
STATUTORY INSTRUMENTS

2015 No. 910

The Mortgage Credit Directive Order 2015

PART 1

Introductory Provisions

Citation and commencement

1.—(1) This Order may be cited as the Mortgage Credit Directive Order 2015.

(2) Articles 2 (interpretation) and 32 (FCA power to direct timing of applications for permission and registration) come into force on 6th April 2015.

(3) Article 3 (amendments to legislation) comes into force on 20th April 2015 in so far as it gives effect to paragraph 15 of Schedule 1 (amendments to the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013).

(4) The following provisions come into force on 21st September 2015—

- (a) article 3 in so far as it gives effect to paragraph 1(4) of Schedule 1 (amendments to section 137R of the Act); and
- (b) article 31 (transitional provision: person subject to the Consumer Credit Act 1974 who chooses to adopt new rules before 21st March 2016).

(5) The other provisions of this Order come into force—

- (a) on 20th April 2015 for the purposes of enabling the making and determination of applications for —
 - (i) a Part 4A permission, or a variation of a Part 4A permission, in relation to an activity of the kind specified by article 36A(1) (credit broking), 53A(2) (advising on regulated mortgage contracts) or 60B (regulated credit agreements) of the Regulated Activities Order, article 25A (arranging regulated mortgage contracts) or 61(3) (entering into and administering regulated mortgage contracts) of the Regulated Activities Order as amended by this Order, or article 53DA (advising on regulated credit agreements for the acquisition of land) of the Regulated Activities Order as inserted by this Order; or
 - (ii) entry on the register of consumer buy-to-let mortgage firms under article 8 of this Order (register of consumer buy-to-let mortgage firms);
- (b) on 21st December 2015 for the purposes of—
 - (i) enabling the appropriate regulator to treat a consent notice referred to in paragraph 13(1)(a) or a regulator's notice referred to in paragraph 14(1)(b) of Schedule 3 to the Act (as amended by this Order) given on or after that date by an EEA firm falling

(1) Articles 36A and 60B were inserted by [S.I. 2003/1881](#).

(2) Articles 25A and 53A were inserted by [S.I. 2003/1475](#).

(3) Article 61 was amended by [S.I. 2001/3544](#), [2005/2114](#), [2006/3283](#) and [2010/2960](#).

within paragraph 5(i) of Schedule 3 to the Act (as amended by this Order) as effective for the purposes of paragraph 13(1) or 14(1) (as the case may be)(4); and

- (ii) enabling the appropriate regulator to treat a notice of intention referred to in paragraph 19(2)(5) or 20(1)(6) of Schedule 3 to the Act (as amended by this Order) given on or after that date by a UK firm wishing to exercise an EEA right under the mortgages directive as effective for the purposes of paragraph 19(2) or 20(1) (as the case may be); and

- (c) for all other purposes, on 21st March 2016.

(6) Nothing in paragraph (5)(b) gives a person an EEA right to carry on, before 21st March 2016, any of the activities set out in sub-paragraphs (a) to (c) of Article 4(5) of the mortgages directive or to provide advisory services (as defined in Article 4(21) of that directive).

Interpretation

2.—(1) In this Order—

“the Act” means the Financial Services and Markets Act 2000;

“appropriate regulator” means—

- (a) in relation to a firm which is a PRA-authorised person, the PRA;
- (b) in any other case, the FCA;

“borrower” has the meaning given by article 61(3)(a)(i) of the Regulated Activities Order;

“consumer credit back book mortgage contract” means a contract which—

- (a) (i) is entered into before 21st March 2016,
- (ii) immediately before 21st March 2016 is a regulated credit agreement within the meaning of article 60B(3) of the Regulated Activities Order, and
- (iii) but for article 28(1), would be a regulated mortgage contract if it were entered into on or after 21st March 2016; or
- (b) (i) relates to the granting of credit in the circumstances described in article 28(1),
- (ii) is entered into on or after 21st March 2016,
- (iii) 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
- (iv) but for article 28(1), would be a regulated mortgage contract at the time that it is entered into;

“the mortgages directive” means 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(7);

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(8).

(2) Unless otherwise defined—

(4) Paragraphs 13(1) and 14(1) were previously amended by paragraph 2 of Schedule 4 to the Financial Services Act 2012 (c. 21) and by [S.I. 2003/1473](#) and [2066, 2007/126](#) and [2013/1773](#).

(5) Paragraph 19(2) was previously amended by paragraph 10 of Schedule 4 to the Financial Services Act 2012.

(6) Paragraph 20(1) was previously amended by paragraph 11 of Schedule 4 to the Financial Services Act 2012 and by [S.I. 2007/3253](#) and [2013/1773](#).

