

MORTGAGE CREDIT DIRECTIVE (AMENDMENT NO 3) INSTRUMENT 2016

Powers exercised by the Financial Ombudsman Service

- A. The Financial Ombudsman Service Limited makes and amends the voluntary jurisdiction rules and fixes and varies the standard terms for voluntary jurisdiction participants as set out in Annex A to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (3) paragraph 22 (Consultation) of Schedule 17.
- B. The making and amendment of the voluntary jurisdiction rules and the fixing and variation of the standard terms by the Financial Ombudsman Service Limited, as set out in Annex A, is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under the following sections of the Act:
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 226 (Compulsory jurisdiction); and
 - (5) paragraph 13 (The FCA’s procedural rules) of Schedule 17 (The Ombudsman Scheme).
- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority approves the voluntary jurisdiction rules made and amended and the standard terms fixed and varied by the Financial Ombudsman Service Limited in this instrument.

Commencement

- F. Part 1 of Annex A to this instrument comes into force on 20 March 2016.
- G. Part 2 of Annex A, Annex B and Annex C to this instrument come into force on 21 March 2016 immediately after the Mortgage Contracts (Legacy CCA) Instrument 2016 comes into force.

Amendments to the Handbook

- H. The Glossary of definitions is amended in accordance with Annex A to this instrument.

- I. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with Annex B to this instrument.

Amendments to material outside the Handbook

- J. The Perimeter Guidance manual (PERG) is amended in accordance with Annex C to this instrument.

Notes

- K. In Annex B to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- L. This instrument may be cited as the Mortgage Credit Directive (Amendment No 3) Instrument 2016.

By order of the Board of the Financial Ombudsman Service Limited
16 March 2016

By order of the Board of the Financial Conduct Authority
17 March 2016

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

Part 1: Comes into force on 20 March 2016

- regulated consumer hire agreement* in accordance with article 60N of the *Regulated Activities Order*;
- (a) in the case of an agreement entered into before 1 April 2014, a *consumer hire agreement*:
 - (i) which was a regulated agreement within the meaning of section 189(1) of the CCA when the agreement was entered into; or
 - (ii) which was such a regulated agreement after being varied or supplemented by another agreement before 1 April 2014; or
 - (b) in the case of an agreement entered into on or after 1 April 2014, a *consumer hire agreement* which is not an exempt agreement under articles 60O to 60Q of the *Regulated Activities Order*.
- regulated credit agreement* in accordance with article 60B of the *Regulated Activities Order*; ~~a *credit agreement*~~;
- (a) in the case of an agreement entered into before 1 April 2014, a *credit agreement*:
 - (i) which was a regulated agreement within the meaning of section 189(1) of the CCA when the agreement was entered into; or
 - (ii) which was such a regulated agreement after being varied or supplemented by another agreement before 1 April 2014; or
 - (b) in the case of an agreement entered into on or after 1 April 2014, a *credit agreement* which is not an exempt agreement under articles 60C to 60H of the *Regulated Activities Order*.

Part 2: Comes into force on 21 March 2016

advising on regulated credit agreements for the acquisition of land the *regulated activity*, specified in article 53DA of the *Regulated Activities Order* which is, in summary, advising a *person* if ~~the advice~~:

- (a) the advice is given to the *person* in his capacity as a recipient, or potential recipient, of *credit* under a *regulated credit agreement*;
- (b) ...; and
- (c) the advice consists of the provision of personal recommendations to the *person* in respect of one or more transactions relating to *regulated credit agreements* entered into, or to be entered into, on or after 21 March 2016.

regulated credit agreement in accordance with article 60B of the *Regulated Activities Order*:

- (a) in the case of an agreement entered into before 1 April 2014, a *credit agreement*:
 - (i) which was a regulated agreement within the meaning of section 189(1) of the *CCA* when the agreement was entered into; or
 - (ii) which was such a regulated agreement after being varied or supplemented by another agreement before 1 April 2014; ~~or~~

and which would not be an exempt agreement pursuant to article 60C(2) of the *Regulated Activities Order* if it had been entered into on 21 March 2016; or

- (b) in the case of an agreement entered into on or after 1 April 2014, a *credit agreement* which is not an exempt agreement under articles 60C to 60H of the *Regulated Activities Order*.

regulated mortgage contract (a) (in relation to a contract) a contract which:

- (i) ...
 - (A) ...
 - (B) ...

