

**2015 No. 1557**

**FINANCIAL SERVICES AND MARKETS**

**The Mortgage Credit Directive (Amendment) Order 2015**

*Made* - - - - *20th July 2015*

*Laid before Parliament* *21st July 2015*

*Coming into force in accordance with article 1*

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

The Treasury make this Order in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972 and section 22(1) of the Financial Services and Markets Act 2000(c).

**Citation and commencement**

- 1.—(1) This Order may be cited as the Mortgage Credit Directive (Amendment) Order 2015.  
(2) This article and article 2 come into force on 20th September 2015.  
(3) Article 3 comes into force on 21st March 2016.

**Amendment of the Mortgage Credit Directive Order 2015**

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

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

- (a) at the end of paragraph (ii) omit “and”; and  
(b) after paragraph (ii) insert—

“(iii) would not be an exempt agreement within the meaning of article 60B(3) of the Regulated Activities Order by virtue of article 60D of that Order (exempt agreements: exemption relating to the purchase of land for non-residential purposes) if it were entered into immediately before 21st March 2016, and”.

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(a) S.I. 2012/1759.

(b) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and the European Union (Amendment) Act 2008 (c. 7), Schedule, Part 1. By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51) legislation may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1992 (Cm 2183).

(c) 2000 c. 8. Section 22(5) provides that “specified” means specified in an order made by the Treasury. Paragraph 25(1)(f) of Schedule 2 to that Act provides that an order under section 22(1) may make such consequential, transitional or supplemental provision as the Treasury consider appropriate for purposes of, or connected with, any relevant provision, and “relevant provision” is defined in sub-paragraph (3) of that paragraph to include any provision made under section 22.

(d) S.I. 2015/910.

(3) In article 27 (transitional provision: person with Part 4A permission to carry on an activity in relation to a regulated mortgage contract before 21st March 2016), in paragraph (1) after “36A,” insert “53A,”.

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

(a) in paragraph (1)(c)—

(i) for “the creditor has not” substitute “neither the creditor nor any credit-broker has”;  
and

(ii) for “Part 4” substitute “Part 5”;

(b) in paragraphs (1)(d) and (2) after “creditor” insert “or any credit-broker”; and

(c) in paragraph (3) before the definition of “creditor” insert—

““credit-broker” has the meaning given in section 189(1) of the Consumer Credit Act 1974(a);”.

(5) In Part 2 of Schedule 1 (amendments to secondary legislation), omit paragraph 3 (the Consumer Credit (Agreements) Regulations 1983).

(6) In Schedule 2 (requirements for registered consumer buy-to-let mortgage firms), for sub-paragraph (1) of paragraph 14 (foreign currency loans) substitute—

“(1) Where a borrower enters into a buy-to-let mortgage contract that is a foreign currency loan—

(a) either the borrower must have a right to convert the contract into an alternative currency if conditions specified by the creditor are met, or the creditor must put in place other arrangements to limit the exchange risk to which the borrower is exposed under the contract; and

(b) if sub-paragraph (4) applies, the creditor must give the borrower, on a regular basis, foreign currency risk warnings.”.

### **Amendment of the Consumer Credit (Agreements) Regulations 1983**

**3.** In regulation 8 of the Consumer Credit (Agreements) Regulations 1983(b) (application of regulations), for paragraph (1A)(b) substitute—

“(b) an agreement under which the creditor provides the debtor with credit exceeding £60,260 other than a residential renovation agreement, or”.

*George Hollingbery*  
*Mel Stride*

20th July 2015

Two of the Lords Commissioners of Her Majesty’s Treasury

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(a) 1974 c. 39. There are amendments to section 189(1) but none is relevant here.

(b) S.I. 1983/1553. Regulation 8 was amended by S.I. 2010/1010 and 1969 and 2013/1881, and was to be amended by S.I. 2015/910 until the amendment of that instrument by article 2(5) of this Order.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes amendments to the Mortgage Credit Directive Order 2015 (S.I. 2015/910) (“the original Order”). The original Order transposed in part Directive 2014/17/EU of the European Parliament and of the Council of 4th February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (“the mortgages directive”) (OJ L 60, 28.2.2014, p.34). The Financial Conduct Authority (“FCA”) has transposed other parts of the mortgages directive in rules. A transposition note setting out how the mortgages directive has been transposed into UK law is available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on HM Treasury’s website ([www.gov.uk/government/organisations/hm-treasury](http://www.gov.uk/government/organisations/hm-treasury)).

Article 2(2) ensures that a non-residential or buy-to-let mortgage which would be exempt from being regulated as a credit agreement if entered into immediately before 21st March 2016, but which is a regulated credit agreement at that time (for instance because it was entered into before the existing exemption for such mortgages came into force), does not fall within the definition of “consumer credit back book mortgage contract”. The effect is that such regulated mortgages continue to be regulated by the FCA as regulated credit agreements, rather than being treated as regulated mortgage contracts, following the coming into force of the original Order.

Article 2(3) clarifies that where a person has permission to carry on the regulated activity of advising on regulated mortgage contracts immediately before 21st March 2016, the person is to be treated from that date as having permission to carry on that regulated activity in relation to all contracts which are regulated mortgage contracts after 21st March 2016, and not only in relation to those contracts which would have been regulated mortgage contracts before that date.

Article 2(4) has the effect that the application of the Consumer Credit Act 1974 (c. 39) to certain credit agreements is modified if either the credit broker or the creditor starts to comply early with new rules implementing the mortgages directive. The original Order provided for such modified application only if the creditor starts to comply early with such new rules.

Articles 2(5) and 3 substitute a new amendment to the Consumer Credit (Agreements) Regulations 1983 (S.I. 1983/1553) for the amendment made by the original Order, to correct an error in the original Order.

Article 2(6) amends the requirements which apply to a consumer buy-to-let mortgage contract which falls within the definition of a “foreign currency loan”, so that the two requirements set out in paragraph 14(1)(a) and (b) of Schedule 2 to the original Order become alternative rather than cumulative requirements.

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.

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