(7) OJ L 60, 28.2.2014, p.34.

(8) [S.I. 2001/544](#).

- (a) any expression used in this Order which is used in the mortgages directive has the same meaning as in that directive; and
- (b) any other expression used in this Order which is defined for the purposes of the Act has the meaning given by the Act.

PART 2

Amendments to legislation

Amendments to legislation

- 3. Schedule 1, which contains amendments to primary and secondary legislation, has effect.

PART 3

Consumer buy-to-let mortgages

Interpretation of this Part

- 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) falls within Article 3(1)(b) of the mortgages directive; 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)⁽⁹⁾ 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)⁽¹⁰⁾;

“decision notice” means a notice that complies with the requirements of section 388 of the Act (decision notices)⁽¹¹⁾;

“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)⁽¹²⁾; and

“warning notice” means a notice that complies with the requirements of section 387 of the Act (warning notices)⁽¹³⁾.

(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

⁽⁹⁾ Article 61(2) was amended by [S.I. 2001/3544](#).

⁽¹⁰⁾ Article 72I is inserted by paragraph 4 of the Schedule to this Order.

⁽¹¹⁾ 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).

⁽¹²⁾ Article 61A is inserted by paragraph 4 of the Schedule to this Order.

⁽¹³⁾ 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.

(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.

Meaning of credit intermediary

5.—(1) A person acts as a credit intermediary if the person—

- (a) is not a creditor;
- (b) is not merely introducing, either directly or indirectly, a consumer to a creditor or credit intermediary;
- (c) 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
- (d) 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

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—

- (a) 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
- (b) 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

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

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⁽¹⁴⁾;
- (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;

⁽¹⁴⁾ S.I. 2013/1881. Article 56 was amended by S.I. 2014/366 and 376.

- (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 specified in Commission Delegated Regulation (EU) No. 1125/2014 of 19th September 2014 of the European Parliament and of the Council with regard to regulatory technical standards on the minimum monetary amount of the professional indemnity insurance or comparable guarantee to be held by credit intermediaries⁽¹⁵⁾, as such Regulation may be 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

(15) OJ L 305, 24.10.2014, p.1

(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.

Applications for entry on the register or variation of an existing entry on the register

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

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

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

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

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

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

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

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

17. Section 39 of the Act (exemption of appointed representatives)(16) 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.

Obligations of registered consumer buy-to-let mortgage firms

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(17), 349(18) and 352(19) 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.

Power to direct registered consumer buy-to-let mortgage firms to take appropriate action

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.

(16) 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.

(17) 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).

(18) 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.

(19) Section 352 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c. 44).

(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⁽²⁰⁾ (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)⁽²¹⁾.

Functions of the FCA in relation to this Part

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

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

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.

⁽²⁰⁾ Section 166 was substituted by paragraph 5 of Schedule 12 to the Financial Services Act 2012.

⁽²¹⁾ 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.

- (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

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(**22**) (meaning of “relevant requirements”);
- (b) section 380(**23**) (injunctions);
- (c) section 382(**24**) (restitution orders);
- (d) section 384 (power of FCA or PRA to require restitution); and
- (e) section 398(**25**) (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(**26**) (regulators’ power to require information: authorised persons etc.);
- (b) section 166(**27**) (reports by skilled persons);
- (c) section 167(**28**) (appointment of persons to carry out general investigations);
- (d) section 168(4) to (6)(**29**) (appointment of persons to carry out investigations in particular cases);
- (e) section 169(**30**) (investigations etc. in support of overseas regulator);
- (f) section 170(**31**) (investigations: general);
- (g) section 171(**32**) (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(**33**) (admissibility of statements made to investigators);
- (k) section 175(**34**) (information and documents: supplemental provisions);

(22) Section 204A was inserted by paragraphs 1 and 10 of Schedule 9 to the Financial Services Act 2012 (c. 21).

(23) 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.

(24) 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.

(25) Section 398 was amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012 and by S.I. 2013/1773.

(26) 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.

(27) Section 166 was substituted by paragraph 5 of Schedule 12 to the Financial Services Act 2012.

(28) Section 167 was amended by paragraph 7 of Schedule 12 to the Financial Services Act 2012 and S.I. 2007/126.

(29) 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.

(30) Section 169 was amended by paragraph 9 of Schedule 12 to the Financial Services Act 2012.

(31) Section 170 was amended by paragraph 10 of Schedule 12 to the Financial Services Act 2012.

(32) Section 171 was amended by S.I. 2007/126.

(33) Section 174 was amended by paragraph 12 of Schedule 12 to the Financial Services Act 2012.

