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HM TREASURY – MORTGAGE REGULATION RESPONSE TO CONSULTATION

15 FEBRUARY 2010

Homes for Scotland is the representative body of the Scottish homebuilding industry, with over 200 full and associate members. Its members build around 95% of all new homes for sale built each year, as well as a significant proportion of the affordable housing output annually. Homes for Scotland makes policy submissions on National and Local Government policy issues affecting the industry, and its views are endorsed by the relevant local committees and advisory groups consisting of key representatives drawn from within our members.

We were recently made aware of two consultations on the financial system which have direct implications for the home building industry. The first was, the Discussion Paper by FSA on 09/3 Mortgage Market Review and the second HM Treasury's own 'Mortgage Regulation: a consultation' covering some of the same issues. Following our submission to FSA, this paper will focus on the specific issues raised in your own consultation relating to the expansion of regulation to Second Charge Mortgages and Buy to Let.

Regulation of Second Charge Mortgages

It is imperative that Shared Equity Schemes do not suffer at the expense of the proposed extension to regulation. A number of schemes have recently been introduced or expanded in Scotland, both privately by home builders and by the Scottish Government (LIFT, New Supply Shared Equity with Developers etc), to stimulate the housing market and in particular to assist first time buyers who are currently locked out of the housing market. There is a danger that the proposals raised in this consultation will damage the operation of such schemes.

We understand the desire to expand regulation to ensure sustainable finance markets in the UK, but using a blanket measure to capture all second charge loans is not the way to achieve this.

Shared Equity schemes do involve a second charge on a home. There are however clear differences between such schemes and other second charges, the clearest example being that no interest is paid on this charge. Shared Equity Products are not used as a way for a home owner to release equity from their home for other purposes, but as a secure way for people to access home ownership in the first instance, where access to a deposit or high loan to value mortgage is limited. As with 'normal' mortgages, applications to purchase homes under Shared Equity products are properly assessed by the chosen lender to ensure the purchaser can afford the share of equity which will be the first charge on the home. Shared Equity schemes do not promote irresponsible lending.

The proposals note one exemption to the legal definition of a regulated mortgage contract, Home Purchase Plans (which offer an alternative way to purchase homes through sale and lease back and are regulated by the FSA in another way). The consultation does not suggest that the Government is proposing to amend the exemptions or exclusions that apply in relation to regulated mortgage contracts but we urge the exemptions to be given serious consideration. An exclusion category for Shared Equity Products should be insisted upon and is absolutely essential if this important and responsible type of lending is to be maintained.

Under current arrangements the shared equity provider i.e. the home builder is exempt from the Consumer Credit Act, meaning that no license is required. This dispensation from OFT regulation is operated through the careful wording of the home builder's contract. Home builder's contracts often limit the number of occasions that a customer can staircase and thereby pay back the equity share in usually no more than four repayments in the period of the loan. The wording of the contract centres around the percentage of equity that can be repaid, i.e. if 20% equity is retained by the home builder the contract would state a 'staircasing' limit to a minimum of 5% so that the customer cannot physically make more than four repayments before the equity share is repaid in full.

Home builders should be encouraged to take steps to stimulate the market and allow access to home ownership to people who would otherwise be excluded. A step which aside from through Government schemes is not on offer in the second hand market. Any regulation that could discourage or make it more difficult for home builders to offer such schemes must not be introduced at this time.

Regulation of Buy to Let

We understand that regulating Buy to Let will introduce specific standards for lenders to follow, which may be helpful in ensuring financial sustainability of the sector which has grown rapidly over the last decade. However we must ensure that there is still a choice of products for Buy to Let landlords to access. We must not forget the beneficial impact of Buy to Let on the expansion of the private rental sector or the economy, and this enterprise should not be damaged.

It is likely that the lending changes outlined within the recent FSA Discussion Paper combined with general market conditions will increase the number of people unable to secure a mortgage at all, or, who will have to save for considerably longer to obtain the levels of deposit or financial strength required. Those people will inevitably end up relying on the 'Private Rental Sector' to meet their housing needs in the interim. To that end professionally managed and long term Buy to Let investment is essential. We welcome the recently published consultation on Investment in the UK private rented sector and will be considering this closely in due course.