

## STATUTORY INSTRUMENTS

# 2015 No. 910

## The Mortgage Credit Directive Order 2015

### PART 3 **U.K.**

#### Consumer buy-to-let mortgages

#### [<sup>F1</sup>Application of this Part **U.K.**

**3A.** This Part does not apply in relation to any agreement entered into before 21st March 2016.]

#### Textual Amendments

**F1** [Art. 3A](#) 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(3)** (with Pt. 5)

#### Interpretation of this Part **U.K.**

**4.—(1)** In this Part—

“advisory services” has the meaning given by article 6;

“annual percentage rate of charge” has the meaning given by paragraph 9(6) of Schedule 2;

“buy-to-let mortgage contract” means a contract that—

(a) at the time it is entered into—

(i) meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) of the Regulated Activities Order (regulated mortgage contracts); and

(ii) provides that the land subject to the mortgage cannot at any time be occupied as a dwelling by the borrower or by a related person, and is to be occupied as a dwelling on the basis of a rental agreement; or

(b) is a regulated credit agreement within the meaning of article 60B of the Regulated Activities Order which—

(i) [<sup>F2</sup>falls within section 423A(2)(b) of the Act, and]

(ii) provides that the land, or existing or projected building, to which it relates cannot at any time be occupied as a dwelling by the borrower or by a related person, and is to be occupied as a dwelling on the basis of a rental agreement;

“consumer” means a person acting for purposes which are outside that person's trade, business or profession;

“consumer buy-to-let mortgage business” means one or more of the following activities—

(a) acting as a creditor;

(b) acting as a credit intermediary; or

(c) providing advisory services;

“consumer buy-to-let mortgage contract” means a buy-to-let mortgage contract which 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;

“consumer buy-to-let mortgage firm” means a person carrying on consumer buy-to-let mortgage business;

“credit intermediary” has the meaning given by article 5;

“creditor” means a person who, in the course of a trade, business or profession—

(a) enters into, or promises to enter into, a consumer buy-to-let mortgage contract under which the person is to provide credit, or

(b) administers a consumer buy-to-let mortgage contract,

and for the purposes of paragraph (b) a person administers a consumer buy-to-let mortgage contract if the person carries on the regulated activity specified by article 61(2) of the Regulated Activities Order (regulated mortgage contracts) <sup>M1</sup> in respect of the contract, or would carry on that regulated activity in respect of the contract but for the exclusion in article 72I of that Order (registered consumer buy-to-let mortgage firms) <sup>M2</sup>;

“decision notice” means a notice that complies with the requirements of section 388 of the Act (decision notices) <sup>M3</sup>;

[<sup>F3</sup>“durable medium” means any instrument which enables a consumer to store information which is addressed personally to the consumer in a way accessible for future reference for a period of time adequate for the purposes for which the information is provided and which allows the unchanged reproduction of the information stored;]

“foreign currency loan” means a consumer buy-to-let mortgage contract where the credit is denominated in a currency other than that in which the borrower receives the income or holds the assets from which the credit is to be repaid;

“register” means the register kept by the FCA under article 8(1);

“registered consumer buy-to-let mortgage firm” means a person who is included in the register;

“related person” has the meaning set out in article 61A of the Regulated Activities Order (mortgage contracts which are not regulated mortgage contracts) <sup>M4</sup>, <sup>F4</sup> ...

[<sup>F5</sup>“staff” means—

(a) any individual working for a creditor or credit intermediary who—

(i) is directly engaged in consumer buy-to-let mortgage business, or

(ii) has contacts with consumers in the course of consumer buy-to-let mortgage business,

(b) any individual working for a relevant person (see paragraph (1A)) who has contacts with consumers in the course of consumer buy-to-let mortgage business, or

(c) any individual directly managing or supervising any individual falling within paragraph (a) or (b);]

“warning notice” means a notice that complies with the requirements of section 387 of the Act (warning notices) <sup>M5</sup>.