- (ii) is not a *home purchase plan*, a limited payment second charge bridging loan, a second charge business loan, an investment property loan, an exempt consumer buy-to-let mortgage contract, an exempt equitable mortgage bridging loan, an exempt housing authority loan or a limited interest second charge credit union loan within the meaning of article 61A(1) or (2) of the *Regulated Activities Order*; and

...

residential renovation agreement

an unsecured *credit agreement* entered into on or after 21 March 2016 the purpose of which is the renovation of residential property, as described in paragraph 2a of article 2 of the *Consumer Credit Directive*.

Annex B

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4.4A Initial disclosure requirements

...

Method of providing initial disclosure in all cases

- 4.4A.9 R The information required by *MCOB* 4.4A.1R, *MCOB* 4.4A.2R, *MCOB* 4.4A.4R(1), *MCOB* 4.4A.8R and *MCOB* 4.4A.8AR must be communicated clearly and prominently, and in doing so:
- (1) an *MCD mortgage adviser*, or any other *firm* that is an *MCD mortgage lender* or an ~~*MCD mortgage credit intermediary*~~ *MCD mortgage arranger* that provides advisory services within the meaning of article 4(21) of the *MCD*, must provide the following information in *MCOB* 4.4A.1R(1) and (2) and *MCOB* 4.4A.8R(1)(a) and (2)(e) in a *durable medium*;
 - (a) ~~for an *MCD mortgage lender*, the information in *MCOB* 4.4A.1R(1) and *MCOB* 4.4A.1R(2) and *MCOB* 4.4A.8R(1)(a) and (2)(e); [deleted]~~
 - (b) ~~for an *MCD mortgage credit intermediary*, the information in *MCOB* 4.4A.1R(1) and *MCOB* 4.4A.1R(2), *MCOB* 4.4A.4R(1)(a) and *MCOB* 4.4A.4R(3), and *MCOB* 4.4A.8R(1)(a), (e), (d) and (2); and [deleted]~~
 - (1A) an *MCD mortgage arranger* who is not also an *MCD mortgage lender* carrying out direct sales only must provide the information in *MCOB* 4.4A.1R(1) and (2), *MCOB* 4.4A.4R(1)(a) and (3), and *MCOB* 4.4A.8R(1)(a), (c), (d) and (2) in a *durable medium*; and
 - (2) in all other cases:
 - (a) if the *initial contact* includes spoken interaction, the information must be communicated orally; and
 - (b) if the *initial contact* does not include spoken interaction, the messages must appear separately from other messages in the communication.

If the *initial contact* is made by electronic means, the *firm* must ensure that the *customer* cannot progress to the next stage of the sale unless the information has been communicated to the *customer*.

[Note: article 15(1) and article 22(2) of the MCD]

- 4.4A.10 G (1) In order to comply with ~~MCOB 4.4A.9R~~ for an internet sale, a *firm* should display the required information on a screen which the *customer* must access as part of the sales process. It would not be sufficient for the information to be accessible only by giving the *customer* the option to click on a link or download a document. The messages could be displayed clearly on one of the initial pages which the *customer* accesses MCOB 4.4A.9R(1) and (1A), the required information must be provided in a *durable medium* for all sales.
- (1A) In order to comply with MCOB 4.4A.9R(2):
- (a) for an internet sale, a *firm* should display the required information on a screen which the *customer* must access as part of the sales process. It would not be sufficient for the information to be accessible only by giving the *customer* the option to click on a link or download a document. The messages could be displayed clearly on one of the initial pages which the *customer* accesses;
 - (b) in a postal sale, a *firm* may comply by setting out the information in a clear covering letter;
 - (c) where the *initial contact* is by email, SMS or instant messaging, the information could be displayed clearly and prominently early on in the body of the email, SMS or instant messaging; and
 - (d) for face-to-face and telephone contact, a *firm* should comply by building the information into the initial oral discussion with the *customer*.
- (2) ~~In a postal sale, a *firm* may comply by setting out the messages in a clear covering letter. [deleted]~~
- (3) ~~Where the *initial contact* is by email, SMS or instant messaging, the messages could be displayed clearly and prominently early on in the body of the email, SMS or instant messaging. [deleted]~~
- (4) ~~For face-to-face and telephone contact, a *firm* should comply by building the messages into the initial oral discussion with the *customer*. [deleted]~~
- 4.4A.11 G A *firm* may demonstrate compliance with MCOB 4.4A.9R(4) by, for example, undertaking one or more of the following: building a requirement for oral communication of the relevant information into its training of staff as evidenced by its training and compliance manuals; inserting appropriate prompts into paper-based or automated sales systems; and having procedures in place to monitor compliance by staff with that *rule*. What is

