EXPLANATORY MEMORANDUM TO

THE MORTGAGE CREDIT DIRECTIVE ORDER 2015

2015 No. 910

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument makes the changes necessary to ensure that the UK complies with Directive 2014/17/EU on credit agreements relating to residential immovable property, more commonly known as the EU Mortgage Credit Directive (MCD).

2.2 The instrument makes a number of changes to UK legislation. Principally, these changes provide the Financial Conduct Authority (FCA) with the appropriate powers to design, supervise and enforce rules as required to achieve compliance with the MCD. In addition, the legislation introduces a new legislative framework for the regulation of buy-to-let lending to consumers, and provides the FCA with the appropriate powers to supervise and enforce this framework.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The draft of this instrument laid before Parliament and published on 27 February 2015 (ISBN 978-0-11-113081-0) superseded the draft The Mortgage Credit Directive Order 2015 laid before Parliament and published on 26 January 2015 (ISBN 978-0-11-112774-2). The draft of this instrument was issued free of charge to all known recipients of that draft Statutory Instrument.

4. Legislative Context

4.1 This Order implements the MCD in part by making amendments to the Financial Services and Markets Act 2000 (FSMA) and other relevant legislation so that the activities which are within the scope of the MCD are regulated under the regime set out in FSMA. Those amendments are made using both the power in section 2(2) of the European Communities Act 1972, and powers in FSMA itself. The detail of the MCD requirements will be implemented in rules made by the FCA under FSMA.

4.2 The approach to buy-to-let lending to consumers is different. Article 3(3) and (4) of the MCD permits Member States to decide not to implement the MCD fully for this type of lending provided that an appropriate framework applies at a national level for this type of lending. Such a framework is established in the Order under section 2(2) of the European Communities Act 1972, with the detail of the requirements set out in Schedule 2 to the Order.

4.3 The Financial Secretary to the Treasury provided an Explanatory Memorandum on the MCD to the House of Commons European Scrutiny Committee and the House of Lords European Union Committee on 8 June 2011. The House of Lords European Union Committee cleared the MCD on 7 February 2012. The House of Commons European Scrutiny Committee requested a debate on the MCD, which took place on 11 September 2012. Following the debate, the House of Commons European Scrutiny Committee cleared the MCD. Since then, the responsible Treasury Minister has written to both Committees on a number of occasions in order to provide updates and further information.

4.4 A transposition note is annexed to this Memorandum.

5. Territorial Extent and Application

5.1 The instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury, Andrea Leadsom MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Mortgage Credit Directive Order 2015 are compatible with the Convention rights."

7. Policy background

7.1 The European Commission proposed the MCD on 31 March 2011 for adoption through the co-decision procedure. After a first reading agreement on 22 April 2013 the Directive was published in February 2014. The final text of the Directive is available in full on the website of the European Commission. The UK is required to implement the MCD requirements by 21 March 2016, in order to meet its Treaty obligations. This requires the Government to make changes to the legislation that enables mortgage regulation.

7.2 Most of the MCD provisions are concerned with setting the minimum regulatory requirements that Member States are required to meet in order to protect consumers taking out credit agreements relating to residential property. The MCD also imposes maximum standards on Member States in a few areas, in particular the provision of pre-contractual information in a standardised format.

7.3 The Government does not believe that the MCD offers many benefits to UK consumers beyond those already provided by the high level of protection offered by the existing FCA regime for mortgages. This has driven the Government's approach to the negotiation and implementation of this Directive, which has been to minimise the impact on the UK market as far as possible. The legislative changes set out Mortgage Credit Directive Order 2015 are designed to implement these requirements in a way that best meets the Government's objectives.

