

Chapter 4

Guidance on regulated activities connected with mortgages

4.10B Regulation of buy to let lending

Introduction

- 4.10B.1 **G** Article 72I of the *Regulated Activities Order* (Registered consumer buy-to-let mortgage firms) excludes certain consumer buy-to-let credit business from the *Regulated Activities Order*. Instead that business is regulated under Part 3 of the *MCD Order*. This section provides more detail about the regulation of consumer-buy-to-let business.

Details about the Regulated Activities Order exclusion

- 4.10B.2 **G** Article 72I of the *Regulated Activities Order* excludes *CBTL business* from the regulated activities listed in ■ PERG 2.9.28G.

- 4.10B.3 **G** The exclusion only applies to a *person* included on the *FCA* register described in ■ PERG 4.10B.16.

- 4.10B.4 **G** There are three main conditions for regulated mortgage activities to be *CBTL* business:

- (1) the activities must relate to *buy-to-let credit agreements* (see ■ PERG 4.10B.5G);
- (2) the borrower must be acting as a consumer (see ■ PERG 4.10B.10G(2)); and
- (3) the activities must come within the definition of *CBTL business* (see ■ PERG 4.10B.8G).

What does buy-to-let credit agreement mean?

- 4.10B.5 **G** (1) A *buy-to-let credit agreement* means either:
- (a) a contract that at the time it is entered into has the following characteristics:
 - (i) a lender provides credit to an individual or 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, as or in connection with a dwelling (or, where trustees are

- the borrower, by an individual who is a beneficiary of the trust or by a *related person*); and
 - (iv) provides that the land secured by the mortgage is subject to the requirements in (2); or
 - (b) is an *MCD article 3(1)(b) credit agreement* which provides that the land, or existing or projected building, to which it relates is subject to the requirements in (2).
- (2) The requirements are that the land, or existing or projected building (as applicable):
- (a) cannot at any time be occupied as a dwelling by the borrower or by a *related person*; and
 - (b) is to be occupied as a dwelling on the basis of a rental agreement.

4.10B.6 G *Related person* is described in ■ PERG 4.4.19.

4.10B.7 G ■ PERG 4.4.6AG explains why the requirement in ■ PERG 4.10B.5G that the borrower does not use the land as a dwelling does not take the contract out of the definition of *regulated mortgage contract* altogether without having to rely on the consumer buy-to-let exclusion described in this section.

Business covered by Part 3 of the Mortgage Credit Directive Order 2015: Introduction

4.10B.8 G *CBTL business* means the activities in the table in ■ PERG 4.10B.9G.

4.10B.9 G Table: Definition of consumer buy-to-let business

Activity	Explanation
Entering into, or promising to enter into, a <i>CBTL credit agreement</i> in the course of a trade, business or profession (acting as a <i>CBTL lender</i>)	See PERG 4.10B.11G(1)
Administering a <i>CBTL credit agreement</i> in the course of a trade, business or profession (acting as a <i>CBTL lender</i>)	See PERG 4.10B.11G(2)
Acting as a <i>CBTL arranger</i> in relation to a <i>CBTL credit agreement</i>	See PERG 4.10B.12G
Acting as a <i>CBTL adviser</i> in relation to a <i>CBTL credit agreement</i>	See PERG 4.10B.13

A *CBTL credit agreement* is explained in PERG 4.10B.10G

Meaning of CBTL credit agreement

4.10B.10 G A *CBTL credit agreement* means a contract that meets the following conditions:

- (1) it meets the definition of a *buy-to-let credit agreement* in ■ PERG 4.10B.5G; and

4.10B.11 G

- (2) it 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.
- (1) ■ PERG 4.4.32G explains when a borrower is regarded as entering into a *buy-to-let credit agreement* for the purpose of a business carried on, or intended to be carried on, by the borrower.
- (2) A person administers a *CBTL credit agreement* if the person carries on *administering a regulated mortgage contract* in respect of the *CBTL credit agreement*, or would carry on that regulated activity in respect of the *CBTL credit agreement* if it was not a person included on the FCA register described in ■ PERG 4.10B.16.

Business covered by Part 3 of the Mortgage Credit Directive Order 2015: Credit intermediaries

4.10B.12 G

A *person* is acting as a *CBTL arranger* if the person:

- (1) is not a lender as described in the first row of the table in ■ PERG 4.10B.9G;
- (2) is not merely introducing, either directly or indirectly, a borrower to a lender or credit intermediary;
- (3) is acting in the course of the *person's* trade, business or profession, for remuneration, which may take a pecuniary form or any other agreed form of financial consideration; and
- (4) meets one or more of the following conditions:
 - (a) the *person* presents or offers *CBTL credit agreements* to consumers; or
 - (b) the *person* assists consumers by undertaking preparatory work or other pre-contractual administration in respect of *CBTL credit agreements* other than as referred to in (a); or
 - (c) the *person* concludes *CBTL credit agreements* with consumers on behalf of the lender.

