

Title: THE MORTGAGE CREDIT DIRECTIVE ORDER 2015 PIR No: n/a Original IA/RPC No: found here Lead department or agency: HM Treasury Other departments or agencies: Financial Conduct Authority (FCA) Prudential Regulation Authority (PRA) Contact for enquiries: Kezia.Johnson@HMTreasury.gov.uk	Post Implementation Review
	Date: 11/04/2019
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 25/03/2015
	Recommendation: Keep
	RPC Opinion: Green

1. What were the policy objectives of the measure?

The UK was required to implement the EU Mortgage Credit Directive (MCD) to ensure that the UK met its treaty obligations. The UK has been sceptical about the value of the MCD in adding to consumer protections beyond those already provided by the Financial Conduct Authority (FCA) or in facilitating a better internal market in mortgage lending across Europe. As such, the policy objective was to achieve compliance with the MCD while minimising the impact on UK industry in terms of their cost and competitiveness.

This was achieved by maintaining the existing regulatory framework as far as possible and minimising any adjustments required to meet the MCD. The MCD recognised the different characteristics of buy-to-let mortgage lending and provides Member States with the option to exempt it from the detailed requirements of the Directive, provided they establish an alternative appropriate framework. Therefore, the UK used an exemption clause in the Mortgage Credit Directive Order (MCDO) to set out a national framework regulating consumer buy-to-let (CBTL) lending. The MCDO also provides the FCA with the appropriate powers to design, supervise and enforce rules as required to achieve compliance with the MCD.

2. What evidence has informed the PIR?

HMT has engaged with the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) to obtain information on the effect of the MCDO as well as data on the mortgage products affected by the MCDO to support this review. As the provisions of the MCDO focus for the most part on establishing a new regime of regulation for CBTL lending, this review has focused on impact of this type of lending.

For comparative purposes, HMT sought to assess how other Member States implemented the MCD, however the FCA are not aware of any other Member State that has established a specific regime for CBTL to enable comparison.

HMT has also considered feedback from the UK mortgage industry to inform this review. Beyond some initial concerns that the MCDO lacked clarity in its definition of CBTL (which was solved through discussion with UK Finance), the FCA are not aware of any specific industry complaints regarding the effect of the MCDO on consumer protection.

3. To what extent have the policy objectives been achieved?

The original objective, to achieve compliance with the MCD has been met. The UK focused on aligning the Directive requirements as far as possible with the existing UK regulation, with a view of minimising the impact on UK industry and consumers. By using the MCD exemption clause to establish a national framework regulating CBTL lending, the MCDO built in the

existing regulatory framework and did not remove existing protections. Additionally, this approach minimised the impact of the changes on UK mortgage firms, as far as was possible.

The introduction of the MCDO has had a minimal effect on UK businesses in terms of cost. As the regulatory framework for CBTL was only established in 2015, the PRA have collected data from firms since Q3 2017, which limits the ability to assess the effect of the MCDO on CBTL lending. However, the data they have does not show any impact on the market from the MCDO.

The FCA have reported that they are not aware of any specific industry complaints about the MCDO having a detrimental effect on consumer protection. Therefore, MCDO has been effective in achieving common regulatory standards while minimising burdens on UK industry.

SCS of Banking and Credit

Signed: ***David Raw***

Date: ***11/04/2019***

SCS of Better Regulation Unit

Signed: ***Gemma Peck***

Date: ***15/04/2019***

Sign-off for Post Implementation Review: Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***John Glen MP, Economic Secretary to the Treasury***

Date: ***23/04/2019***

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?

The underlying assumption to these Regulations was that by copying out the MCD's requirements into UK legislation (i.e. by not using the exemption clause to establish a specific regime for CBTL) there would have been significant costs and disruption to industry in the immediate term, and would have dismantled the robust consumer protections which had previously been implemented by the FCA in their mortgage regulations.

5. Were there any unintended consequences?

Evidence obtained from the FCA and the PRA has not revealed any unintended consequences for firms or the mortgage products under provision of the MCDO. However, in addition to establishing a national regulatory framework for CBTL lending, the MCDO provides the FCA with the appropriate powers to design, supervise and enforce rules as required to achieve compliance with the MCD. It has been found that in achieving compliance with the MCD, the FCA reduced flexibility for consumer affordability assessments, making it difficult for a small number of mortgage borrowers to switch to a new deal. The FCA are currently consulting on a solution to this issue which will look to change the regulator's rules, whilst remaining compliant with the MCDO.

6. Has the evidence identified any opportunities for reducing the burden on business?

The evidence given to HMT by the FCA and the PRA has not identified any opportunities to reduce the burden on business. The original impact assessment for the implementation of the MCDO assessed that there would be minimal impact on business. This has not changed.

7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business?

The FCA are not aware of any other Member State that used the MCD's exemption to set up a national framework regulating CBTL lending for comparison. Additionally, the FCA are not aware of any Member State that has carried out a review of its implementation of the MCD, although the Commission website indicates it had carried out some form of review and sent initial letters to a number of Member States regarding delays in their implementation of the MCD.

Recommended Next Steps (Keep, Amend, Repeal or Replace)

This review proposes to keep the legislation.

The Regulations established a national regulatory framework for CBTL lending. It also provided the FCA with the appropriate powers to bring 2nd charge mortgages under the mortgages regime, previously part of the consumer credit regime, which received widespread support. The changes made by the MCDO has been minimal on industry. There have been no representations from industry that reflects discontent or detrimental effect of the MCDO.