[<sup>F6</sup>(1A) A “relevant person” is a person who, acting on behalf of and under the full and unconditional responsibility of only one credit intermediary, carries on one or more of the activities referred to in article 5(2) to (4).]

(2) For the purposes of this Part, 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 this Order if the agreement were a consumer buy-to-let mortgage contract under this Order; 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 this Order, 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 (3) applies.

- (3) This paragraph applies if, when the agreement is entered into—
  - (a) the creditor (or, if there is more than one creditor, any of the creditors), or
  - (b) any person who has acted on behalf of the creditor (or, if there is more than one creditor, any of the creditors) 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.

(4) For the purposes of this Part, 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 to which the agreement relates;
  - (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 to which the agreement relates, 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) subject to a mortgage under a buy-to-let mortgage contract.

#### **Textual Amendments**

- F2** Words in art. 4(1) substituted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), **5(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in art. 4(1) inserted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), **5(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

- F4** Word in art. 4(1) omitted (31.12.2020) by virtue of The Mortgage Credit (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/656), regs. 1(2), **5(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in art. 4(1) inserted (31.12.2020) by The Mortgage Credit (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/656), regs. 1(2), **5(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Art. 4(1A) inserted (31.12.2020) by The Mortgage Credit (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/656), regs. 1(2), **5(3)**; 2020 c. 1, Sch. 5 para. 1(1)

#### **Marginal Citations**

- M1** Article 61(2) was amended by S.I. 2001/3544.
- M2** Article 72I is inserted by paragraph 4 of the Schedule to this Order.
- M3** Section 388 was amended by paragraphs 1 and 27 of Schedule 9 to the Financial Services Act 2012 (c. 21) and by paragraph 13 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c. 33).
- M4** Article 61A is inserted by paragraph 4 of the Schedule to this Order.
- M5** Section 387 was amended by paragraphs 1 and 26 of Schedule 9 to the Financial Services Act 2012 and paragraph 12 of Schedule 3 to the Financial Services (Banking Reform) Act 2013.

#### **Meaning of credit intermediary** **U.K.**

- 5.—(1) A person acts as a credit intermediary if the person—
- is not a creditor;
  - is not merely introducing, either directly or indirectly, a consumer to a creditor or credit intermediary;
  - is acting in the course of the person's trade, business or profession, for remuneration, which may take a pecuniary form or any other agreed form of financial consideration; and
  - meets one or more of conditions A to C.

(2) Condition A is that the person presents or offers consumer buy-to-let mortgage contracts to consumers.

(3) Condition B is that the person assists consumers by undertaking preparatory work or other pre-contractual administration in respect of consumer buy-to-let mortgage contracts other than as referred to in Condition A.

(4) Condition C is that the person concludes consumer buy-to-let mortgage contracts with consumers on behalf of the creditor.

#### **Meaning of advisory services** **U.K.**

6.—(1) A person provides advisory services if, in the course of that person's trade, business or profession, the person provides personal recommendations to a consumer in respect of one or more transactions relating to consumer buy-to-let mortgage contracts.

(2) A person who provides personal recommendations to a consumer in respect of one or more transactions relating to consumer buy-to-let mortgage contracts is not providing advisory services if the recommendations are provided—

- in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the making of those recommendations; or
- in the context of managing existing debt as an insolvency practitioner where that activity is regulated by legal or regulatory provisions or as part of public or voluntary debt advisory services which do not operate on a commercial basis.

### **Limitation on permission to carry on regulated activities** U.K.

7. If a person has a Part 4A permission to carry on an activity of the kind specified by article 25A, 36A, 53A, 53DA, 60B or 61 of the Regulated Activities Order, that person's Part 4A permission is subject to a requirement that the person does not carry on any activity that would constitute consumer buy-to-let mortgage business unless the person is a registered consumer buy-to-let mortgage firm.

### **Register of consumer buy-to-let mortgage firms** U.K.

8.—(1) The FCA must keep a register of consumer buy-to-let mortgage firms and must enter a person on the register if the conditions in paragraph (2) or (3) are met.

