

SCHEDULE 1 **U.K.**

Amendments to legislation

**PART 2** **U.K.**

Amendments to secondary legislation

**The Consumer Credit (Agreements) Regulations 1983** **U.K.**

<sup>F1</sup>3. ....

**Textual Amendments**

**F1** Sch. 1 para. 3 omitted (20.9.2015) by virtue of [The Mortgage Credit Directive \(Amendment\) Order 2015 \(S.I. 2015/1557\)](#), arts. 1(2), **2(5)**

**The Financial Services and Markets (Regulated Activities) Order 2001** **U.K.**

4.—(1) The Regulated Activities Order is amended as follows.

(2) In article 3(1) (interpretation) <sup>M1</sup>, in the definition of “home Member State”, after “capital requirements regulation” insert “, and, in relation to a mortgage intermediary, has the meaning given by Article 4(19) of the mortgages directive”.

(3) In article 4 (specified activities: general) <sup>M2</sup> after paragraph (4A) insert—

“(4B) Where—

- (a) a person is a mortgage creditor or a mortgage intermediary; and
- (b) in acting as a mortgage creditor or a mortgage intermediary, that person would be treated as carrying on an activity of a kind specified by article 25A (arranging regulated mortgage contracts), 36A (credit broking), 53A (advising on regulated mortgage contracts), 53DA (advising on regulated credit agreements for the acquisition of land), 60B (regulated credit agreements) or 61 (entering into and administering regulated mortgage contracts), but for an exclusion or exemption provided for by this Order,

that exclusion or exemption is to be disregarded (and accordingly that person is to be treated as carrying on an activity of the kind specified by the provision in question) to the extent that such exclusion or exemption does not fall within Article 3(2) or (3) of the mortgages directive.”.

(4) In article 25A (arranging regulated mortgage contracts) <sup>M3</sup>—

(a) after paragraph (2) insert—

“(2A) Making arrangements to enter into a regulated mortgage contract with a borrower on behalf of a lender is also a specified kind of activity.”; and

(b) in paragraph (3) for “ “borrower” has the meaning” substitute “ “borrower” and “lender” have the meanings”.

(5) In article 29 (arranging deals with or through authorised persons) <sup>M4</sup>—

(a) in paragraph (1) for “25A(1) and (2)” substitute “ 25A(1), (2) and (2A) ”; and

(b) in paragraph (3) after “article 4(4)” insert “ and (4B) ”.

- (6) In article 36 (other exclusions) <sup>M5</sup>, after paragraph (2) insert—  
“(2A) Article 25A is also subject to the exclusion in article 72I (registered consumer buy-to-let mortgage firms).”.
- (7) For article 36E <sup>M6</sup> (activities in relation to certain agreements relating to land) substitute—

**“Activities in relation to certain agreements relating to land**

**36E.**—(1) There are excluded from article 36A activities carried on with a view to an individual or a relevant recipient of credit entering into an investment property loan, as defined in article 61A(6) (mortgage contracts which are not regulated mortgage contracts).

(2) There are excluded from article 36A activities of a kind specified by article 25A (arranging regulated mortgage contracts) or 25C (arranging regulated home purchase plans).

(3) There are excluded from article 36A other activities not excluded by paragraph (1) or (2) which consist of effecting an introduction with a view to an individual or relevant recipient of credit entering into a relevant agreement, if the person to whom the introduction is made is an authorised person who has permission to—

- (a) enter into such an agreement as lender or home purchase provider (as the case may be), or
- (b) make an introduction to an authorised person who has permission to enter into such an agreement as lender or home purchase provider (as the case may be).

(4) In paragraph (3) “relevant agreement” means a regulated mortgage contract or a regulated home purchase plan.”.

(8) In article 36G (other exclusions) <sup>M7</sup> for “the exclusion in article 72A (information society services) and the exclusion in article 72G (local authorities)” substitute “ the exclusions in articles 72A (information society services), 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms) ”.

- (9) After article 53D (advising on regulated sale and rent back agreements) <sup>M8</sup> insert—

**“Advising on regulated credit agreements for the acquisition of land**

**53DA.**—(1) Advising a person (“P”) is a specified kind of activity if—

- (a) the advice is given to P in P’s capacity as a recipient of credit, or potential recipient of credit, under a regulated credit agreement;
- (b) P intends to use the credit to acquire or retain property rights in land or in an existing or projected building; and
- (c) the advice consists of the provision of personal recommendations to P in respect of one or more transactions relating to regulated credit agreements.

(2) In this article “regulated credit agreement” has the meaning given by article 60B(3).”.

- (10) In article 54 (advice given in newspapers etc.) <sup>M9</sup>—

- (a) after “53D” each time that it appears insert “ , 53DA ”; and
- (b) after paragraph (1)(b)(v) insert—

“(va) to enter as a recipient of credit into a regulated credit agreement the purpose of which is to acquire or retain property rights in land or in an existing or projected building.”.