required in each case will depend on all the circumstances.

Timing of initial disclosure in all cases

4.4A.12 R The information required by *MCOB* 4.4A.1R, *MCOB* 4.4A.2R, *MCOB* 4.4A.4R(1) and (3), *MCOB* 4.4A.8R and *MCOB* 4.4A.8AR must be provided:

(1) ...

(1A) in the case of information required by *MCOB* 4.4A.1R(1) and (2) and *MCOB* 4.4A.8R(1)(a) and (2)(e), where the *firm* is an *MCD mortgage adviser*, or any other *firm* that is an *MCD mortgage lender* or an *MCD mortgage arranger* that provides advisory services within the meaning of article 4(21) of the *MCD*, before the provision of such advisory services or, where applicable, the conclusion of a contract for the provision of such advisory services; and

(2) ...

[Note: article 15(1) and article 22(2) of the *MCD*]

...

TP1 Transitional provisions

TP1.1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provisions: dates in force	(6) Handbook provisions: coming into force						
...											
46	<i>MCOB</i> 5A, <i>MCOB</i> 6A and <i>MCOB</i> 7B	R	<p>A firm that applies TP 45 must also provide the information in (1), (2) and either (3)(a) or (3)(b) below:</p> <table border="1" data-bbox="512 1659 970 2031"> <tr> <td data-bbox="512 1659 608 1729">...</td> <td data-bbox="608 1659 970 1729"></td> </tr> <tr> <td data-bbox="512 1729 608 1839">(3)</td> <td data-bbox="608 1729 970 1839">where the <i>borrowing rate</i> is variable:</td> </tr> <tr> <td data-bbox="512 1839 608 2031"></td> <td data-bbox="608 1839 970 2031">(a) the warning and the additional <i>APRC</i> required by section 4 of <i>MCOB</i> <i>MCOB</i></td> </tr> </table>	...		(3)	where the <i>borrowing rate</i> is variable:		(a) the warning and the additional <i>APRC</i> required by section 4 of <i>MCOB</i> <i>MCOB</i>	From 21 March 2016 until 21 March 2019	21 March 2016
...											
(3)	where the <i>borrowing rate</i> is variable:										
	(a) the warning and the additional <i>APRC</i> required by section 4 of <i>MCOB</i> <i>MCOB</i>										

				<p>5A Annex 1R and <i>MCOB</i> 5A Annex 2, 6.2R to 6.8R, <u>and the maximum instalment illustration required by section 6 of <i>MCOB</i> 5A Annex 1R and <i>MCOB</i> 5A Annex 2, 8.5R; or</u></p>	
			...		
...					

Annex C

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Authorisation and regulated activities

...

2.7 Activities: a broad outline

...

Advising on regulated credit agreements for the acquisition of land

2.7.16F G {text to follow}

2.7.16F G Under article 53DA of the *Regulated Activities Order*, advising a person (“P”) is a *regulated activity* if:

...

- (3) the advice consists of the provision of personal recommendations to P in respect of one or more transactions relating to *regulated credit agreements* entered into, or to be entered into, on or after 21 March 2016.

...