(2) The conditions in this paragraph are that—

- (a) the person carries on, or is seeking to carry on, consumer buy-to-let mortgage business;
- (b) the person—
  - (i) has a Part 4A permission to carry on one or more regulated activities; or
  - (ii) is treated as having an interim permission to carry on one or more regulated activities under article 56 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013<sup>M6</sup>;
- (c) the person applies to the FCA in a manner that complies with the requirements of, and any requirements imposed under, article 9 for entry on the register; and
- (d) the FCA has not previously revoked the registration of the person under article 13.

(3) The conditions in this paragraph are that—

- (a) the person carries on, or is seeking to carry on, consumer buy-to-let mortgage business;
- (b) the person's head office, registered office or place of residence, as the case may be, is in the United Kingdom;
- (c) none of the individuals responsible for the management or operation of the person's consumer buy-to-let mortgage business—
  - (i) has been convicted of any offence involving fraud or dishonesty, or any indictable offence, and for this purpose “offence” includes any act or omission which would have been an offence if it had taken place in the United Kingdom; or
  - (ii) is subject to a prohibition order;
- (d) if the registration is to be of a partnership, an unincorporated association or a body corporate, the FCA is satisfied that any persons having a controlling interest over the partnership, unincorporated association or body corporate are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of a consumer buy-to-let mortgage firm;
- (e) the FCA is satisfied that—
  - (i) where the registration is to be of a body corporate, the directors;
  - (ii) the persons responsible for the management of the firm; and
  - (iii) the persons responsible for consumer buy-to-let mortgage business, are of good repute;
- (f) if the person is not a creditor but is a credit intermediary or provides advisory services for the purposes of this Part, the person holds professional indemnity insurance covering its consumer buy-to-let mortgage business in the United Kingdom, or some other comparable guarantee against liability arising from professional negligence, of at least the minimum monetary amount [F7] of such insurance or guarantee specified for mortgage intermediaries

- in the FCA's Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries as amended from time to time];
- (g) the individuals responsible for the management or operation of the person's consumer buy-to-let mortgage business possess an appropriate level of knowledge and competence in relation to consumer buy-to-let mortgage contracts; and
  - (h) the person applies to the FCA in a manner that complies with the requirements of, and any requirements imposed under, article 9 for entry on the register.
- (4) For the purposes of sub-paragraph (3)(d), a person (“C”) has a controlling interest over the firm (“F”) if—
- (a) C holds 10% or more of the shares in F or in a parent undertaking of F (“P”);
  - (b) C holds 10% or more of the voting power in F or P; or
  - (c) C holds shares or voting power in F or P as a result of which C is able to exercise significant influence over the management of F.
- (5) The FCA may—
- (a) keep the register in any form it thinks fit;
  - (b) include on the register such information as the FCA considers appropriate;
  - (c) publish the register, or any part of it; and
  - (d) exploit commercially the information contained in the register, or any part of that information.
- (6) The FCA must—
- (a) make the register available for inspection by members of the public in a legible form at such times and in such place or places as the FCA may determine; and
  - (b) provide a certified copy of the register, or any part of it, to any person who asks for it—
    - (i) on payment of the fee (if any) fixed by the FCA; and
    - (ii) in a form (either written or electronic) in which it is legible to the person asking for it.
- (7) If a partnership or unincorporated association is entered on the register, its registration—
- (a) has effect for activities carried on in the name of the partnership or unincorporated association;
  - (b) is not affected by any change in the membership of the partnership or unincorporated association; and
  - (c) if the partnership or unincorporated association is dissolved, continues to have effect in relation to any individual, partnership or unincorporated association which succeeds to the whole or substantially the whole of the business of the former partnership or unincorporated association.
- (8) In paragraph (7) “partnership” does not include a partnership which is constituted under the law of any place other than the United Kingdom and is a body corporate.

