EXPLANATORY MEMORANDUM TO

THE MORTGAGE CREDIT DIRECTIVE (AMENDMENT) ORDER 2015

2015 No. 1557

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument makes changes to ensure that the legislative changes to the regulatory regime for mortgages which were made at the time of the UK's implementation of Directive 2014/17/EU on credit agreements relating to residential immovable property, more commonly known as the EU Mortgage Credit Directive (MCD), achieve the policy intent previously announced in the 2015 consultation response.

2.2 The two most significant changes are to ensure that second charge mortgage lenders are able to take advantage of the Mortgage Credit Directive Order 2015's transitional provisions intended to reduce the burden of moving to the new regulatory framework where a broker has the initial contact with the borrower, and, to clarify the regulatory status of a small number of existing buy-to-let mortgages regulated under the consumer credit regime.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The provisions at paragraphs (2) to (4) of article 2 are made under section 22(1) of the Financial Services and Markets Act 2000. The power at section 22(1) (read together with the definition of "specified" at section 22(5)) is provided primarily for the specification of activities which are to be regulated, however paragraph 22(1)(f) of Schedule 2 to that Act provides that an order under section 22(1) may make such consequential, transitional or supplemental provisions as the Treasury consider appropriate for the purposes of, or connected with, any relevant provision ("relevant provision" being defined at defined in sub-paragraph (3) of that paragraph as including any provision made under section 22). Therefore the power at section 22(1) is available to amend transitional provisions in the Mortgage Credit Directive Order 2015 which relate to changes to the specification of regulated activities made under section 22(1) in that Order.

4.2 The provisions at paragraphs (5) and (6) of article 2 and article 3 are made under section 2(2) of the European Communities Act 1972. In the case of articles 2(5) and 3, these correct a drafting error in the Mortgage Credit Directive Order 2015 by substituting an amendment to the Consumer Credit (Agreements) Regulations 1983 for an incorrect amendment made by the Mortgage Credit Directive Order 2015. The procedure for the issue of the instrument free of charge has not been applied, by agreement with the SI Registrar, because the correction is not the main purpose of this Order and this Order is aimed at the same audience as the Mortgage Credit Directive Order 2015.

5. Territorial Extent and Application

5.1 The instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government made the necessary legislative changes to implement the MCD in the Mortgage Credit Directive Order 2015 (S.I. 2015/910), which was made on 25 March 2015. More detail on the changes made can be found on the Government's consultation webpage: https://www.gov.uk/government/consultations/implementation-of-the-eu-mortgage-credit-directive .

7.2 The Government has engaged closely with industry in order to support implementation efforts. It has emerged, however, that in a number of areas further legislative change is necessary in order to ensure that the Government's policy aims are achieved fully.

7.3 The changes included in this Order are being made to ensure the policy intent set out in the Government's consultation and summary of responses are met and the regulatory requirements are clear. To this effect there are two main changes made:

- Amending the Mortgage Credit Directive Order 2015 so that the availability of a transitional arrangement for new loans secured by a second or subsequent mortgage is determined at the first contact with a customer, whether that contact is made by a mortgage lender or intermediary. This will allow the application of the transitional arrangement, which was designed to ease the burden on firms of second charge mortgages moving into the new regulatory framework, whether or not any particular mortgage is arranged through a broker.

- Amending the Mortgage Credit Directive Order 2015 to clarify the regulatory status of a small number of existing buy-to-let mortgages which, if currently regulated, will remain in the consumer credit regime.

8. Consultation outcome

8.1 The Mortgage Credit Directive Order 2015 was made on 25 March 2015. Following the General Election on 7 May 2015, the Government resumed consulting with industry groups in order to understand their emerging plans for compliance with the requirements of the MCD and support the transition to the new regulatory framework. At this point, it emerged that there were several issues that had not been identified previously but which warranted legislative action in order to ensure the policy intent that had previously been consulted on was put in place. The Government then developed this instrument in close coordination with relevant industry stakeholders.

9. Guidance

9.1 The Financial Conduct Authority (FCA) have responsibility for the conduct regulation of mortgages in the UK. The FCA provide guidance on their rules where this is appropriate, as well as on the scope of regulation.

10. Impact

10.1 The Equivalent Annual Net Cost to Business of the changes to be made to the regulation of mortgages in March 2016 is already covered within the Impact Assessment for the Mortgage Credit Directive Order 2015. As such this instrument adds no additional costs to business and the relevant EANCB is £0.

10.2 The impact on the public sector, charities or voluntary bodies is nil.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 This legislation will not alter the impact on small businesses as set out in the impact assessment for the Mortgage Credit Directive Order 2015. The changes contained in this Order were developed in response to queries from businesses and will clarify the impact of the original changes proposed as part of the implementation of the MCD.

12. Monitoring & review

12.1 This instrument does not contain a requirement to conduct a separate review in relation to it. Under the Small, Business, Enterprise and Employment Act 2015, a Minister may publish a statement that it is not appropriate in the circumstances to make provision for review, rather than including such a provision. One of the circumstances in

which a Minister may determine that it is not appropriate to make provision for review is where a review would be disproportionate taking into the economic impact of the regulation. The Economic Secretary to the Treasury, Harriett Baldwin MP, has made the following statement: "In my view the economic impact of this regulation is negligible. As such, it would be disproportionate to the economic impact of the regulation to include a separate statutory requirement for it to be reviewed".

12.2 HM Treasury will however monitor the practical effects of the instrument to ensure that it provides a useful clarification to firms seeking to comply with the UK's regulatory framework for mortgage lending. The Mortgage Credit Directive Order 2015 requires that a review of that Order be carried out by 1st September 2018 and at intervals of no more than five years thereafter, and that review will need to consider the regulatory regime for mortgages as amended up to the date of the review, including the amendments made by this instrument.

13. Contact

13.1 Simon Smith at HM Treasury (tel: 0207 270 1883 or email: simon.smith@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.