
STATUTORY INSTRUMENTS

2001 No. 544

The Financial Services and Markets Act
2000 (Regulated Activities) Order 2001

PART II

SPECIFIED ACTIVITIES

CHAPTER XV

REGULATED MORTGAGE CONTRACTS

The activities

Regulated mortgage contracts

61.—(1) Entering into a regulated mortgage contract as lender is a specified kind of activity.

(2) Administering a regulated mortgage contract is also a specified kind of activity, [^{F1}where the contract was entered into [^{F2}by way of business] after the coming into force of this article.][^{F1}where—

- (a) the contract was entered into by way of business on or after 31st October 2004; or
- (b) the contract—
 - (i) was entered into by way of business before 31st October 2004, and
 - (ii) was a regulated credit agreement immediately before 21st March 2016.]

(3) In this Chapter—

[^{F3}(a) a contract is a “regulated mortgage contract” if, at the time it is entered into, the following conditions are met—

- [^{F4}(i) the contract is one under which a person (“the lender”) provides credit to an individual or to trustees (“the borrower”);
- (ii) the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land in the EEA;
- (iii) at least 40% of that land is used, or is intended to be used—
 - (aa) in the case of credit provided to an individual, as or in connection with a dwelling; or
 - (bb) in the case of credit provided to a trustee which is not an individual, as or in connection with a dwelling by an individual who is a beneficiary of the trust, or by a related person;]

[^{F5}but such a contract is not a regulated mortgage contract if it [^{F6}is a regulated home purchase plan][^{F6}falls within article 61A(1) or (2)];]

(b) “administering” a regulated mortgage contract means either or both of—

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- (i) notifying the borrower of changes in interest rates or payments due under the contract, or of other matters of which the contract requires him to be notified; and
 - (ii) taking any necessary steps for the purposes of collecting or recovering payments due under the contract from the borrower;
- but a person is not to be treated as administering a regulated mortgage contract merely because he has, or exercises, a right to take action for the purposes of enforcing the contract (or to require that such action is or is not taken);
- (c) “credit” includes a cash loan, and any other form of financial accommodation.
- (4) For the purposes of [F7]paragraph 3(a)—
- [F8](a) “mortgage” includes a charge and (in Scotland) a heritable security;
 - (b) the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys;
 - (c) “related person”, in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust, means—
 - (i) that person’s spouse [F9]or civil partner];
 - (ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or
 - (iii) that person’s parent, brother, sister, child, grandparent or grandchild; [F10]and]
 - [F11](d) [F12]“timeshare accommodation” means overnight accommodation which is the subject of a timeshare contract within the meaning of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.]]

Textual Amendments

- F1** Words in art. 61(2) substituted (5.11.2015 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 3\) Order 2015 \(S.I. 2015/1863\)](#), art. 1(2)(b)(4), **2(4)**
- F2** Words in art. 61(2) inserted (31.10.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2001 \(S.I. 2001/3544\)](#), arts. 1(1)(b), **8(a)**
- F3** Art. 61(3)(a) substituted (31.10.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2001 \(S.I. 2001/3544\)](#), arts. 1(1)(b), **8(b)**
- F4** Art. 61(3)(a)(i)-(iii) substituted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(21)(a)(i)** (with Pt. 4)
- F5** Words in art. 61(3)(a) inserted (6.11.2006 for specified purposes, 6.4.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2006 \(S.I. 2006/2383\)](#), arts. 1(2), **17**
- F6** Words in art. 61(3)(a) substituted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(21)(a)(ii)** (with Pt. 4)
- F7** Words in art. 61(4) substituted (31.10.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2001 \(S.I. 2001/3544\)](#), arts. 1(1)(b), **8(c)**
- F8** Art. 61(4)(a) substituted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(21)(b)** (with Pt. 4)
- F9** Words in art. 61(4)(c)(i) inserted (5.12.2005) by [The Civil Partnership Act 2004 \(Amendments to Subordinate Legislation\) Order 2005 \(S.I. 2005/2114\)](#), reg. 1, **Sch. 16 para. 1(3)**
- F10** Word in art. 61(4) omitted (20.4.2015 for specified purposes) by virtue of [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(21)(c)(i)** (with Pt. 4)
- F11** Art. 61(4)(d) substituted (23.2.2011) by [The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 \(S.I. 2010/2960\)](#), reg. 1(2), **Sch. 6 para. 7(2)** (with Sch. 7 para. 4)

F12 Art. 61(4)(d) omitted (20.4.2015 for specified purposes) by virtue of [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), [Sch. 1 para. 4\(21\)\(c\)\(ii\)](#) (with Pt. 4)

Commencement Information

II Art. 61 in force at 31.10.2004, see art. 1(2)(b) (as read with Treasury notice dated 9.7.2003)

[^{F13}Mortgage contracts which are not regulated mortgage contracts

61A.—(1) A contract falls within this paragraph if it is—

- (a) a regulated home purchase plan;
- (b) a limited payment second charge bridging loan;
- (c) a second charge business loan;
- (d) an investment property loan; [^{F14}or]
- (e) an exempt consumer buy-to-let mortgage contract [^{F15}; or
- (f) an exempt equitable mortgage bridging loan.]