- (11) In article 54A (advice given in the course of administration by an authorised person) <sup>M10</sup>, after paragraph (4) insert—

- “(5) A person who is not an authorised person (“A”) does not carry on an activity of the kind specified by article 53DA by reason of—
- (a) anything done by an authorised person (“B”) in relation to a regulated credit agreement which B is administering pursuant to arrangements of the kind mentioned in article 60I(a) (arranging administration by authorised person); or
  - (b) anything A does in connection with the administration of a regulated credit agreement in circumstances falling within article 60I(b).”.
- (12) In article 55 (other exclusions) <sup>M11</sup>, in paragraph (2)—
- (a) for “53C and 53D” substitute “ 53C, 53D and 53DA ”; and
  - (b) for “and 72G (local authorities)” substitute “ , 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms) ”.
- (13) In article 60C (exempt agreements: exemptions relating to the nature of the agreement) <sup>M12</sup>, in paragraph (2) for “a regulated home purchase plan” substitute “ if it is of a type described in article 61A(1) or (2) (mortgage contracts which are not regulated mortgage contracts) ”.
- (14) In article 60D (exempt agreements: exemption relating to the purchase of land for non-residential purposes), after paragraph (3) insert—
- “(4) This article does not apply to an agreement of the type described in Article 3(1)(b) of the mortgages directive.”.
- (15) In article 60E (exempt agreements: exemptions relating to the nature of the lender)—
- (a) in paragraph (2) for “A relevant credit agreement” substitute “ Subject to article 60HA, a relevant credit agreement ”; and
  - (b) in paragraph (5) for “A relevant credit agreement” substitute “ Subject to article 60HA, a relevant credit agreement ”.
- (16) In article 60F (exempt agreements: exemptions relating to the number of repayments to be made), in paragraph (4) for “A credit agreement” substitute “ Subject to article 60HA, a credit agreement ”.
- (17) In article 60G (exempt agreements: exemptions relating to the total charge for credit)—
- (a) in paragraph (2)—
    - (i) after sub-paragraph (a) omit “and”; and
    - (ii) after sub-paragraph (b) insert—

“, and
    - (c) paragraph (2A) applies to the agreement.”;
  - (b) after paragraph (2) insert—

“(2A) This paragraph applies to the agreement if—

    - (a) the agreement is not of a type described in Article 3(1) of the mortgages directive; or
    - (b) the agreement is of such a type and—
      - (i) the agreement is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive,
      - (ii) the agreement is a bridging loan within the meaning of Article 4(23) of the mortgages directive, or
      - (iii) in relation to the agreement—
        - (aa) the borrower receives timely information on the main features, risks and costs of the agreement at the pre-contractual stage, and

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- (bb) any advertising of the agreement is fair, clear and not misleading.”;
  - (c) in paragraph (3) for “A credit agreement” substitute “ Subject to paragraph (8), a credit agreement ”;
  - (d) in paragraph (4) for “A credit agreement” substitute “ Subject to paragraph (8), a credit agreement ”;
  - (e) in paragraph (6) for “paragraph (5)” substitute “ paragraphs (5) and (8) ”;
  - (f) after paragraph (7) insert—
    - “(8) A credit agreement of a type described in Article 3(1) of the mortgages directive is an exempt agreement pursuant to paragraph (3) or (4) only if—
      - (a) the agreement meets the general interest test;
      - (b) the borrower receives timely information on the main features, risks and costs of the agreement at the pre-contractual stage; and
      - (c) any advertising of the agreement is fair, clear and not misleading.”.
- (18) In article 60H (exempt agreements: exemptions relating to the nature of the borrower)—
- (a) the existing text becomes paragraph (1);
  - (b) in paragraph (1)—
    - (i) for “A credit agreement” substitute “ Subject to article 60HA, a credit agreement ”; and
    - (ii) for sub-paragraph (b)(ii) substitute—
      - “(ii) for credit which exceeds £60,260 and is for a purpose other than—
        - (aa) the renovation of residential property, or
        - (bb) to acquire or retain property rights in land or in an existing or projected building,”; and
  - (c) after paragraph (1) insert—
    - “(2) Where a credit agreement would be an exempt agreement pursuant to this article but for paragraph (1)(b)(ii)(bb) or article 60HA, the FCA may treat the agreement as an exempt agreement except for the purpose of the application of the requirements of the mortgages directive.”.
- (19) After article 60H insert—

**“Exempt agreements: exemptions not permitted under the mortgages directive**

**60HA.**—(1) A credit agreement is not an exempt agreement pursuant to article 60E(2) or (5), 60F(4) or 60H(1) if—

- (a) the agreement is of a type described in Article 3(1) of the mortgages directive, and
  - (b) paragraph (2) does not apply.
- (2) This paragraph applies if—
- (a) the agreement is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;
  - (b) the agreement is a bridging loan within the meaning of Article 4(23) of that directive; or
  - (c) the agreement is a restricted public loan in respect of which—