Exempt agreements

2.7.19B G (1) A credit agreement entered into before 1 April 2014 is a regulated credit agreement for the purposes of PERG 2.7.19AG if it was a ‘regulated agreement’ within the meaning of the CCA when it was entered into, or became such a ‘regulated agreement’ by virtue of being varied or supplemented by another agreement before 1 April 2014. But a credit agreement is not a regulated credit agreement for the purposes of PERG 2.7.19AG if was entered into before 1 April 2014 and, if it had been entered into on 21 March 2016:

- (a) a person would have been carrying on the regulated activity of entering into a regulated mortgage contract or entering into a home purchase plan by entering into the agreement;
or
- (b) a person would have been carrying on the regulated activity of administering a regulated mortgage contract by administering the agreement.

- (2) A credit agreement entered into on or after 1 April 2014 is not a *regulated credit agreement* for the purposes of *PERG 2.7.19AG* if it is an exempt agreement. *PERG 2.7.19CG* to *PERG 2.7.19JG* describe the categories of exempt agreement. Where part of a *credit agreement* falls within the exemptions in articles 60C to 60H of the *Regulated Activities Order*, only that part of the agreement is an exempt agreement.

Exemptions relating to the nature of the agreement

2.7.19C G A *credit agreement* is an exempt agreement in the following cases:

- (1) ~~if it is a *regulated mortgage contract* or a *home purchase plan*; :~~
- (a) by entering into the agreement as lender, a person is or was carrying on the regulated activity of entering into regulated mortgage contracts; or
- (b) by entering into the agreement as home purchase provider, a person is or was carrying on a regulated activity of the kind specified by article 63F(1) of the *Regulated Activities Order* (entering into regulated home purchase plans); or
- (c) by administering the agreement on 21 March 2016, a person is carrying on a regulated activity of the kind specified by article 61(2) of the *Regulated Activities Order* (administering regulated mortgage contracts);

...

...

Exemptions relating to the nature of the lender

...

2.7.19F B G (1) In *PERG 2.7.19FG*(3), ‘housing authority’ has the same meaning as in article 60E(7) of the *Regulated Activities Order*. The definition of ‘housing authority’ in article 60E includes housing associations registered under the relevant housing legislation.

- (2) The effect of the definition of ‘regulated credit agreement’ in the *Regulated Activities Order* is that credit agreements entered into by housing associations and other housing authorities before 1 April 2014 that were *regulated credit agreements* when they were entered into are to be *regulated credit agreements* notwithstanding the introduction of the exemption in article 60E(5) of the *Regulated Activities Order*. Credit agreements entered into on or after 1 April 2014 and that meet the conditions in *PERG 2.7.19F*(3) are exempt. See also *PERG 4.4.28CG*.

...

Exemptions relating to the total charge for credit

- 2.7.19I G A *credit agreement* is also an exempt agreement in the following cases:
- (1) if it is a *borrower-lender agreement*, the *lender* is a *credit union* and the rate of the *total charge for credit* (see CONC App 1) does not exceed 42.6 per cent provided that:
 - (a) the agreement is not an MCD regulated mortgage contract or an article 3(1)(b) credit agreement; or
 - (b) the agreement is an MCD regulated mortgage contract or an article 3(1)(b) credit agreement but:
 - (i) the agreement is of a kind to which the MCD does not apply by virtue of article 3(2) of the MCD (in other words, it is an agreement listed in PERG 4.10A.5G(1) to (6); or
 - (ii) it is a credit agreement which relates to the deferred payment, free of charge, of an existing debt and is not secured by a legal or equitable mortgage); or
 - (iii) it is a bridging loan described in PERG 4.13.6G; or
 - (iv) it is a restricted public loan described in PERG 4.13.7G; or
 - (c) the agreement was entered into before 21 March 2016;
 - (2) if (subject to (5) ~~and~~ (6) and (7)):

...
 - (3) if (subject to (5) ~~and~~ (6) and (7)):

...
 - (6) ... to the borrower; and
 - (7) if the agreement is an MCD regulated mortgage contract or an article 3(1)(b) credit agreement, the agreement is only an exempt agreement if:
 - (a) it meets the conditions in (6)(c) and (d);
 - (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.

High net worth exemption

2.7.19J G A *credit agreement* is an exempt agreement if:

...