(2) A contract falls within this paragraph if—

- (a) it is a limited interest second charge credit union loan;
- (b) the borrower receives timely information on the main features, risks and costs of the contract at the pre-contractual stage; and
- (c) any advertising of the contract is fair, clear and not misleading.

(3) For the purposes of this article, 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 the Act if the agreement were a regulated mortgage contract under the Act, 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 the Act, 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 (4) applies.

(4) This paragraph applies if, when the agreement is entered into—

- (a) the lender (or, if there is more than one lender, any of the lenders), or
- (b) any person who has acted on behalf of the lender (or, if there is more than one lender, any of the lenders) 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.

(5) For the purposes of this article 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—

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- (a) (i) the borrower previously purchased, or is entering into the contract in order to finance the purchase by the borrower of, the land subject to the mortgage;
 - (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 subject to the mortgage, 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) secured by a mortgage under a buy-to-let mortgage contract.
- (6) For the purposes of this article—
- “borrower” and “lender” have the meaning set out in article 61(3) (regulated mortgage contracts);
- “borrower-lender agreement”, “borrower-lender-supplier agreement”, “credit union” and “total charge for credit” have the meanings set out in article 60L (interpretation of Chapter 14A);
- “bridging loan” has the meaning given by Article 4(23) of the mortgages directive;
- “buy-to-let mortgage contract” has the meaning given in article 4 of the Mortgage Credit Directive Order 2015 (interpretation of Part 3);
- “exempt consumer buy-to-let mortgage contract” is a contract that, at the time it is entered into, is a consumer buy-to-let mortgage contract within the meaning of article 4 of the Mortgage Credit Directive Order 2015 and—
- (a) is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive; or
 - (b) is a bridging loan;
- [^{F16}“exempt equitable mortgage bridging loan” is a contract that—
- (a) is a bridging loan;
 - (b) is secured by an equitable mortgage on land; and
 - (c) is an exempt agreement within the meaning of article 60B(3) (regulated credit agreements) by virtue of article 60E(2) (exempt agreements: exemptions relating to the nature of the lender);]

“investment property loan” is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—

 - (a) less than 40% of the land subject to the mortgage is used, or intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a related person; and
 - (b) 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;

“limited payment second charge bridging loan” is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—

 - (a) it is a borrower-lender-supplier agreement financing the purchase of land;

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- (b) it is used by the borrower as a temporary financing solution while transitioning to another financial arrangement for the land subject to the mortgage;
- (c) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and
- (d) the number of payments to be made by the borrower under the contract is not more than four;

“limited interest second charge credit union loan” is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—

- (a) it is a borrower-lender agreement;
- (b) the mortgage ranks in priority behind one or more other mortgages affecting the land in question;
- (c) the lender is a credit union; and
- (d) the rate of the total charge for credit does not exceed 42.6 per cent;

“payment” has the meaning set out in article 60F(8) (exempt agreement: exemptions relating to number of repayments to be made);

“regulated home purchase plan” has the meaning set out in article 63F(3)(a) (entering into and administering regulated home purchase plans);

“related person” in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust, means—

- (a) that person's spouse or civil partner;
- (b) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or
- (c) that person's parent, brother, sister, child, grandparent or grandchild;

“second charge business loan” is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—

- (a) the lender provides the borrower with credit exceeding £25,000;
- (b) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and
- (c) 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.]

Textual Amendments

- F13** Art. 61A inserted (20.4.2015 for specified purposes) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 4(22)** (with Pt. 4)
- F14** Word in art. 61A(1) omitted (5.11.2015 for specified purposes) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 3\) Order 2015 \(S.I. 2015/1863\)](#), art. 1(2)(b)(4), **2(5)(a)(i)**
- F15** Art. 61A(1)(f) and preceding word inserted (5.11.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 3\) Order 2015 \(S.I. 2015/1863\)](#), art. 1(2)(b)(4), **2(5)(a)(ii)**
- F16** Words in art. 61A(6) inserted (5.11.2015 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 3\) Order 2015 \(S.I. 2015/1863\)](#), art. 1(2)(b)(4), **2(5)(b)**

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