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**Textual Amendments**

- F7** Words in [art. 8\(3\)\(f\)](#) substituted (31.12.2020) by [The Mortgage Credit \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/656\)](#), regs. 1(2), 6; 2020 c. 1, Sch. 5 para. 1(1)
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**Marginal Citations**

- M6** [S.I. 2013/1881](#). Article 56 was amended by [S.I. 2014/366](#) and 376.

### **Applications for entry on the register or variation of an existing entry on the register** U.K.

9.—(1) An application for entry on the register may be made by an individual, a body corporate, a partnership or an unincorporated association.

(2) An application for entry on the register or variation of an existing entry on the register must—

- (a) be made in such manner as the FCA may direct; and
- (b) contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it, the FCA may require the applicant to provide it with such further information as it considers necessary to enable it to determine the application.

(4) Different directions may be given, and different requirements imposed, in relation to different applications or categories of applications.

(5) The FCA may require an applicant to provide information which the applicant is required to give under this article in such form, or to verify it in such manner, as the FCA may specify.

### **Determination of applications** U.K.

10.—(1) The FCA must determine an application for entry on the register before the end of the period of six months beginning with the date on which it receives the completed application.

(2) The FCA may determine an incomplete application, and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.

(3) If the FCA enters a person on the register, it must give written notice of its determination to that person.

### **Procedure when refusing an application** U.K.

11.—(1) If the FCA proposes to refuse an application made under article 9(1) it must give the applicant a warning notice.

(2) If the FCA refuses an application—

- (a) it must give the applicant a decision notice; and
- (b) the applicant may refer the matter to the Tribunal.

### **Registered consumer buy-to-let mortgage firm ceasing to meet the requirements for registration** U.K.

12. If a registered consumer buy-to-let mortgage firm ceases to meet a condition in article 8(2) or (3) that applies to it, the firm must inform the FCA immediately.

### **Revocation of registration** U.K.

13. The FCA may revoke the registration of a registered consumer buy-to-let mortgage firm if—

- (a) the firm does not meet a condition in article 8(2) or (3) that applies to it;
- (b) the firm has contravened a requirement in Schedule 2 that applies to it;
- (c) the firm applies for or consents to the revocation of the registration;
- (d) the firm has ceased to engage in consumer buy-to-let mortgage business for more than twelve months;
- (e) a fee due in respect of the registration has not been paid; or

- (f) the revocation is desirable in order to protect the interests of consumers.

#### **Procedure on revocation** U.K.

14.—(1) If the FCA proposes to revoke the registration of a registered consumer buy-to-let mortgage firm other than at the firm's request or with the firm's consent, the FCA must give that firm a warning notice.

(2) If the FCA decides to revoke the registration of a registered consumer buy-to-let mortgage firm other than at the firm's request or with the firm's consent—

- (a) the FCA must give that firm a decision notice, and
- (b) that firm may refer the matter to the Tribunal.

#### **Suspension of registration** U.K.

15.—(1) If it appears to the FCA that a registered consumer buy-to-let mortgage firm does not meet a condition in article 8(2) or (3) that applies to it, the FCA may suspend the registration of that firm for a specified period, until the occurrence of a specified event, or until specified conditions are complied with.

(2) In this article “specified” means specified by the FCA in a notice given under article 16.

#### **Procedure on suspension** U.K.

16.—(1) The suspension of the registration of a registered consumer buy-to-let mortgage firm takes effect—

- (a) immediately, if the notice given under paragraph (4) states that that is the case;
- (b) on such date as may be specified in the notice; or
- (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A suspension may take effect immediately or on a specified date only if the FCA, having regard to the ground on which it is exercising its power under article 15, considers that it is necessary for the suspension to take effect immediately or on that date.

(3) If the FCA proposes to suspend the registration of a registered consumer buy-to-let mortgage firm other than at the firm's request or with the firm's consent, the FCA must give that firm a warning notice.

(4) If the FCA decides to suspend the registration of a registered consumer buy-to-let mortgage firm other than at the firm's request or with the firm's consent—

- (a) the FCA must give that firm a decision notice, and
- (b) that firm may refer the matter to the Tribunal.

