section 77(1) was amended by [S.I. 1998/997](#).
- M6** Section 77A(1) was inserted by section 6 of the [Consumer Credit Act 2006 \(c. 14\)](#) and subsequently substituted by [S.I. 2008/2826](#).
- M7** Section 78(1) was amended by [S.I. 1998/997](#).
- M8** Section 97(1) was amended by [S.I. 2010/1010](#).
- M9** Section 86D was inserted by section 11 of the Consumer Credit Act 2006.
- M10** Section 86E was inserted by section 12 of the Consumer Credit Act 2006.
- M11** Section 107 was amended by [S.I. 1998/997](#) and [S.I. 2008/1277](#).
- M12** Section 108 was amended by [S.I. 1998/997](#) and [S.I. 2008/1277](#).
- M13** Section 110 was amended by [S.I. 1998/997](#) and [S.I. 2008/1277](#).
- M14** Section 93 was amended by [S.I. 2013/1881](#).
- M15** Section 94 was amended by section 29 of the [Energy Act 2011 \(c. 16\)](#) and by [S.I. 2010/1010](#).

**M16** Section 95 was amended by S.I. 2010/1010.

**M17** 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.

**M18** Section 8(3) was substituted by S.I. 2013/1881.

**Status:**

Point in time view as at 25/03/2015. This version of this provision has been superseded.

**Changes to legislation:**

There are currently no known outstanding effects for the The Mortgage Credit Directive Order 2015, Section 29.