(2) the agreement is either:

(a) ... ; or

(b) for credit which exceeds £60,260 and, if entered into on or after 21 March 2016, is for a purpose other than:

(i) the renovation of residential property; or

(ii) to acquire or retain property rights in *land* or in an existing or projected building ;

...

...

2.9 Regulated activities: exclusions applicable in certain circumstances

...

Local authorities

...

2.9.24 G ...

(3) In essence, the *Regulated Activities Order* exempts activity in relation to *credit agreements* carried on by a local authority to the extent permitted by the *Consumer Credit Directive* and the *MCD*. The ~~exclusion~~ exclusions relating to *entering into a regulated credit agreement as lender* and ~~exercising, or having the right to exercise the lender's rights and duties under a regulated credit agreement~~ exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement ~~applies only therefore~~ apply only in relation to an agreement within (3A) or (4).

(3A) A credit agreement is within this paragraph if:

(a) it was entered into before 21 March 2016; or

(b) it is entered into on or after that date for a purpose other than acquiring or retaining property rights in *land* or in an existing or projected building;

but a credit agreement is only within this paragraph in so far as ~~these activities are not carried on for the purpose of acquiring or retaining property rights in land or in an existing or projected building and relate to credit agreements~~ the agreement is of a kind to which the *Consumer Credit Directive* does not apply under article 2(2) of that Directive (see (3B)).

(3B) In summary, ~~these kind~~ the kinds of agreements to which the *Consumer Credit Directive* does not apply under article 2(2) of that Directive include *credit agreements*:

(c)

...

(4) ~~The exclusion relating to entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement for activities that are carried on for the purpose of acquiring or retaining property rights in land or in an existing or projected building apply to local authorities and (in some cases) their subsidiaries only when the relevant credit agreement~~ A credit agreement is within this paragraph if it:

(a) ~~is of a kind to which the Consumer Credit Directive does not apply under article 2(2) of that Directive, and is entered into on or after 21 March 2016; and~~

(b) meets one of the following conditions:

(i) it is an agreement listed in PERG 4.10A.5G; it is of a kind to which the MCD does not apply by virtue of article 3(2) of the MCD (in other words, it is an agreement listed in PERG 4.10A.5G(1) to (6); or it is a credit agreement which relates to the deferred payment, free of charge, of an existing debt and is not secured by a legal or equitable mortgage); or

...

4.4 What is a regulated mortgage contract?

...

Type of security

...

4.4.16A G It is possible for more than one mortgage contract to be secured by the same charge.

...

Exclusion for equitable mortgage bridging loans

4.4.28A G A contract is excluded from the definition of *regulated mortgage contract* if, at the time is entered into, it meets the following conditions:

- (1) it is a *bridging loan* described in *PERG* 4.13.6G;
- (2) it is secured by an equitable mortgage on *land*; and
- (3) it is an exempt agreement within the meaning of article 60B(3) (*regulated credit agreements*) of the *Regulated Activities Order* by virtue of article 60E(2): in summary, the *lender* is a *local authority*, or the agreement is specified in *CONC* App 1.3 and the *lender* is a person or within class of persons specified in *CONC* App 1.3 (see *PERG* 2.7.19FG(1) and (2)).

4.4.28B G The *Regulated Activities Order* refers to such a contract as an ‘exempt equitable mortgage bridging loan’.

Exclusion for housing association and other housing authority loans

4.4.28C G A contract is excluded from the definition of *regulated mortgage contract* if, at the time is entered into, it meets the following conditions:

- (1) it provides for credit to be granted by a ‘housing authority’ within the meaning of article 60E of the *Regulated Activities Order*. The definition in article 60E includes housing associations registered under the relevant housing legislation (see *PERG* 2.7.19FAG);
- (2) if entered into on or after 21 March 2016:
 - (a) it is an agreement of a kind to which the *MCD* does not apply by virtue of article 3(2) of the *MCD* (in other words, it is an agreement listed in *PERG* 4.10A.5G(1) to (6); or it is a *credit agreement* which relates to the deferred payment, free of charge, of an existing debt and is not secured by a *legal or equitable mortgage*); or
 - (b) it is a *bridging loan* described in *PERG* 4.13.6G; or
 - (c) it is a restricted public loan described in *PERG* 4.13.7G.