#### **Appointed representatives** U.K.

17. Section 39 of the Act (exemption of appointed representatives)<sup>M7</sup> applies in respect of consumer buy-to-let mortgage business as if in subsection (4), the reference to provisions contained in the Act included reference to provisions contained in this Order.



**Marginal Citations**

**M7** 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.

**Obligations of registered consumer buy-to-let mortgage firms** **U.K.**

**18.**—(1) A registered consumer buy-to-let mortgage firm must, in respect of its consumer buy-to-let mortgage business—

- (a) comply with the requirements set out in Schedule 2;
- (b) retain information relevant to demonstrating the firm's compliance or non-compliance with the requirements of that Schedule—
  - (i) in retrievable and legible form; and
  - (ii) so long as any sum remains outstanding, or any mortgage or charge remains in place, under the consumer buy-to-let mortgage contract to which the information relates;
- (c) provide the FCA with such information in relation to the firm's consumer buy-to-let mortgage business and its compliance with the requirements of that Schedule as the FCA may direct, in order to enable the FCA to discharge its functions under this Part; and
- (d) deal with the FCA in an open and co-operative manner.

(2) Information provided under paragraph (1)(c) must be given at such times and in such manner, and verified in such manner, as the FCA may direct.

(3) Sections 348 <sup>M8</sup>, 349 <sup>M9</sup> and 352 <sup>M10</sup> of the Act (confidential information) and regulations made under section 349 of the Act apply in relation to information provided to the FCA under paragraph (1)(c) as they apply in relation to information received by the FCA in the discharge of its functions under the Act.

**Marginal Citations**

**M8** Section 348 was amended by paragraph 26 of Schedule 2 to the [Financial Services Act 2010 \(c. 28\)](#), [paragraph 18](#) of Schedule 12 to the [Financial Services Act 2012 \(c. 21\)](#) and paragraph 5 of Schedule 8 to the [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#).

**M9** Section 349 was amended by section 964 of the [Companies Act 2006 \(c. 46\)](#), [paragraph 19](#) of Schedule 12 to the [Financial Services Act 2012](#) and [S.I. 2006/1183](#).

**M10** Section 352 was amended by paragraph 54 of Schedule 26 to the [Criminal Justice Act 2003 \(c. 44\)](#).

**Power to direct registered consumer buy-to-let mortgage firms to take appropriate action** **U.K.**

**19.**—(1) The FCA may direct a registered consumer buy-to-let mortgage firm to take such steps as are necessary for the purposes of securing compliance with the requirements of Schedule 2 in respect of the firm's consumer buy-to-let mortgage business.

- (2) A direction under paragraph (1) may, in particular, require the firm to—
  - (a) take specified action,
  - (b) refrain from taking specified action,
  - (c) review or take remedial action in respect of past conduct.

(3) A direction under paragraph (1) may also be given to or apply to a person who was a registered consumer buy-to-let mortgage firm, in relation to conduct that occurred while the person was registered.

(4) The FCA may direct registered consumer buy-to-let mortgage firms as to the steps to be taken where the FCA requires such a firm to appoint a person to make a report pursuant to section 166 of the Act<sup>M11</sup> (as applied by article 23(2)).

(5) A person to whom a direction under paragraph (1) or (4) is given or to whom such a direction applies must comply with the direction.

(6) Section 55Y (exercise of own-initiative power: procedure) and 55Z3(2) (right to refer matters to the Tribunal) of the Act apply to a direction to a person under paragraph (1) as they apply to a requirement imposed on an authorised person under section 55L(3) of the Act (imposition of requirements by the FCA)<sup>M12</sup>.

#### Marginal Citations

**M11** Section 166 was substituted by paragraph 5 of Schedule 12 to the Financial Services Act 2012.

**M12** Sections 55L, 55Y and 55Z3 were substituted, together with the rest of Part 4A of the Act, by section 11(2) of the Financial Services Act 2012.