- (i) the borrower receives timely information on the main features, risks and costs at the pre-contractual stage; and
  - (ii) any advertising is fair, clear and not misleading.
- (3) In paragraph (2)(c) “restricted public loan” means a credit agreement that is—
  - (a) offered to a particular class of borrower and not offered to the public generally;
  - (b) offered under an enactment with a general interest purpose; and
  - (c) provided on terms which are more favourable to the borrower than those prevailing on the market, because it meets one of the following conditions—
    - (i) it is interest free;
    - (ii) the rate of interest is lower than that prevailing on the market; or
    - (iii) the rate of interest is no higher than that prevailing on the market but the other terms on which credit is provided are more favourable to the borrower.”.
- (20) In article 60K (other exclusions) for “the exclusion in article 72A (information society services) and the exclusion in article 72G (local authorities)” substitute “ the exclusions in articles 72A (information society services), 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms) ”.
- (21) In article 61 (regulated mortgage contracts) <sup>M13</sup>—
  - (a) in paragraph (3)(a)—
    - (i) for paragraphs (i) to (iii) substitute—
      - “(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”; and
    - (ii) in the wording after paragraph (iii) for “is a regulated home purchase plan” substitute “ falls within article 61A(1) or (2) ”;
  - (b) for paragraph (4)(a) substitute—
    - “(a) “mortgage” includes a charge and (in Scotland) a heritable security;”; and
  - (c) in paragraph (4)—
    - (i) after sub-paragraph (c) omit “and”; and
    - (ii) omit sub-paragraph (d).
- (22) After article 61 insert—

**“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;

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- (d) an investment property loan; or
  - (e) an exempt consumer buy-to-let mortgage contract.
- (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—

- (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;
- “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;
  - (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;

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“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.”.

(23) In article 63A (other exclusions) <sup>M14</sup> for “and 72G (local authorities)” substitute “, 72G (local authorities) and 72I (registered consumer buy-to-let mortgage firms) ”.

(24) In article 66 (trustees, nominees and personal representatives) <sup>M15</sup>—

- (a) in paragraph (2) for “25A(1) and (2)” substitute “ 25A(1), (2) and (2A) ”;
- (b) in paragraph (6) for “53C and 53D” substitute “ 53C, 53D and 53DA ”; and
- (c) in paragraph (8) after “article 4(4A)” insert “ and (4B) ”.

(25) In article 67 (activities carried on in the course of a profession or non-investment business) <sup>M16</sup>—

- (a) in paragraph (1) for “53C and 53D” substitute “ 53C, 53D and 53DA ”; and
- (b) in paragraph (3) for “4(4) and (4A)” substitute “ 4(4), (4A) and (4B) ”.

(26) In article 72 (overseas persons) <sup>M17</sup>—

- (a) in paragraph (5A) after “25A(1)(a),” insert “ 25A(2A), ”; and
- (b) after paragraph (9) insert—

“(10) Paragraphs (5A) and (5C) do not apply where the overseas person is a mortgage intermediary whose home Member State is the United Kingdom.”.

(27) In article 72G (local authorities) <sup>M18</sup>—

- (a) in paragraph (3)—
  - (i) for “25A” substitute “ 25A(1)(b), 25A(2) ”; and
  - (ii) omit “53A,” and “61,”;
- (b) after paragraph (3) insert—

“(3A) There is excluded from article 25A(1)(b) and (2) any activity which is carried on by a company which is a wholly-owned subsidiary of a local authority.

(3B) There is excluded from articles 25A(1)(a) and (2A), 53A, 53DA and 61 any activity which is carried on by a local authority, or a company which is a wholly-owned subsidiary of a local authority, in so far as the contract is—



- (a) of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;
  - (b) a bridging loan; or
  - (c) a restricted public loan in relation to which the requirements of paragraph (6) are met.”;
- (c) for paragraph (4) substitute—
- “(4) There is excluded from article 60B—
- (a) any activity which is carried on by a local authority, the purpose of which is other than to acquire or retain property rights in land or in an existing or projected building, in so far as the credit agreement is of a kind to which the consumer credit directive does not apply by virtue of Article 2(2) of that directive;
  - (b) any activity which is carried on by a local authority, the purpose of which is to acquire or retain property rights in land or in an existing or projected building, in so far as the credit agreement meets one of the following conditions—
    - (i) it is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;
    - (ii) it is a bridging loan; or
    - (iii) it is a restricted public loan in relation to which the requirements of paragraph (6) are met.”; and
- (d) after paragraph (5) insert—
- “(6) The requirements of this paragraph are that—
- (a) the borrower receives timely information on the main features, risks and costs of the loan at the pre-contractual stage; and
  - (b) any advertising of the loan is fair, clear and not misleading.
- (7) In this article—
- “bridging loan” has the meaning given by Article 4(23) of the mortgages directive;
- “borrower” means a person receiving credit;
- “consumer credit directive” means Directive [2008/48/EC](#) of the European Parliament and of the Council of 23rd April 2008 on credit agreements for consumers and repealing Council Directive [87/102/EC](#)<sup>M19</sup>;
- “credit” includes a cash loan and any other form of financial accommodation;
- “restricted public loan” means credit that is—
- (a) offered to a particular class of borrower and not offered to the public generally;
  - (b) offered under an enactment with a general interest purpose; and
  - (c) provided on terms which are more favourable to the borrower than those prevailing on the market, because the credit meets one of the following conditions—
    - (i) it is interest free;
    - (ii) the rate of interest is lower than that prevailing on the market; or
    - (iii) the rate of interest is no higher than that prevailing on the market but the other terms on which the credit is provided are more favourable to the borrower; and

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“wholly-owned subsidiary” has the same meaning as in section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006 <sup>M20</sup> and, for the purposes of this definition, a local authority is to be treated as a body corporate.”