4.4.28D G The *Regulated Activities Order* refers to such a contract as an ‘exempt housing authority loan’.

...

4.4A **Transitional issues Mortgage contracts entered into before 21 March 2016**

~~Regulated mortgage contracts entered into before 2004: variations~~

- 4.4A.1 G ~~There are special provisions for mortgages entered into before 31 October 2004. [deleted]~~
- 4.4A.1A G Prior to 21 March 2016, the definition of ‘regulated mortgage contract’ in article 61(3)(a) of the *Regulated Activities Order* was limited to mortgage contracts secured by a first legal mortgage (but not a second charge mortgage or an equitable mortgage) of *land* in the *United Kingdom* (rather than *land* in the *EEA*), and the regulated activity of *administering a regulated mortgage contract* was limited to mortgage contracts entered into on or after 31 October 2004, being the date on which mortgage regulation under the *Act* began. Accordingly, prior to 21 March 2016 some mortgage contracts were *regulated mortgage contracts* regulated under *MCOB*; some mortgage contracts were *regulated credit agreements* regulated under the *CCA* and, from 1 April 2014, *CONC*; and some mortgage contracts were outside regulation.
- 4.4A.1B G When the *Regulated Activities Order* was amended to implement the *MCD*, the limitations mentioned in *PERG* 4.4A.1AG were removed: the legislative intention was to provide a single regulatory regime for mortgage contracts under *MCOB* from 21 March 2016, subject to a six month transitional period for first charge mortgages entered into before 31 October 2004. Mortgage contracts that were *regulated mortgage contracts* before that date did not cease to be *regulated mortgage contracts*. But many mortgage contracts that were not *regulated mortgage contracts* immediately before 21 March 2016 became *regulated mortgage contracts* on that date provided that they met the conditions set out in *PERG* 4.4.1G(1) to (3), even though these conditions did not apply in that form at the time the contract was entered into.
- 4.4A.1C G (1) Mortgage contracts that potentially became *regulated mortgage contracts* on 21 March 2016 include, for example:
- (a) mortgages entered into before 31 October 2004;
 - (b) second charge mortgages; and
 - (c) equitable mortgages.
- (2) However:
- (a) a mortgage contract entered into before 21 March 2016, which was not already a *regulated mortgage contract* only became a *regulated mortgage contract* if it was a ‘consumer credit back book mortgage contract’ within the meaning of article 2 of the *MCD Order* (and see paragraph (a)(iii) of the *Glossary* definition of *regulated mortgage contract*). Briefly, this means a *regulated credit agreement* that would have been a *regulated mortgage contract* if it had been entered into on or after 21 March 2016, with the exception of certain

buy-to-let mortgages (which will remain *regulated credit agreements* if they were *regulated credit agreements* at the time they were entered into);

- (b) the exclusions set out in article 61A of the *Regulated Activities Order* and reflected in paragraph (a)(ii) of the *Glossary* definition of *regulated mortgage contract* replicate various consumer credit exemptions, for example equitable mortgage bridging loans; and
- (c) the *regulated activities* of *administering a regulated mortgage contract*, *advising on regulated mortgage contracts* and *arranging (bringing about) regulated mortgage contracts* are limited, in their application to mortgage contracts entered into before 21 March 2016, to mortgage contracts which were already *regulated mortgage contracts* or which are ‘consumer credit back book mortgage contracts’ within the meaning of article 2 of the *MCD Order* (see (a)).

4.4A.2 G The effect of the *Regulated Activities Order* is that mortgage contracts which are varied can fall into one of the following categories:

- (1) a contract that was entered into before 31 October 2004, and that is subsequently varied on or after that date so that it satisfies the conditions set out in:
 - (a) *PERG 4.4.1G(1) to PERG 4.4.1G(3)*; or
 - (b) the old versions of those paragraphs as referred to in *PERG 4.4A.5G*;

will not be a *regulated mortgage contract* (because it was not a regulated mortgage contract at the time it was entered into);

