
DRAFT STATUTORY INSTRUMENTS

2016 No.

The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) Order 2016

PART 3

Amendment of other legislation

Amendment of the Mortgage Credit Directive Order 2015

8.—(1) The Mortgage Credit Directive Order 2015⁽¹⁾ is amended as follows.

(2) In article 2(1) (interpretation), in the definition of “consumer credit back book mortgage contract”—

(a) in sub-paragraph (a)—

(i) the second paragraph (iii) is renumbered as paragraph (iv)⁽²⁾, and

(ii) in that paragraph, omit “but for article 28(1),”; and

(b) for sub-paragraph (b) substitute—

“(b) (i) is entered into on or after 21st March 2016 in the circumstances described in article 28,

(ii) would be a regulated credit agreement within the meaning of article 60B(3) of the Regulated Activities Order if it had been entered into immediately before 21st March 2016, and

(iii) is a regulated mortgage contract immediately after it is entered into.”

(3) In Part 3 (consumer buy-to-let mortgages), before article 4 (interpretation of Part 3) insert—

“Application of this Part

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

(4) For article 28 (transitional provision: agreements before 21st March 2016) substitute—

“Transitional provision: agreements before 21st March 2016

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;

⁽¹⁾ [S.I. 2015/910](#).

⁽²⁾ [S.I. 2015/1557](#) inserted a new paragraph (iii) after the existing sub-paragraph (ii). There was, however, an original paragraph (iii), and this provision renumbers that original paragraph (iii) as paragraph (iv).

- (b) paragraphs (3) to (5) of article 2 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.3) Order 2015⁽³⁾; 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.”.

(5) In article 29 (transitional provision: consumer credit back book mortgage contracts), in paragraph (1) after “consumer credit back book mortgage contract” insert “other than one in relation to which the Consumer Credit Act 1974 applies as described in article 31(2)”.

(6) After article 31(4) (transitional provision: person subject to the Consumer Credit Act 1974 who chooses to adopt new rules before 21st March 2016), insert—

“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—

- (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⁽⁵⁾ 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.”.

(3) [S.I. 2015/1863](#).

(4) Article 31 was amended by [S.I. 2015/1557](#).

(5) Article 60C(2)(c) was inserted by [S.I. 2015/1863](#) and is amended by article 2 of this Order.