(28) After article 72H (insolvency practitioners) <sup>M21</sup> insert—

**“Registered consumer buy-to-let mortgage firms**

**72I.**—(1) There is excluded from articles 25A, 36A, 53A, 53DA, 60B and 61 any consumer buy-to-let mortgage business carried on by a registered consumer buy-to-let mortgage firm.

(2) In this article “consumer buy-to-let mortgage business” and “registered consumer buy-to-let mortgage firm” have the meanings given in article 4 of the Mortgage Credit Directive Order 2015 (interpretation of Part 3).”.

**Marginal Citations**

- M1** Article 3 was amended by S.I. 2006/3384 and 2013/3115; there are other amendments to article 3 but none is relevant to this Order.
- M2** Article 4 was amended by S.I. 2003/1476, 2006/3384, 2009/1389, 2013/1773 and 1881 and 2014/1292.
- M3** Article 25A was inserted by S.I. 2003/1475.
- M4** Article 29 was amended by S.I. 2003/1476, 2006/2383 and 3384 and 2009/1342.
- M5** Article 36 was amended by S.I. 2002/1776, 2003/1475 and 1476, 2006/2383 and 3384, 2009/1342, 2013/1773 and 2014/366.
- M6** Article 36E was inserted by S.I. 2013/1881.
- M7** Article 36G was amended by S.I. 2013/1881 and amended by S.I. 2014/366.
- M8** Article 53D was inserted by S.I. 2009/1342.
- M9** Article 54 was amended by S.I. 2003/1475 and 1476, 2006/2383, 2009/1342 and 2013/472.
- M10** Article 54A was inserted by S.I. 2003/1475 and subsequently amended by S.I. 2006/2383 and 2009/1342.
- M11** Article 55 was amended by S.I. 2002/1776, 2003/1475 and 1476, 2006/2383, 2009/1342, 2013/1773 and 2014/366.
- M12** Chapter 14A (articles 60B to 60M) was inserted by S.I. 2013/1881. Articles 60C to 60G and 60K were subsequently amended by S.I. 2014/366.
- M13** Article 61 was amended by S.I. 2001/3544, 2005/2114, 2006/2383 and 2010/2960.
- M14** Article 63A was inserted by S.I. 2002/1776, substituted by S.I. 2003/1475 and subsequently amended by S.I. 2013/1773 and 2014/366.
- M15** Article 66 was amended by S.I. 2003/1475 and 1476, 2005/593, 2006/2383 and 3384, 2009/1342.
- M16** Article 67 was amended by S.I. 2001/3544, 2003/1475 and 1476, 2006/2383 and 3384 and 2009/1342.
- M17** Article 72 was amended by S.I. 2003/1475 and 1476, 2006/2383 and 3384, 2009/1342 and 2013/504.
- M18** Article 72G was inserted by S.I. 2014/366.
- M19** OJ L 133 22.5.2008, p.66.
- M20** 2006 c. 46.
- M21** Article 72H was inserted by S.I. 2014/366.

**The Financial Services and Markets Act 2000 (Exemption) Order 2001** **U.K.**

**5.**—(1) Paragraph 48 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001 <sup>M22</sup> is amended as follows.

(2) For sub-paragraph (1)(b) substitute “ article 25A(1)(b) and (2) of that Order (arranging a regulated mortgage contract); ”.

(3) After sub-paragraph (1) insert—

- “(1A) A relevant housing body is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 25A(1)(a) or (2A), 53A or 61 of that Order (arranging, advising on, entering into or administering a regulated mortgage contract) in so far as the contract—
- (a) is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive;
  - (b) is a bridging loan; or
  - (c) is a restricted public loan in relation to which the requirements of sub-paragraph (1B) are met.
- (1B) The requirements of this sub-paragraph are that—
- (a) the borrower receives timely information on the main features, risks and costs of the loan at the pre-contractual stage; and
  - (b) any advertising of the loan is fair, clear and not misleading.”.

(4) In sub-paragraph (2)—

    - (a) omit paragraphs (d) (Scottish Homes) and (f) (Communities Scotland);
    - (b) after paragraph (g) insert—
      - “(h) except for the purposes of sub-paragraph (1)(a), the Scottish Ministers;
      - (i) except for the purposes of sub-paragraph (1)(a), the Welsh Ministers.”.

(5) After sub-paragraph (2) insert—

“(3) Except for the purposes of sub-paragraph (1)(a), “relevant housing body” also includes a wholly-owned subsidiary of a body listed in sub-paragraph (2)(a), (aa), (b), (ca), (h) or (i).