(34) Section 175 was amended by paragraph 13 of Schedule 12 to the Financial Services Act 2012.

- (l) section 176(35) (entry of premises under warrant);
- (m) section 176A(36) (retention of documents taken under section 176);
- (n) section 177(37) (offences);
- (o) section 205(38) (public censure); and
- (p) section 206(39) (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(40) 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)(41).

Application of procedural provisions of the Act

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

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(42), and
- (b) paragraph 25 (exemption from liability in damages) of Schedule 1ZA to the Act(43).

Extension of the compulsory jurisdiction of the Financial Ombudsman Scheme to registered consumer buy-to-let mortgage firms

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)(44), after “Payment Services Regulations 2009,” there were inserted “a registered consumer buy-to-let mortgage firm within the meaning of Part 3 of the Mortgage Credit Directive Order 2015,”;

(35) 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](#).

(36) Section 176A was inserted by paragraph 15 of Schedule 12 to the Financial Services Act 2012.

(37) Section 177 was amended by paragraph 8 of Schedule 8 to the Financial Services Act 2012 and [S.I. 2001/1090](#).

(38) Section 205 was amended by paragraph 11 of Schedule 9 to the Financial Services Act 2012.

(39) 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.

(40) 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).

(41) Schedule 1ZA was substituted by Schedule 3 to the Financial Services Act 2012.

(42) 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](#).

(43) Paragraph 25 was amended by section 109 of the Financial Services (Banking Reform) Act 2013.

(44) 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](#).

- (b) in section 232A of that Act (scheme operator’s duty to provide information to FCA)(45), 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)(46), 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)(47), 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,”.

PART 4

Transitional Provisions

Transitional provision: person with Part 4A permission to carry on an activity in relation to a regulated mortgage contract before 21st March 2016

27.—(1) Any person who immediately before 21st March 2016 had permission under Part 4A of the Act to carry on an activity of the kind specified by article 25A, 36A, 60B or 61 of the Regulated Activities Order is, from 21st March 2016, to be treated as having a Part 4A permission to carry on an activity of the kind specified by that article of the Regulated Activities Order as amended by this Order.

(2) Paragraph (1) does not affect the ability of the FCA or the PRA to vary or cancel a Part 4A permission under the Act.

Transitional provision: agreements before 21st March 2016

28.—(1) Subject to paragraph (2), this Order does not apply to the granting of credit pursuant to an agreement existing before 21st March 2016.

(2) Paragraph (1) does not prevent this Order from applying to a consumer credit back book mortgage contract from the later of—

- (a) 21st March 2016, if the consumer credit back book mortgage contract was entered into before that date; or
- (b) the time at which the consumer credit back book mortgage contract is entered into.

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(48) specified in paragraph (3), but for the amendments to legislation made by this Order, the contract is enforceable

(45) Section 232A was inserted by paragraph 9 of Schedule 11 to the Financial Services Act 2012.

(46) 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](#).

(47) 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](#).

(48) [1974 c.39](#).

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)(**49**) 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)(**50**),
- (b) section 61B(3) (duty to supply copy of overdraft agreement)(**51**),
- (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)(**52**),
- (b) section 77A(1) (statements to be provided in relation to fixed-sum credit agreements)(**53**),
- (c) section 78(1) (duty to give information to debtor under running-account credit agreement)(**54**),
- (d) section 85(1) (duty on issue of new credit-tokens),
- (e) section 97(1) (duty to give information about early repayment)(**55**).

(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)(**56**), 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)(**57**) 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

(49) Section 127 was amended by Schedule 4 to the Consumer Credit Act 2006 (c. 14) and by S.I. 2010/1010.

(50) Section 55(2) was substituted by S.I. 2010/1010.

(51) Section 61B was inserted by S.I. 2010/1010.

(52) Section 77(1) was amended by S.I. 1998/997.

(53) Section 77A(1) was inserted by section 6 of the Consumer Credit Act 2006 (c. 14) and subsequently substituted by S.I. 2008/2826.

(54) Section 78(1) was amended by S.I. 1998/997.

(55) Section 97(1) was amended by S.I. 2010/1010.

(56) Section 86D was inserted by section 11 of the Consumer Credit Act 2006.

(57) Section 86E was inserted by section 12 of the Consumer Credit Act 2006.

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)(**58**),
 - (b) section 108(1) (duty to give information to surety under running-account credit agreement)(**59**),
 - (c) section 110(1) (duty to give information to debtor or hirer)(**60**).

(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)(**61**),
- (b) section 94 (right to complete payments ahead of time)(**62**),
- (c) section 95 (rebate on early settlement)(**63**).