### Functions of the FCA in relation to this Part **U.K.**

**20.**—(1) The FCA is to have the functions conferred on it by this Part.

(2) In discharging its function of determining the general policy and principles by reference to which it performs particular functions under this Part, the FCA must have regard to—

- (a) the need to use its resources in the most efficient and economic way;
- (b) the responsibilities of those who manage the affairs of consumer buy-to-let mortgage firms;
- (c) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
- (d) the desirability of facilitating innovation in connection with consumer buy-to-let mortgage business;
- (e) the need to minimise the adverse effects on competition that may arise from anything done in the discharging of those functions; and
- (f) the desirability of facilitating competition in relation to consumer buy-to-let mortgage business.

### Monitoring and enforcement **U.K.**

**21.**—(1) The FCA must maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under this Part are complying with them.

(2) The arrangements referred to in paragraph (1) may provide for functions to be performed on behalf of the FCA by any body or person who is, in the FCA's opinion, competent to perform them.

(3) The FCA must also maintain arrangements for enforcing the provisions of this Part.

(4) Paragraph (2) does not affect the FCA's duty under paragraph (1).

## Guidance **U.K.**

**22.**—(1) The FCA may give guidance consisting of such information and advice as it considers appropriate with respect to—

- (a) the operation of this Part;
- (b) any matters relating to the functions of the FCA under this Part;
- (c) any other matters about which it appears to the FCA to be desirable to give information or advice in connection with this Part.

(2) The FCA may—

- (a) publish its guidance;
- (b) offer copies of its published guidance for sale at a reasonable price;
- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

## Application of provisions of the Act to registered consumer-buy-to-let mortgage firms **U.K.**

**23.**—(1) For the purposes of the following provisions of the Act, a requirement imposed by or under this Part on a consumer buy-to-let mortgage firm in respect of its consumer buy-to-let mortgage business is to be treated as if it were a requirement imposed on an authorised person by or under the Act—

- (a) section 204A <sup>M13</sup> (meaning of “relevant requirements”);
- (b) section 380 <sup>M14</sup> (injunctions);
- (c) section 382 <sup>M15</sup> (restitution orders);
- (d) section 384 (power of FCA or PRA to require restitution); and
- (e) section 398 <sup>M16</sup> (misleading FCA or PRA: residual cases).

(2) The following provisions of the Act apply in respect of the exercise by the FCA of its functions under this Part in relation to a registered consumer buy-to-let mortgage firm as they apply in respect of the exercise by the FCA of its functions under the Act in relation to an authorised person—

- (a) section 165 <sup>M17</sup> (regulators' power to require information: authorised persons etc.);
- (b) section 166 <sup>M18</sup> (reports by skilled persons);
- (c) section 167 <sup>M19</sup> (appointment of persons to carry out general investigations);
- (d) section 168(4) to (6) <sup>M20</sup> (appointment of persons to carry out investigations in particular cases);
- (e) section 169 <sup>M21</sup> (investigations etc. in support of overseas regulator);
- (f) section 170 <sup>M22</sup> (investigations: general);
- (g) section 171 <sup>M23</sup> (powers of persons appointed under section 167);
- (h) section 172 (additional power of persons appointed as a result of section 168(1) or (4));
- (i) section 173 (powers of persons appointed as a result of section 168(2));
- (j) section 174 <sup>M24</sup> (admissibility of statements made to investigators);
- (k) section 175 <sup>M25</sup> (information and documents: supplemental provisions);
- (l) section 176 <sup>M26</sup> (entry of premises under warrant);
- (m) section 176A <sup>M27</sup> (retention of documents taken under section 176);

- (n) section 177 <sup>M28</sup> (offences);
- (o) section 205 <sup>M29</sup> (public censure); and
- (p) section 206 <sup>M30</sup> (financial penalties).

(3) Section 168 of the Act is to be read as if subsection (4) included a reference to circumstances suggesting that a person may have failed to comply with the obligations imposed by this Part.