(4) In this paragraph—

    - “bridging loan” has the meaning given by Article 4(23) of the mortgages directive;
    - “borrower” means a person receiving credit;
    - “credit” includes a cash loan and any other form of financial accommodation;
    - “restricted public loan” means credit that is—
      - (a) offered to a particular class of borrower and not offered to the public generally;
      - (b) offered under an enactment with a general interest purpose; and
      - (c) provided on terms which are more favourable to the borrower than those prevailing on the market, because it meets one of the following conditions—
        - (i) it is interest free;
        - (ii) the rate of interest is lower than that prevailing on the market; or
        - (iii) the rate of interest is no higher than that prevailing on the market but the other terms on which credit is provided are more favourable to the borrower; and

“wholly-owned subsidiary” has the same meaning as in section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006 and, for the purposes of this definition, a relevant housing body is to be treated as a body corporate.”.

### Marginal Citations

**M22** S.I. 2001/1201. Paragraph 48 of the Schedule was substituted by S.I. 2003/1675 and subsequently amended by S.I. 2005/592, 2006/2383, 2008/2831, 2009/1342, 2010/671, 2011/1626 and 2012/641 and 700.

## The Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001 **U.K.**

6.—(1) The Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001 <sup>M23</sup> are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation) <sup>M24</sup>, after the definition of “relevant management company” insert—

““relevant mortgage intermediary” means a mortgage intermediary falling within paragraph 5(i) of Schedule 3 to the Act which is providing all or part of the credit intermediation activities set out in Article 4(5) of the mortgages directive or which is providing advisory services (as defined in Article 4(21) of the mortgages directive) in the United Kingdom;”.

(3) In regulation 2 (persons not to be regarded as relevant persons) <sup>M25</sup>—

- (a) after sub-paragraph (1)(d) omit “and”;
- (b) after sub-paragraph (1)(e) insert—
  - “; and
  - (f) any relevant mortgage intermediary.”; and
- (c) in paragraph (2) for “(b) and (c)” substitute “ (b), (c) and (f) ”.

(4) In regulation 3 (persons who may elect to participate) <sup>M26</sup>—

- (a) after sub-paragraph (1)(c) omit “and”; and
- (b) after sub-paragraph (1)(d) insert—
  - “; and
  - (e) any relevant mortgage intermediary which has established a branch in the United Kingdom in exercise of an EEA right and which is not an investment firm, a credit institution or an insurance intermediary.”.

(5) In regulation 4 (persons in respect of whom inspection under section 224 does not apply) <sup>M27</sup>—

- (a) after paragraph (d) omit “and”; and
- (b) after paragraph (e) insert—
  - “; and
  - (f) any relevant mortgage intermediary.”.

### Marginal Citations

**M23** S.I. 2001/1783.

**M24** Regulation 1 was amended by S.I. 2003/1476 and 2066, 2011/1613 and 2013/1773 and 3115.

**M25** Regulation 2 was amended by S.I. 2003/1476 and 2066, 2011/1613 and 2013/1773.

**M26** Regulation 3 was amended by S.I. 2003/1476 and 2066 and 2013/1773.

**M27** Regulation 4 was amended by S.I. 2003/1476 and 2066 and 2013/1773.

## **The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001** **U.K.**

7.—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 <sup>M28</sup> are amended as follows.

(2) In regulation 2(1) (descriptions of business for which appointed representatives are exempt) <sup>M29</sup>, after sub-paragraph (cc) insert—

“(cca) an activity of the kind specified by article 53DA of that Order (advising on regulated credit agreements for the acquisition of land);”.

(3) In regulation 3(3) (requirements applying to contracts between authorised persons and appointed representatives) <sup>M30</sup>—

(a) after sub-paragraph (a)(ii) omit “or”;

(b) in sub-paragraph (b)(ii) for “with other counterparties.” substitute—  
“with other counterparties; or

(c) gives advice (in circumstances constituting the carrying on of an activity of the kind specified by article 53DA of that Order) which consists of the provision of personal recommendations to a person in respect of one or more transactions with other counterparties.”.

### **Marginal Citations**

**M28** [S.I. 2001/1217](#).

**M29** [Regulation 2\(1\)](#) was amended by [S.I. 2001/2508](#), 2003/1475 and 1476, 2004/453 and 2737, 2006/2383, 2012/1906, 2013/1881 and 2014/206

**M30** [Regulation 3\(3\)](#) was inserted by [S.I. 2003/1475](#).

## **The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001** **U.K.**

8.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 <sup>M31</sup> are amended as follows.

(2) In regulation 2 (interpretation) <sup>M32</sup>—

(a) after the definition of “markets in financial instruments directive information” insert—

““mortgages directive information” means confidential information received by the FCA or the PRA in the course of discharging its functions as a competent authority under the mortgages directive;”;

(b) in the definition of “single market restrictions”, after paragraph (ga) insert—

“(gb) Articles 5(2) and 36 of the mortgages directive;”.

(3) In regulation 9 (disclosure by regulators or regulator workers to certain other persons) <sup>M33</sup>—

(a) in paragraph (1), after “(3E)” insert “, (3F)”; and

(b) after paragraph (3E) insert—

“(3F) Paragraph (1) does not permit disclosure of mortgages directive information to a person specified in the first column of Schedule 1 in contravention of Articles 5(2) or 36 of the mortgages directive.”.