(12) Sections 140A to 140C of the Consumer Credit Act 1974 (unfair relationships)(**64**) 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(**65**).

Transitional provision: person engaged in consumer buy-to-let mortgage business before 20th March 2014

30.—(1) A creditor or credit intermediary who is engaged in consumer buy-to-let mortgage business before 20th March 2014 is not required to comply with paragraph 3 of Schedule 2 (knowledge and competence requirements for staff) until 21st March 2017.

(2) In this article, the terms “creditor”, “credit intermediary” and “consumer buy-to-let mortgage business” have the meanings set out in article 4.

Transitional provision: person subject to the Consumer Credit Act 1974 who chooses to adopt new rules before 21st March 2016

- 31.**—(1) Paragraph (2) applies in relation to an agreement or proposed agreement where—
- (a) if made before 21st March 2016, the agreement would be a regulated consumer credit agreement;
 - (b) if made on or after 21st March 2016, the agreement would not be a regulated consumer credit agreement;
 - (c) the creditor has not acted in compliance or in purported compliance with any provision of Part 4 of the Consumer Credit Act 1974, or regulations made under that Part, in relation to the agreement or proposed agreement; and
 - (d) before 21st March 2016, the creditor acts in compliance or in purported compliance with rules made by the FCA that would apply in relation to the agreement or proposed agreement from 21st March 2016.

(58) Section 107 was amended by [S.I. 1998/997](#) and [S.I. 2008/1277](#).

(59) Section 108 was amended by [S.I. 1998/997](#) and [S.I. 2008/1277](#).

(60) Section 110 was amended by [S.I. 1998/997](#) and [S.I. 2008/1277](#).

(61) Section 93 was amended by [S.I. 2013/1881](#).

(62) Section 94 was amended by section 29 of the Energy Act 2011 (c. 16) and by [S.I. 2010/1010](#).

(63) Section 95 was amended by [S.I. 2010/1010](#).

(64) 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](#).

(65) Section 8(3) was substituted by [S.I. 2013/1881](#).

(2) From the date on which the creditor first acts in compliance or purported compliance with such rules, the Consumer Credit Act 1974 applies in relation to the agreement or proposed agreement as if the amendments to legislation made by paragraphs 2 and 4 of Schedule 1 (amendments to the Consumer Credit Act 1974 and the Regulated Activities Order) had come into force.

(3) In this article—

“creditor” means a creditor within the meaning of section 8(1) of the Consumer Credit Act 1974⁽⁶⁶⁾; and

“regulated consumer credit agreement” means a regulated agreement within the meaning of section 8(3) of the Consumer Credit Act 1974.

FCA power to direct timing of applications for permission and registration

32.—(1) This article applies to an application made before 21st September 2015 for—

(a) a Part 4A permission or a variation of a Part 4A permission in relation to an activity of the kind specified by—

(i) article 53A⁽⁶⁷⁾ of the Regulated Activities Order (advising on regulated mortgage contracts),

(ii) article 25A⁽⁶⁸⁾ (arranging regulated mortgage contracts) or 61⁽⁶⁹⁾ (entering into and administering regulated mortgage contracts) of the Regulated Activities Order as amended by this Order, or

(iii) article 53DA of the Regulated Activities Order (advising on regulated credit agreements for the acquisition of land) as inserted by this Order; or

(b) entry on the register of consumer buy-to-let mortgage firms under article 8 of this Order (register of consumer buy-to-let mortgage firms).

(2) The application may not be made before such date (“the opening date”) as the FCA may direct.

(3) Directions given under paragraph (2) may—

(a) relate to different categories of applications;

(b) set different opening dates for different categories of applications;

(c) be amended by the FCA by further direction.

(4) An application made before the opening date is to be treated as if it had not been made.

PART 5

Review

Review

33.—(1) The Treasury must from time to time—

(a) carry out a review of this Order;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

⁽⁶⁶⁾ Section 8(1) was amended by section 2 of the Consumer Credit Act 2006.

⁽⁶⁷⁾ Article 53A was inserted by [S.I. 2003/1475](#).

⁽⁶⁸⁾ Article 25A was inserted by [S.I. 2003/1475](#).

⁽⁶⁹⁾ Article 61 was amended by [S.I. 2001/3544](#), [2005/2114](#), [2006/2383](#) and [2010/2960](#).

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the mortgages directive (which is implemented by means of this Order) is implemented in other EEA States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by this Order;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this article must be published on or before 1st September 2018.

(5) Reports under this article are afterwards to be published at intervals not exceeding five years.

25th March 2015

Mark Lancaster
Gavin Barwell
Two of the Lords Commissioners of Her
Majesty's Treasury