

# Consumer Credit

## FCA Publishes Final Detailed Rules

March 2014

The UK Treasury and Financial Conduct Authority (FCA) have been drip-feeding the industry rules and practical details of the transfer of consumer credit (CC) regulation to FCA. FCA has now published the final form of its detailed rules in its Consumer Credit Sourcebook (CONC), with feedback and practical advice. The rules apply from 1 April 2014 with limited grace periods only. It is critical that all firms carrying on credit-related regulated activities know what the changes mean for them.

FCA has published its feedback statement and final form rules on the detailed CC regulatory regime that takes effect from 1 April. The feedback covers several specific aspects of FCA's consultation on the rules, and highlights any substantial changes from FCA's original proposals.

### What the paper covers

Most of the high-level requirements around interim permissions, authorisation, prudential and conduct standards as well as the principles on reporting, supervision, enforcement and financial crime compliance will apply as proposed.

FCA is also carrying forward its proposals for introducing more detailed rules for high-cost short-term credit (HCSTC), although it is making changes that will among other things reduce some reporting requirements.

CONC and related rules will apply proportionately, so each firm carrying on credit-related regulated activities must assess how FCA will regulate its

particular business and be in a position to comply within the short transitional periods allowed.

### Timelines

As well as setting out the detailed text of CONC and other Handbook changes discussed below, the paper sets out some useful timelines, including:

- 1 April 2014: Most rules take effect (most of CONC but subject sometimes to a transitional period) including the requirement for risk warnings for HCSTC promotions.
- 1 July 2014: Additional rules on HCSTC.
- 1 October 2014: Transitional period ends, and more rules apply in some areas including for P2P platforms.
- 1 April 2015: End of transitional period for financial promotions first communicated in certain catalogues before 1 October 2014.
- 1 April 2017: End of transitional period for certain

prudential requirements on debt management.

The paper also says firms should be notified by 1 May of when they should apply for full authorisation. A firm will have to apply within three months of that date, or else lose its interim permission. FCA will try to give groups the same application period and will allow an earlier slot for firms that have said they would like to become principals for appointed representative firms. FCA also notes that both new applicants and firms that wish to carry on activities additional to the ones covered by their interim permission can apply from 1 April.

### CONC

The Consumer Credit Instrument 2014, which sets out most of the content of CONC, will take effect from 1 April 2014 and includes chapters on:

- *Chapter 1: Application and purpose.* This chapter specifies the activities CONC covers and the Principles relevant to CC business. It also addresses how firms can

assess when customers may be in financial difficulties.

- *Chapter 2: Conduct of Business standards.* This sets out:
  - general principles, with reference to Principle 6 and the duty not to use misleading names;
  - rules for lenders and providing credit card cheques;
  - credit references in respect of lending and hiring;
  - rules applicable to credit broking, including credit references and unfair business practices;
  - rules applicable to debt counselling, debt adjusting and providing credit information services;
  - rules on distance marketing;
  - e-commerce provisions;
  - the ban on unsolicited credit tokens; and
  - guidance on mental capacity.
- *Chapter 3: Financial promotions and communications with customers.* This sets out each type of communication to which the rules apply, and explains which communications are excluded or to which the chapter otherwise does not apply. Where it applies, there is guidance on the clear, fair and not misleading rule and specific provisions on the risk warning required for HCSTC. There are also detailed rules on financial promotions depending on whether they are or are not about credit agreements secured on land, specific rules on promotions for particular types of firm, unwritten promotions, approval of promotions (and a ban on approving certain promotions).
- *Chapter 4: Pre-contractual requirements.* This sets out the rules on:
  - content of quotations;
  - pre-contract disclosure and adequate explanations;
  - adequate explanations in the context of P2P agreements;
  - pre-contractual requirements for credit brokers;
  - commissions;
  - pre-contract disclosure and continuous payment authorities;
  - information to be provided on entering a current account agreement; and
  - unfair business practices in consumer credit lending at pre-contract stage.
- *Chapter 5: Responsible lending.* This looks at the creditworthiness assessment before agreement, conduct of business in relation to creditworthiness and affordability, conduct of business in respect of credit broking and creditworthiness in P2P agreements.
- *Chapter 6: Post-contractual requirements.* This chapter again applies rules dependent on the type of business and looks at assessing creditworthiness during the agreement, information to be provided on a current account agreement and significant overdrawn,
- appropriation of payments, assignment of rights and pawn broking. Then it looks at business practices post-contract with specific rules for credit brokers.
- *Chapter 7: Arrears, default and recovery (including repossession).* This covers:
  - clear, effective and appropriate arrears policies and procedures;
  - treatment of customers in default or arrears for lenders, owners and debt collectors;
  - information on status of debts;
  - pursuing and recovering repayments;
  - exercise of continuous payment authority;
  - application of interest and charges;
  - jurisdictional requirements;
  - contact with customers;
  - treatment of customers with mental capacity limitations;
  - disclosures relating to “authority” or “status”;
  - lenders’ responsibilities in relation to debt;
  - data accuracy and outsourced activities;
  - settlements, disputed and deadlocked debt;
  - statute barred debts;
  - passing data to lead generators or other third parties;
  - notices of sums in arrears under P2P agreements for fixed-sum credit