### Marginal Citations

**M31** S.I. 2001/2188.

**M32** In regulation 2 the definition of “markets in financial instruments directive information” was inserted by S.I. 2006/3413 and was subsequently amended by S.I. 2010/2628 and 2013/472 and 3115. The definition of “single market restrictions” was inserted by S.I. 2012/916 and was subsequently amended by S.I. 2013/504, 1773 and 3115. There are other amendments to regulation 2 but none is relevant to this Order.

**M33** Regulation 9 was amended by S.I. 2003/693, 2004/3379, 2006/3413, 2007/3255, 2010/2628, 2011/1613, 2012/916, 2013/472, 504, 1773 and 3115.

## The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations

### 2001 **U.K.**

**9.**—(1) The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001<sup>M34</sup> are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)<sup>M35</sup> after the definition of “EEA activities” insert—

““EEA mortgage intermediary” means a person falling within paragraph 5(i) of Schedule 3;”.

(3) In regulation 2 (establishment of a branch: contents of consent notice)<sup>M36</sup> after paragraph (7) insert—

“(8) In the case of an EEA mortgage intermediary, the prescribed information is—

- (a) a statement that the firm is an EEA mortgage intermediary;
- (b) the requisite details of the branch;
- (c) whether the EEA mortgage intermediary is a tied mortgage intermediary;
- (d) the name and address of the mortgage creditors (if any) to which the EEA mortgage intermediary is tied; and
- (e) whether those mortgage creditors (if any) take full and unconditional responsibility for the activities of the EEA mortgage intermediary.”.

(4) In regulation 3 (provision of services: contents of regulator's notice)<sup>M37</sup> after paragraph (5) insert—

“(6) In the case of an EEA mortgage intermediary, the prescribed information is—

- (a) a statement that the firm is an EEA mortgage intermediary;
- (b) particulars of the services to be carried on in the United Kingdom;
- (c) whether the EEA mortgage intermediary is a tied mortgage intermediary;
- (d) the name and address of the mortgage creditors (if any) to which the EEA mortgage intermediary is tied; and
- (e) whether those mortgage creditors (if any) take full and unconditional responsibility for the activities of the EEA mortgage intermediary.”.

(5) After regulation 7A (EEA AIFM: changes to branch details or services)<sup>M38</sup> insert—

#### “EEA mortgage intermediary: changes to branch details or services

**7B.**—(1) An EEA mortgage intermediary which is exercising an EEA right in the United Kingdom deriving from the mortgages directive must not make a material change to any of the matters referred to in regulation 2(8)(b) to (e) or regulation 3(6)(b) to (e) unless the relevant requirements have been complied with.

(2) Where the relevant requirements have been complied with, the mortgage intermediary's permission is to be treated as varied accordingly.

(3) For the purposes of this regulation, the “relevant requirements” are those of paragraph (4) or (if the change is occasioned by circumstances beyond the mortgage intermediary's control) paragraph (5).

(4) The requirements of this paragraph are that—

- (a) the mortgage intermediary has given a notice to the appropriate UK regulator and to its home state regulator stating the details of the proposed change; and
- (b) either the appropriate UK regulator has informed the mortgage intermediary that it may make the change, or the period of one month beginning with the day on which the mortgage intermediary gave the appropriate UK regulator the notice mentioned in sub-paragraph (a) has elapsed.

(5) The requirements of this paragraph are that the mortgage intermediary has as soon as practicable (whether before or after the change) given a notice to the appropriate UK regulator and to its home state regulator, stating the details of the change.

(6) The appropriate UK regulator must, as soon as practicable after receiving a notice from a mortgage intermediary under this regulation, inform the mortgage intermediary of any consequential changes in the applicable provisions (within the meaning of paragraph 13 or, as the case may be, paragraph 14 of Schedule 3).

(7) In this regulation “the appropriate UK regulator” has the same meaning as in paragraph 14 of Schedule 3.”.

(6) After regulation 9 (financial institutions giving up right to authorisation) <sup>M39</sup> insert—

**“EEA mortgage intermediaries giving up right to authorisation**

**9A.**—(1) The appropriate UK regulator may, where paragraph (2) or (3) applies, direct that the qualification for authorisation given to an EEA mortgage intermediary under Schedule 3 is cancelled from such date as may be specified in the direction.

(2) This paragraph applies if the appropriate UK regulator receives notice (“a withdrawal notice”) from the EEA mortgage intermediary's home state regulator stating that the EEA mortgage intermediary's authorisation which gives rise to an EEA right under the mortgages directive has been withdrawn.

(3) This paragraph applies if—

- (a) despite action taken by the appropriate regulator under section 194C of the Act, the EEA mortgage intermediary persists in contravening an obligation to which Article 34(2) of the mortgages directive applies; and
- (b) the appropriate UK regulator has informed the home state regulator that it intends to direct that the qualification for authorisation given to the EEA mortgage intermediary under Schedule 3 is cancelled.