(4) Sections 207 to 211 (disciplinary measures: procedure and policy) of, and paragraph 20 (penalties) of Schedule 1ZA to, the Act <sup>M31</sup> apply in relation to the exercise of the FCA's powers under section 205 or 206 of the Act as applied by paragraph (2)(o) and (p) as they apply in relation to the exercise of such powers under section 205 or 206 of the Act in respect of authorised persons.

(5) Registered consumer buy-to-let mortgage firms are to be treated as regulated persons for the purposes of paragraph 21 of Schedule 1ZA to the Act (financial penalty scheme) <sup>M32</sup>.

#### **Marginal Citations**

- M13** Section 204A was inserted by paragraphs 1 and 10 of Schedule 9 to the [Financial Services Act 2012 \(c. 21\)](#).
- M14** Section 380 was amended by paragraph 19 of Schedule 9 to the [Financial Services Act 2012 \(c. 21\)](#), [paragraph 3](#) of Schedule 10 to the [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#) and [S.I. 2013/1773](#).
- M15** Section 382 was amended by paragraph 21 of Schedule 9 to the [Financial Services Act 2012](#), paragraph 3 of Schedule 10 to the [Financial Services \(Banking Reform\) Act 2013](#) and [S.I. 2013/1773](#).
- M16** Section 398 was amended by paragraph 36 of Schedule 9 to the [Financial Services Act 2012](#) and by [S.I. 2013/1773](#).
- M17** Section 165 was amended by paragraph 15 of Schedule 2 to the [Financial Services Act 2010 \(c. 28\)](#), [paragraph 1](#) of Schedule 12 to the [Financial Services Act 2012](#) and [S.I. 2013/1773](#).
- M18** Section 166 was substituted by paragraph 5 of Schedule 12 to the [Financial Services Act 2012](#).
- M19** Section 167 was amended by paragraph 7 of Schedule 12 to the [Financial Services Act 2012](#) and [S.I. 2007/126](#).
- M20** Section 168 was amended by paragraph 33 of Schedule 7 to the [Counter-Terrorism Act 2008 \(c. 28\)](#), [paragraph 16](#) of Schedule 2 to the [Financial Services Act 2010](#), paragraph 8 of Schedule 12 to the [Financial Services Act 2012](#) and [S.I. 2007/126](#), [2012/2554](#) and [2013/1773](#).
- M21** Section 169 was amended by paragraph 9 of Schedule 12 to the [Financial Services Act 2012](#).
- M22** Section 170 was amended by paragraph 10 of Schedule 12 to the [Financial Services Act 2012](#).
- M23** Section 171 was amended by [S.I. 2007/126](#).
- M24** Section 174 was amended by paragraph 12 of Schedule 12 to the [Financial Services Act 2012](#).
- M25** Section 175 was amended by paragraph 13 of Schedule 12 to the [Financial Services Act 2012](#).
- M26** Section 176 was amended by paragraph 17 of Schedule 2 to the [Financial Services Act 2010](#), paragraph 14 of Schedule 12 to the [Financial Services Act 2012](#) and [S.I. 2005/1433](#).
- M27** Section 176A was inserted by paragraph 15 of Schedule 12 to the [Financial Services Act 2012](#).
- M28** Section 177 was amended by paragraph 8 of Schedule 8 to the [Financial Services Act 2012](#) and [S.I. 2001/1090](#).
- M29** Section 205 was amended by paragraph 11 of Schedule 9 to the [Financial Services Act 2012](#).
- M30** Section 206 was amended by section 10 of the [Financial Services Act 2010](#) and by paragraph 12 of Schedule 9 to the [Financial Services Act 2012](#).
- M31** Sections 207 to 211 were amended by paragraphs 18, 19 and 20 of Schedule 2 to the [Financial Services Act 2010 \(c. 28\)](#) and by paragraphs 14, 15, 16, 17 and 18 of Schedule 9 to the [Financial Services Act 2012 \(c. 21\)](#).
- M32** Schedule 1ZA was substituted by Schedule 3 to the [Financial Services Act 2012](#).

