STATUTORY INSTRUMENTS

2015 No. 910

FINANCIAL SERVICES AND MARKETS

The Mortgage Credit Directive Order 2015

Made - - - - 25th March 2015

Coming into force in accordance with article 1

The Treasury are a government department designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to financial services.

In the opinion of the Treasury, one of the effects of this Order is that an activity which is not a regulated activity, within the meaning of the Financial Services and Markets Act 2000 [F3], will become a regulated activity.

This Order contains a provision restricting an exemption provided by an earlier Order [F4] made under section 38 of the Financial Services and Markets Act 2000.

A draft of this Order has been laid before and approved by a resolution of each House of Parliament in accordance with paragraphs 2 and 2A of Schedule 2 to the European Communities Act 1972 [F5] and section 429(3) of and paragraph 26(2) of Schedule 2 to the Financial Services and Markets Act 2000 [F6].

The Treasury make this Order in exercise of the powers conferred on them by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 [F7] and sections 21(9) and (15), 22(1) and (5), 38, 409 and 428(3) of the Financial Services and Markets Act 2000 [F8].

Annotations:

F1 S.I. 2012/1759.

F2 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and the European Union (Amendment) Act 2008 (c. 7), **Sch**edule, Part 1. By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51) legislation may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1992 (Cm 2183).

F3 2000 c.8.

F4 S.I. 2001/1201, amended by S.I. 2003/1675, 2005/592, 2006/2383, 2008/2831, 2009/1342, 2010/671, 2011/1626 and 2012/641 and 700; there are other amending instruments but none is relevant to this Order.

F5 Paragraph 2 was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and paragraph 2A was inserted by section 29 of that Act.

F6 Paragraph 26 of Schedule 2 was substituted by section 8 of the Financial Services Act 2012 (c. 21).

F7 Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.

F8 Section 14A of the Interpretation Act 1978 (c. 30) (inserted by section 59 of the Enterprise and Regulatory Reform Act 2013 (c. 24)) provides that, where an Act provides a power to make subordinate legislation, that subordinate legislation may include a requirement to review the effectiveness of the legislation.

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 [F9] (credit broking), 53A [F10] (advising on regulated mortgage contracts) or 60B (regulated credit agreements) of the Regulated Activities Order, article 25A (arranging regulated mortgage contracts) or 61 [F11] (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 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) [F12]; and

(ii) enabling the appropriate regulator to treat a notice of intention referred to in paragraph 19(2) [F13] or 20(1) [F14] 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).

Annotations:

F9 Articles 36A and 60B were inserted by S.I. 2003/1881.

F10 Articles 25A and 53A were inserted by S.I. 2003/1475.

F11 Article 61 was amended by S.I. 2001/3544, 2005/2114, 2006/3283 and 2010/2960.

F12 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.

F13 Paragraph 19(2) was previously amended by paragraph 10 of Schedule 4 to the Financial Services Act 2012.

F14 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.

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, F15...

(iii) **[**F16would not be an exempt agreement within the meaning of article 60B(3) of the Regulated Activities Order by virtue of article 60D of that Order (exempt agreements: exemption relating to the purchase of land for non-residential purposes) if it were entered into immediately before 21st March 2016, and**]**

(iv) F17F18...would be a regulated mortgage contract if it were entered into on or after 21st March 2016; or

(b) (i) **[**F19is entered into on or after 21st March 2016 in the circumstances described in article 28,

(ii) 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

(iii) is a regulated mortgage contract immediately after 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 F20;

"the Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 [F21].

(2) Unless otherwise defined—

(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.

Annotations:

F15 Word in art. 2(1) omitted (20.9.2015) by virtue of The Mortgage Credit Directive (Amendment) Order 2015 (S.I. 2015/1557), arts. 1(2), **2(2)(a)**

F16 Words in art. 2(1) inserted (20.9.2015) by The Mortgage Credit Directive (Amendment) Order 2015 (S.I. 2015/1557), arts. 1(2), **2(2)(b)**

F17 Art. 2(1): text amended (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **8(2)(a)(i)** (with Pt. 5)

F18 Words in art. 2(1) omitted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **8(2)(a)(ii)** (with Pt. 5)

F19 Words in art. 2(1) substituted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **8(2)(b)** (with Pt. 5)

F20 OJ L 60, 28.2.2014, p.34.

F21 S.I. 2001/544.

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

[F22Application of this Part

3A. This Part does not apply in relation to any agreement entered into before 21st March 2016.]

Annotations:

F22 Art. 3A inserted (17.3.2016 for specified purposes, 21.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), art. 1(2)(3)(c), **8(3)** (with Pt. 5)

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) [F23] 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) [F24];

"decision notice" means a notice that complies with the requirements of section 388 of the Act (decision notices) [F25];

"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);