(4) Where paragraph (3) applies and the appropriate UK regulator makes a direction under paragraph (1), the appropriate UK regulator must inform the European Commission of that direction without undue delay.

(5) In this regulation “the appropriate UK regulator” has the same meaning as in paragraph 14 of Schedule 3.”.

(7) After regulation 17A (full-scope UK AIFM: changes to branch details or services) <sup>M40</sup> insert—

**“UK firm exercising an EEA right under the mortgages directive: changes to branch details or services**

**17B.**—(1) A mortgage intermediary which has exercised an EEA right deriving from the mortgages directive to establish a branch or provide services must not make any material change to the requisite details of the branch or to the services to be carried on in exercise of that EEA right unless the requirements of paragraph (2) have been complied with.

(2) The requirements are that—

- (a) the mortgage intermediary has given a notice to the appropriate UK regulator stating the details of the proposed change, and
- (b) the period of one month beginning with the day on which the mortgage intermediary gave the notice has elapsed.

(3) The appropriate UK regulator must, as soon as reasonably practicable after receiving a notice under paragraph (2), inform the host state regulator of the proposed change.

(4) Paragraph (1) does not apply to a change occasioned by circumstances beyond the mortgage intermediary's control.”.

**Marginal Citations**

**M34** [S.I. 2001/2511](#).

**M35** [Regulation 1\(2\)](#) was amended by [S.I. 2002/765](#), 2003/1473 and 2066, 2006/3385, 2007/763, 2011/99 and 2013/642.

**M36** [Regulation 2](#) was amended by [S.I. 2002/765](#), 2003/2066, 2004/1862, 2006/3385, 2011/99 and 2013/642, 1773, 1797 and 3115.

**M37** [Regulation 3](#) was amended by [S.I. 2003/1473](#) and 2066, 2004/1862, 2006/3385 and 2013/642, and 1773.

**M38** [Regulation 7A](#) was inserted by [S.I. 2013/1773](#).

**M39** [Regulation 9](#) was amended by [S.I. 2013/642](#).

**M40** [Regulation 17A](#) was inserted by [S.I. 2013/1773](#) and amended by [S.I. 2013 1797](#).

**The Financial Services and Markets Act 2000 (Gibraltar) Order 2001 U.K.**

**10.**—(1) The Financial Services and Markets Act 2000 (Gibraltar) Order 2001 <sup>M41</sup> is amended as follows.

(2) In article 2 (exercise of deemed passport rights by Gibraltar-based firms) <sup>M42</sup>—

(a) after paragraph (3D) insert—

“(3E) A Gibraltar-based firm falling within paragraph 5(i) of Schedule 3 is to be treated as having an entitlement, corresponding to its EEA right deriving from the mortgages directive, to establish a branch or provide services in the United Kingdom.”;

(b) in paragraph (4)—

(i) for “and (3D)” substitute “, (3D) and (3E) ”;

(ii) for “and (h)” substitute “, (h) and (i) ”;

(c) in paragraph (5) for “or (3D)” in both places that it appears substitute “, (3D) or (3E) ”;

(d) in paragraph (7) for “or (3D)” substitute “, (3D) or (3E) ”; and

(e) in paragraph (8)—

(i) in sub-paragraph (a), for “section 194A(7) has” substitute “ sections 194A(7) and 194C(6) <sup>M43</sup> have ”;



(ii) in sub-paragraph (b), for “section 195A(11) is” substitute “ sections 195A(11) and 195B(10)<sup>M44</sup> are ”.

(3) In article 3 (EEA firms satisfying conditions under Gibraltar law)<sup>M45</sup>, in paragraph (3) for “(7A)” substitute “ (7B) ”.

**Marginal Citations**

**M41** [S.I. 2001/3084](#).

**M42** [Article 2](#) was amended by [S.I. 2005/1](#), 2006/1805, 2007/2932 and 3254, 2012/2017, 2013/472 and 3115 and 2014/1292.

**M43** [Section 194C](#) is inserted by this Order.

**M44** [Section 195B](#) is inserted by this Order.

**M45** [Article 3](#) was amended by [S.I. 2007/3254](#) and 2014/1292.

**The Consumer Credit (Disclosure of Information) Regulations 2004** **U.K.**

**11.** In regulation 2 of the Consumer Credit (Disclosure of Information) Regulations 2004<sup>M46</sup> (agreements to which these regulations apply), in sub-paragraph (1)(c) after “£60,260” insert “ other than residential renovation agreements ”.

**Marginal Citations**

**M46** [S.I. 2004/1481](#). Regulation 2 was substituted by [S.I. 2010/1010](#), as amended by [S.I. 2011/1969](#).

**The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005** **U.K.**

**12.—**(1) Schedule 1 to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005<sup>M47</sup> is amended as follows.

(2) After paragraph 10BA (providing relevant consumer credit) insert—

**“Advising on certain relevant consumer credit relating to land**

**10BAA.** Advising a person is a controlled activity if the advice—

- (a) is given to the person in the person's capacity as a recipient of credit, or potential recipient of credit; and
- (b) consists of the provision of personal recommendations to the person in respect of one or more transactions relating to a relevant credit agreement where the person intends to use the credit to acquire or retain property rights in land or in an existing or projected building, other than an agreement under which qualifying credit within the meaning of paragraph 10 is provided.”.

