

# Countdown to the MCD has begun

Given the UK's battle to keep buy-to-let mortgages outside the scope of the MCD, it is perhaps no surprise that the exception for consumer buy-to-let mortgages has been downplayed by the regulator. The exception provides that buy-to-let loans which aren't entered into "wholly or predominantly for business purposes", will be regulated. However, with consumer buy-to-let lending expected to make up only 5-10% of total mortgage business in the UK, it appears that the majority of buy-to-let lenders are intending to operate outside of the new regime. In order to do so, lenders will have to satisfy themselves that a borrower is entering into a loan "wholly or predominantly for business purposes".

The Financial Services and Markets Act 2000 (Regulated Activities)



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Order 2001 provides that a mortgage is presumed to have been entered into "wholly or predominantly for business purposes" if a borrower signs a declaration confirming that the loan is for business purposes, and acknowledging that he waives the rights he would have as a consumer. If lenders simply add wording to this effect into the customer declaration section of an application form, will this be sufficient to avoid falling within the consumer buy-to-let regime?

The short answer is no. Whilst the statement is a good place to start, it is only a presumption – lenders and intermediaries will need to be alert for any other circumstances which may render the presumption incorrect. If the lender or any of their agents knows or "has reasonable

cause to believe" that a borrower hasn't entered into an agreement wholly or predominantly for business purposes, then the above statement is void and the loan becomes a regulated consumer buy-to-let loan.

So how can lenders stay on top of this? Lenders may want to review their terms of business with intermediaries and other agents, to ensure they allow for timely sharing of information. It will be important for lenders to have open channels of communication with their agents to ensure that, if any information comes to light which indicates that the borrower may not be using the property "wholly or predominantly for business purposes", the lender is told at the earliest opportunity.

Lenders will need to review applications on a case-by-case basis.



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