### Application of procedural provisions of the Act **U.K.**

24.—(1) Part 9 of the Act (hearings and appeals) applies in the case of a matter referred to the Tribunal under this Part as it applies in the case of a matter referred to the Tribunal under the Act.

(2) Part 26 of the Act (notices) applies to warning notices and decision notices given under this Part as it applies to such notices given under the Act.

### Application of provisions of the Act to the FCA in respect of its supervision of consumer buy-to-let mortgage firms **U.K.**

25. The functions of the FCA under this Order are to be treated as functions conferred on the FCA under the Act for the purposes of—

- (a) paragraph 23 (fees) of Schedule 1ZA to the Act <sup>M33</sup>, and
- (b) paragraph 25 (exemption from liability in damages) of Schedule 1ZA to the Act <sup>M34</sup>.

#### Marginal Citations

**M33** Paragraph 23 was amended by paragraph 7 of Schedule 8 and paragraph 4 of Schedule 10 to the [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#) and by [S.I. 2013/1773](#).

**M34** Paragraph 25 was amended by section 109 of the [Financial Services \(Banking Reform\) Act 2013](#).

### Extension of the compulsory jurisdiction of the Financial Ombudsman Scheme to registered consumer buy-to-let mortgage firms **U.K.**

26.—(1) Part 16 (the Ombudsman Scheme) of the 2000 Act applies in respect of a complaint relating to the act or omission of a registered consumer buy-to-let mortgage firm as if—

- (a) in section 226(2)(b) of that Act (compulsory jurisdiction) <sup>M35</sup>, after “Payment Services Regulations [<sup>F8</sup>2017],” there were inserted “ a registered consumer buy-to-let mortgage firm within the meaning of Part 3 of the Mortgage Credit Directive Order 2015, ”;
- (b) in section 232A of that Act (scheme operator's duty to provide information to FCA) <sup>M36</sup>, after “FCA's operational objectives” there were inserted “ , or which might otherwise be of assistance to the FCA for the purposes of discharging any of the FCA's functions under Part 3 of the Mortgage Credit Directive Order 2015, ”;
- (c) in section 234 of that Act (industry funding) <sup>M37</sup>, after “any electronic money issuer within the meaning of the Electronic Money Regulations 2011” there were inserted “ , any registered consumer buy-to-let mortgage firm within the meaning of Part 3 of the Mortgage Credit Directive Order 2015 ”;
- (d) in paragraph 13(4) of Schedule 17 to that Act (FCA's procedural rules) <sup>M38</sup>, after “an electronic money issuer within the meaning of the Electronic Money Regulations 2011,” there were inserted “ a registered consumer buy-to-let mortgage firm within the meaning of the Mortgage Credit Directive Order 2015, ”.

#### Textual Amendments

**F8** Word in art. 26(1)(a) substituted (13.1.2018) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(6), [Sch. 8 para. 22](#) (with reg. 3)

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**Changes to legislation:** *There are currently no known outstanding effects for the The Mortgage Credit Directive Order 2015, PART 3. (See end of Document for details)*

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**Marginal Citations**

- M35** Section 226 was amended by paragraph 1 of Schedule 11 to the Financial Services Act 2012 and by [S.I. 2009/209](#) and 2011/99.
- M36** Section 232A was inserted by paragraph 9 of Schedule 11 to the Financial Services Act 2012.
- M37** Section 234 was amended by paragraph 10 of Schedule 11 to the Financial Services Act 2012 and by [S.I. 2009/209](#) and 2011/99.
- M38** Paragraph 13 was amended by paragraphs 13 and 24 of Schedule 11 to the Financial Services Act 2012 and by [S.I. 2009/209](#) and 2011/99.

**Changes to legislation:**

There are currently no known outstanding effects for the The Mortgage Credit Directive Order 2015, PART 3.