7.4 The changes made by the legislation are set out in detail in the consultation document, published by Government on 5 September 2014, and in the summary of responses, published on 23 January 2015. The key changes are as follows:

- Amending the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 so that mortgages secured by a second or subsequent charge on land are regulated alongside first charge mortgages rather than other consumer credit. The MCD applies to both first and second charge mortgages, and so this Order changes their regulatory status so that the regulatory treatment can be more easily aligned. Further changes to the 2001 Order ensure that the FCA has the appropriate authority to make and enforce rules with respect to all those types of transaction covered by the Directive.
- Introducing a new framework for the regulation of buy-to-let mortgage lending to consumers, in order to meet the requirement of the MCD to have in place an 'appropriate framework' to protect consumers engaging in such transactions.
- Amending the Financial Services and Markets Act 2000 to allow for mortgage intermediaries to exercise their right under MCD to engage in cross-border activities within the EEA.

8. Consultation outcome

8.1 HM Treasury published a consultation paper, draft legislation and consultation stage impact assessment on 5 September 2014. The consultation ran for 8 weeks and received 33 responses from a wide range of mortgage market stakeholders. An 8 week consultation period was considered to be sufficient to receive the necessary feedback, while also allowing the UK Government to finalise the legislation as quickly as possible, to meet stakeholders' request for clarity on the UK approach to implementation as early as possible.

8.2 All respondents who addressed the question of the Government's proposed approach were supportive of the intention to build on the existing UK regulatory regime rather than copy-out the directive into UK legislation. However, some respondents commented that there was a tight timetable for implementation. In response, the Government refined its policy approach in order to alleviate the pressure on firms, in particular with respect to the 'pipeline' of mortgages for which the application had been started on a pre-MCD basis but had not yet been completed on 21 March 2016.

8.3 There was widespread support received on the Government's intention to implement its existing policy commitment to move second charge mortgage lending into the regulatory regime for mortgage lending, rather than the regime for consumer credit.

Some respondents did suggest changes to the Government's approach, however the Government did not propose any amendments to its initial approach. The rationale behind this decision is covered in full within the Government's summary of responses.

8.4 The Government received a number of helpful responses from stakeholders on the legislation implementing the new framework for buy-to-let lending to consumers. Respondents were again broadly supportive of the overall approach but proposed some alterations to the legislation in order to better achieve the Government's objectives. In response to this the Government provided greater clarity for firms on several issues, and took the decision to remove existing regulation for firms engaged in broking on buy-to-let mortgages, which was no longer needed following the introduction of these new requirements.

8.5 The consultation also provided the Government with an opportunity to gather more detailed information about the likely impact of the proposals on the UK mortgage market, to inform a final stage impact assessment, which has been published alongside this legislation.

8.6 HM Treasury published a summary of responses on 26 January 2015, ahead of laying this Order in draft. This document summarises the key points raised by stakeholders who responded to the consultation, and provides the Government's response to these.

9. Guidance

9.1 The FCA is the key organisation that will implement the MCD compliant rules which mortgage firms will need to meet. The FCA provide guidance on their rules where this is appropriate. The Government's consultation document and summary of responses also contain an explanation of the changes introduced to implement the MCD.

10. Impact

10.1 The Equivalent Annual Net Cost to Business of this instrument is £1.5m.

10.2 The impact on the public sector, charities or voluntary bodies is negligible.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The MCD does not offer any exemption to small businesses and as such the Treasury was limited in the steps it could take to alleviate the burden on small businesses. However, central to the Government's approach as a whole has been minimising the impact on business wherever possible. For example, as part of the approach to the implementation of the MCD, the Government has decided to deregulate in the area of broking on buy-to-let mortgages. The benefits of this will be particularly felt by mortgage intermediaries, many of whom are small businesses.

12. Monitoring & review

12.1 HM Treasury will monitor the practical effects of the Order to ensure that it continues to meet the policy aims to transpose the MCD with as little disruption to the UK mortgage market as possible.

12.2 This Order contains a requirement to review the Order and publish a report of the conclusions of this review on or before 1 September 2018. There is also an ongoing requirement to publish further reports subsequent to this initial review, at intervals not exceeding five years.

13. Contact

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