(3) In paragraph 28 (interpretation) for the definition of “relevant credit agreement” substitute—  
““relevant credit agreement” means a credit agreement (within the meaning given by article 60B of the Regulated Activities Order) other than—

- (a) a regulated mortgage contract or a regulated home purchase plan (within the meaning of that Order); or
- (b) a buy-to-let mortgage contract as defined in article 4 of the Mortgage Credit Directive Order 2015;”.

#### Marginal Citations

**M47** [S.I. 2005/1529](#). Paragraph 10BA was inserted by [S.I. 2013/1881](#) and amended by [S.I. 2014/366](#). In paragraph 28 the definition of “relevant credit agreement was inserted by [S.I. 2013/1881](#) and amended by [S.I. 2014/366](#).”

### The Consumer Credit (Disclosure of Information) Regulations 2010 **U.K.**

**13.** In regulation 2 of the Consumer Credit (Disclosure of Information) Regulations 2010 <sup>M48</sup> (agreements to which these regulations apply), in sub-paragraphs (3)(a) and (4)(a) after “£60,260” insert “ unless it is a residential renovation agreement ”.

#### Marginal Citations

**M48** [S.I. 2010/1013](#). Regulation 2 was amended by [S.I. 2013/1881](#).

### The Consumer Credit (Agreements) Regulations 2010 **U.K.**

**14.—(1)** The Consumer Credit (Agreements) Regulations 2010 <sup>M49</sup> are amended as follows.

(2) In regulation 2 (agreements to which these regulations apply) <sup>M50</sup>, in sub-paragraph (3)(b) after “£60,260” insert “ other than a residential renovation agreement ”.

(3) In Schedule 1 (information to be included in regulated consumer credit agreements) <sup>M51</sup>, in paragraph 25 in the second column after “£60,260” insert “ other than a residential renovation agreement ”.

#### Marginal Citations

**M49** [S.I. 2010/1014](#).

**M50** [Regulation 2](#) was amended by [S.I. 2010/1969](#) and 2013/1881.

**M51** [Schedule 1](#) was amended by [S.I. 2010/1969](#), 2012/2798, 2013/1881 and 2014/366.

### The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 **U.K.**

**15.—(1)** Article 58 (duration of interim permission) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 <sup>M52</sup> is amended as follows.

(2) In paragraph (1), after “in so far as it relates to a particular regulated activity or class of activity”, insert “ other than an activity to which paragraph (1A) applies ”.

(3) After paragraph (1) insert—

“(1A) Paragraphs (1B) and (1C) apply to an activity—

- (a) of a kind specified by article 36A or 60B of the Regulated Activities Order (regulated credit agreements) as that Order is in force before 21st March 2016; and
- (b) which, if carried on on or after 21st March 2016, would be of a kind specified by article 25A, 53A or 61 of the Regulated Activities Order by virtue of the amendments made to that Order by the Mortgage Credit Directive Order 2015.

(1B) P's interim permission ceases to have effect—

**Changes to legislation:** *There are currently no known outstanding effects for the The Mortgage Credit Directive Order 2015, PART 2. (See end of Document for details)*

- (a) if P applies to the appropriate regulator before 21st March 2016 for Part 4A permission to carry on an activity of the kind specified by article 25A, 53A or 61 of the Regulated Activities Order or (as the case may be) to vary P's permission to add an activity of a kind specified by those articles to those to which the permission relates, on the date on which that application is determined; and
- (b) in any other case, on 21st March 2016;

(1C) P's interim permission is to be treated as an interim permission to carry on the activity from 21st March 2016 until the interim permission ceases to have effect, if—

- (a) P's interim permission continues to have effect on 21st March 2016 by virtue of paragraph (1B)(a), and
- (b) P had permission to carry on the activity immediately before 21st March 2016 by virtue of the interim permission.

(1D) If P's interim permission continues to have effect on 21st March 2016 by virtue of paragraph (1B)(a), from 21st March 2016 until the interim permission ceases to have effect the interim permission is to be treated as giving permission to carry on an activity which—

- (a) if carried on immediately before 21st March 2016, would not have been a regulated activity, and
- (b) becomes a regulated activity on 21st March 2016 by virtue of the amendments made to the Regulated Activities Order by the Mortgage Credit Directive Order 2015.”.

(4) In paragraph (2) for “Paragraph (1) does” substitute “ Paragraphs (1) and (1B) to (1D) do ”.

(5) In paragraph (3) for “paragraph (1)(a)” substitute “ paragraphs (1)(a) and (1B)(a) ”.

(6) In paragraph (6) after “paragraph (1)” insert “ or (1B) ”.

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**Marginal Citations**

**M52** [S.I. 2013/1881](#). Article 58 was amended by [S.I. 2014/208](#), 366, 506 and 2632.

**Changes to legislation:**

There are currently no known outstanding effects for the The Mortgage Credit Directive Order 2015, PART 2.