Business covered by Part 3 of the Mortgage Credit Directive Order 2015: Advisers

4.10B.13 G

Under article 6(1) of the *MCD Order* a *person* is acting as a *CBTL adviser* if in the course of that *person's* trade, business or profession, the *person* provides personal recommendations to a consumer in respect of one or more transactions relating to *CBTL credit agreements*.

4.10B.14 G

Under article 6(2) of the *MCD order* a *person* who provides personal recommendations to a consumer in respect of one or more transactions relating to *CBTL credit agreements* is not acting as a *CBTL adviser* if the recommendations are provided:

- (1) in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of

ethics governing the profession which do not exclude the making of those recommendations; or

- (2) in the context of managing existing debt as an insolvency practitioner where that activity is regulated by legal or regulatory provisions or as part of public or voluntary debt advisory services which do not operate on a commercial basis.in the context of managing existing debt as an insolvency practitioner where that activity is regulated by legal or regulatory provisions or as part of public or voluntary debt advisory services which do not operate on a commercial basis.

Link to the Mortgage Credit Directive

4.10B.15 G

- (1) The definitions of *CBTL arranger* and *CBTL adviser* are largely the same as those under the *Mortgage Credit Directive*.
- (2) There is *guidance* on these terms in ■ PERG 4.10A (Activities regulated under the Mortgage Credit Directive).
- (3) The main difference between the definitions in this section and those in ■ PERG 4.10A is that this section only relates to CBTL credit agreements.

Registration of consumer buy-to-let mortgage firms

4.10B.16 G

Part 3 of the *MCD Order* has a procedure for the *FCA* to include a person carrying on one of the activities described in ■ PERG 4.10.9G in a register.

4.10B.17 G

There are two types of person subject to the regime:

- (1) *firms* with *Part 4A permissions* (including firms with an interim permission to carry on one or more regulated activities under article 56 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013)); and
- (2) *unauthorised persons* described in article 8(3) of the *MCD order*.

4.10B.18 G

- (1) There are detailed conditions for admission to the register that apply to an unauthorised *person* described in article 8(3) of the *MCD Order*.
- (2) These detailed conditions do not apply to a *firm* in ■ PERG 4.10B.17(1). The conditions for a firm in ■ PERG 4.10B.17(1) to be included on the register are simpler.

4.10B.19 G

Part 3 of the *MCD Order* has a detailed regulatory regime for firms subject to that regime.

Exempt consumer buy-to-let contracts

4.10B.20 G

There is another exclusion for buy-to-let contracts in addition to the one in article 72I of the *Regulated Activities Order* (see ■ PERG 4.10B.1G for article 72I).

4.10B.21 G A contract is excluded from the definition of *regulated mortgage contract* if, at the time it is entered into, it meets the following conditions:

- (1) it is a consumer buy-to-let mortgage contract within the meaning of the *MCD Order* (see ■ PERG 4.10B.10G for an explanation of what this means); and
- (2) it is either:
 - (a) of a kind to which the *Mortgage Credit Directive* does not apply by virtue of the exclusions summarised in ■ PERG 4.10A.5G(1) to (8); or
 - (b) a bridging loan (see ■ PERG 4.13.6G).

4.10B.22 G The *RAO* refers to the contract described in ■ PERG 4.10B.21G as an “exempt consumer buy-to- let mortgage contract”.

4.10B.23 G (1) The exclusion for exempt consumer buy-to-let mortgage contracts has the effect that a *person* whose business covers exempt consumer buy-to-let lending does not have to consider its position in respect of Part 3 of the *MCD Order* or consider the exclusion in ■ PERG 4.10B.2G.

(2) However, exempt consumer buy-to-let lending is not excluded from the regime in Part 3 of the *MCD Order* altogether. This is because the *Part 4A permission* of a *firm* that has *permission* to carry out any of the following activities:

- (a) *arranging (bringing about) regulated mortgage contracts*;
- (b) *making arrangements with a view to regulated mortgage contracts*;
- (c) *credit broking*;
- (d) *advising on regulated mortgage contracts*;
- (e) *entering into a regulated mortgage contract*;
- (f) *administering a regulated mortgage contract*;

is subject to a *requirement* that the *firm* does not carry on any activity that would constitute *CBTL business* as defined in ■ PERG 4.10B.9G unless the *firm* is registered as described in ■ PERG 4.10B.16.

(3) That *requirement* covers the exempt consumer buy-to-let lending referred to in (1).

4.10B.24 G Another purpose of the exclusion in ■ PERG 4.10B.2G is that it provides an exclusion in relation to *credit broking*.

Does all buy-to-let business fall under this regime?

4.10B.25 G Part 3 of the *MCD Order* does not apply to all mortgage contracts secured on buy-to-let property.

4.10B.26 **G** The regime is only relevant to credit secured on residential property. If a loan to a buy-to-let borrower is secured on commercial property, the loan is not a residential mortgage contract and this chapter does not apply.

4.10B.27 **G** The Part 3 regime is only relevant to consumer borrowers. Non-consumer borrowers fall outside Part 3. Many will be excluded from *regulated mortgage activities* altogether by the exclusions for loans to business borrowers in ■ PERG 4.4.17G to ■ PERG 4.4.21G.