- (2) a contract that was originally entered into before 31 October 2004, but is subsequently changed on or after that date such that a new contract is entered into, will be a *regulated mortgage contract* (provided that it meets the definition in the *Regulated Activities Order*); and
- (3) a *regulated mortgage contract* that was originally entered into on or after 31 October 2004 and which is subsequently varied by, for example, making a further advance, will remain a *regulated mortgage contract*. [deleted]

4.4A.3 G It is possible for more than one mortgage contract to be secured by the same (first) charge. The first contract might be entered into before 31 October 2004 (and, therefore, not be a *regulated mortgage contract*) and a second contract entered into on or after 31 October 2004 (and be a *regulated mortgage contract*). [deleted]

~~Regulated mortgage contracts entered into before 2016~~

- 4.4A.4 G ~~In some cases (described in this section), the definition applicable to a contract that existed before 21 March 2016 is different from the one in PERG 4.4 (What is a regulated mortgage contract?). [deleted]~~
- 4.4A.5 G ~~The definition in PERG 4.4 applies to a contract which, immediately before 21 March 2016, met the following conditions:~~
- ~~(1) it was a *regulated credit agreement* (under the definition existing at that time); and~~
 - ~~(2) it provided for the obligation of the borrower to repay to be secured by a mortgage on land that ranked in priority behind one or more other mortgages affecting the land in question. [deleted]~~
- 4.4A.6 G ~~Except for the contracts mentioned in PERG 4.4A.5G, the definition applicable to pre-2016 contracts is the version in force on 20 March 2016. [deleted]~~
- 4.4A.7 G ~~The old definition referred to in PERG 4.4A.6 G can be found in historical versions of PERG, which can be found on the FCA's website along with the current version. [deleted]~~
- 4.4A.8 G ~~In summary, the old definition of a *regulated mortgage contract* was a contract that, at the time it was entered into, met the following conditions:~~
- ~~(1) the contract was one under which a person (“the lender”) provided credit to an individual or to trustees (“the borrower”);~~
 - ~~(2) the contract provided for the obligation of the borrower to repay to be secured by a first legal mortgage on land (other than timeshare accommodation) in the *United Kingdom*;~~
 - ~~(3) at least 40% of that land was used, or was 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 was a beneficiary of the trust, or by a *related person*. [deleted]~~
- 4.4A.9 G ~~As is still the case, the old definition excluded regulated home purchase plans. [deleted]~~
- 4.4A.10 G ~~In practice, there may not be many contracts entered into prior to 21 March 2016 that are not *regulated mortgage contracts* but which would be *regulated mortgage contracts* if they had been entered into after 21 March 2016. Examples include: [deleted]~~
- ~~(1) a loan secured by a first ranking mortgage on land elsewhere in the *EEA*;~~
 - ~~(2) a loan secured by first ranking equitable security;~~

- (3) ~~a loan that was not a *regulated credit agreement* and is secured by second ranking security. [deleted]~~

...

4.10 Exclusions relating to more than one regulated activity

...

Exclusion: Local authorities

- 4.10.10 G There are exclusions that apply, in relation to each of the *regulated mortgage activities* ~~and to *advising on regulated credit agreements for the acquisition of land*~~, if the *person* carrying on the activity is a *local authority* or a wholly owned subsidiary of a *local authority*. They can be found in article 72G of the *Regulated Activities Order*, but only apply where:
- (a) the relevant agreement was entered into before 21 March 2016; or
 - (b) the relevant agreement is entered into on or after 21 March 2016 and:
 - (i) the agreement is of a kind to which the *MCD* does not apply by virtue of article 3(2) of the *MCD* (in other words, it is an agreement listed in *PERG* 4.10A.5G(1) to (6); or it is a *credit agreement* which relates to the deferred payment, free of charge, of an existing debt and is not secured by a *legal or equitable mortgage*); or
 - (ii) it is a *bridging loan* described in *PERG* 4.13.6G; or
 - (iii) it is a restricted public loan described in *PERG* 4.13.7G.

...

4.13 Other exemptions

...

- 4.13.4 G The exemption in *PERG* 4.13.3G only applies in relation to *regulated mortgage contracts* entered into before 21 March 2016 and to a limited range of *regulated mortgage contracts* entered into on or after that date. These are set out in the table in *PERG* 4.13.5G.

...