HOUSE OF COMMONS LIBRARY

BRIEFING PAPER
Number 07453, 8 January 2016

Mortgage Credit Directive

By Timothy Edmonds

Inside:

Contents

Summary

The Mortgage Credit Directive 2014/17/EU (MCD) on credit agreements for consumers relating to residential immovable property was adopted on 4 February 2014. This Directive aims to create a Union-wide mortgage credit market with a high level of consumer protection. It applies to both secured credit and home loans. Member States will have to transpose its provisions into their national law by March 2016.

Since mortgage activity in the UK already had a comprehensive regulatory framework the MCD impact will be less than in some other EU Member States. One of the biggest changes in the UK is that second charge mortgages move from the consumer credit regime and into the full regulatory sphere. Hence providers now need to seek full authorisation.

The UK government decided to not apply the MCD to the buy to let market. New rules on arranging, lending and administering (consumer) buy-to-let mortgages are introduced by the *Mortgage Credit Directive Order 2015.*

Another Library Paper describes the FCA's Mortgage Market Review.

1. Introduction

1.1 EU action

The EU has had a very long standing ambition to extend the concept of a single market to financial services. This extends back to the Financial Services Action Plan first published in 1999. At its heart was the vision that European citizens would find it as easy to open a bank account in another member state to their own, or get a mortgage with a foreign lender as the building society in their own high street. Similar ambitions were expressed for capital markets and commercial markets.

A guide to the historical development of the single market in financial services and the Free Movement of Capital within the EU can be found in chapter 1 of the Treasury's *Review of the Balance of Competences between the United Kingdom and the European Union*.

Mortgage credit was one market which the EU looked at and introduced proposals. The Directive covered issues such as:

- consumer information requirements including standardised calculations of interest rates,
- principle based rules and standards for the performance of services (e.g. conduct of business obligations, competence and knowledge requirements for staff),
- a consumer creditworthiness assessment obligation,
- provisions on early repayment,
- provisions on foreign currency loans,
- provisions on tying practices,
- some high-level principles (e.g. those covering financial education, property valuation and arrears and foreclosures); and
- a passport for credit intermediaries who meet the admission requirements in their home Member State.

The Mortgage Credit Directive (MCD) was adopted in 2013 and a simple summary of measures can be found in a Commission publication here.

A complete list of all relevant decisions and documentation can be found on the EU Commission website here.

1.2 UK implementation

The UK has had another separate review of the mortgage market which is described in another Library Paper – Mortgage Market Review.

Like many EU financial service directives that need to be enacted in the UK, it is the Financial Conduct Authority (FCA) which is the responsible body.

The Directive comes into force in March 2016. The main source for implementation material is the FCA website here. One of the biggest changes is that second charge mortgages move out of the relatively lighter regulation of consumer credit and into the full regulatory sphere and hence providers now need to seek full authorisation.

Implementation of many directives is partly legislative (often secondary legislation) and part changes to the FCA rulebook (Handbook). In the case of the MCD the legislative measure is the *Mortgage Credit Directive Order 2015*.[1] Introducing the measure in the Delegated Legislation Committee, the Minister, Andrea Leadsom said:

> Turning to the draft Mortgage Credit Directive Order 2015, the Government remain committed to ensuring that regulation of mortgages remains proportionate to the need for consumer protection. That is why we have asked the Committee also to consider that order, which will ensure that the UK implements the EU mortgage credit directive on time and with a limited impact on the UK mortgage market. The directive aims to enhance consumer protection and promote the creation of a more harmonised European mortgage market. However, the UK already has a strong regulatory framework, built up incrementally since 2004, which ensures strong consumer protections tailored to the specifics of the UK market. The MCD does not therefore offer many additional benefits to UK consumers beyond those already provided. However, it does have the potential to increase the burden on business, so the Government decided that the most appropriate course of action was to build on the existing UK regulatory regime, minimising the impact on the UK market, avoiding disruption and ensuring the gains made from improvements in regulation were not squandered unnecessarily. This approach means that the implementation of the MCD will be achieved primarily through adjustments to existing Financial Conduct Authority rules. However, there are areas where UK legislation has to be changed and this is the purpose of the draft order under consideration today.
>
> The order makes significant changes in two main areas. First, the regulation of second charge mortgages will move from the FCA's consumer credit regime into the mortgages regime. This is a long-standing policy commitment that has been well-received by industry and will ensure that lending secured on a borrower's home is regulated consistently.
>
> Secondly, the Government will use their exemption from the full directive requirements for buy-to-let lending, secured in negotiations, to put in place the minimum requirements needed to meet the UK's legal obligations. We remain unpersuaded of the case for the full conduct regulation of buy-to-let mortgage lending.
>
> The approach the Government have taken to implementing this directive will ensure compliance in a manner that minimises the impact on industry, retains the strengths of our regulatory framework for mortgages and ensures that consumers experience limited change as a result. By putting this legislation in place well in advance of the transposition date, we will give the industry the best possible chance of a smooth transition to the new regulatory framework.[2]

---

1 *The Mortgage Credit Directive Order 2015* SI 910/2015, this was amended later in the year by the *The Mortgage Credit Directive (Amendment) Order 2015* SI 1557/2015

2 Delegated Legislation Committee 23 March 2015 c6

The consequences of exempting buy to let mortgages from the regime are set out in an FCA consultation paper and in the following guide to buy to let implementation here. In short, the broking of buy-to-let mortgages will no longer be a regulated credit activity. However, advising on, arranging, lending and administering consumer buy-to-let (CBTL) mortgages will be subject to a legislative framework, as set out in the Mortgage Credit Directive Order 2015.

The Treasury's final impact assessment of the MCD can be found here.

BRIEFING PAPER
Number 07453, 8 January 2016