and running-account credit; and

- Notice of default sums under P2P agreements.
- *Chapter 8: Debt advice.* The chapter covers conduct standards for debt counselling, debt adjusting and where relevant credit information services. It also looks at pre-contract information and advice requirements, debt solution contracts, financial statements and debt repayment offers, changes to contractual payments, charging for debt counselling, debt advice and related services, debt management plans, rules for firms dealing with customers referred through a lead generator, and conduct of business requirements for providing credit information services.
- *Chapter 9: Credit reference agencies in relation to correction of entries in credit reference agency files.*
- *Chapter 10: Prudential rules for debt management firms.* This covers prudential resources requirements and calculation of prudential resources.
- *Chapter 11: Cancellation.* This looks at the right to cancel, and the right of withdrawal in P2P agreements.
- *Chapter 12: Requirements for firms with interim permission for credit-related regulated activities.* This amends the text already made for this chapter to show which rules are disapplied or modified while firms are operating on an interim permission.
- *Chapter 13: Guidance on the duty to give information under sections 77,78 and 79 of the CCA.* This sets out as guidance how firms should react to requests for

information and what they should give out. It looks at what the copy agreement should be, the statement of account and the consequences of failing to comply.

- *Chapter 14: Requirement in relation to agents.* This chapter sets out requirements on firms when they appoint individuals as agents.
- *Chapter 15: Second charge lending.* This chapter will change when the Mortgage Credit Directive is implemented, but for the time being sets the requirements specific to lending and broking in relation to credit agreements secured on land. The rules note that other parts of CONC will also be relevant.
- *Transitional provisions:* These chapters allow firms extra time to comply with certain rules in CONC, mainly to allow them six months to continue to comply with the pre-FCA regime while they make the changes necessary to comply with CONC. As noted above there are specific transitional arrangements for certain businesses.

#### Other Handbook changes

The main changes to other parts of the Handbook are to:

- The Glossary to add or amend many definitions.
- Principles for Business (PRIN) to amend the changes previously made to ensure the definitions of client and customer in relation to credit-related regulated activities mirror the definition of consumer in relevant parts of the Regulated Activities Order.
- The Senior Management Arrangements, Systems and Controls Sourcebook (SYSC) to summarise application to

relevant firms, including specifying which parts apply only where the firm is subject to the Money Laundering Regulations.

- The Threshold Conditions (COND) to explain how COND applies to limited permission firms.
- The General Provisions (GEN) to delete the wording previously included on explanations of what a limited permission means.
- The Conduct of Business Sourcebook (COBS) to ensure the financial promotion rules in relation to credit agreements, consumer hire agreements and credit-related regulated activities are not covered by it (because they are covered by CONC).
- The Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB) to distinguish regulated mortgage contracts from regulated credit agreements.
- The Client Assets Sourcebook (CASS) in respect of debt management, including a new chapter CASS 11 setting out the detailed rules.
- The Supervision Manual (SUP) mainly to insert a new chapter 8A on directions and determinations by FCA waiving, varying or disapplying CCA requirements, and adding rules and guidance on the approved persons regime, appointed representatives and reporting.
- The Decision Procedure and Penalties Manual (DEPP) to include details of the decision-making process in relation to contraventions of defined "CCA requirements".
- The Dispute Resolution: Complaints Sourcebook

(DISP) in respect of the application of the Financial Ombudsman Service (FOS) and complaints previously subject to the FOS Consumer Credit Jurisdiction.

- The Credit Union Sourcebook (CREDS) reminding credit unions that CONC will apply to any credit-related regulated activities they wish to undertake.
- CONC itself to make minor changes to chapter 1 to confirm applicability to legal or equitable mortgages.
- The Building Societies Regulatory Guide (BSOG) to remove the definition of the Office of Fair Trading (OFT).

- The Enforcement Guide (EG) to set out powers of enforcement under the Consumer Credit Act.
- The Financial Crime Guide (FC) to remove references to the OFT.
- The Perimeter Guidance Manual (PERG) to add guidance on how a person, even if already authorised, will commit a criminal offence for carrying on credit-related regulated activities outside permission, to add guidance on the business test and to address the main elements of the various credit-related regulated activities. There is a new chapter 8.17A giving guidance on financial promotions concerning

consumer credit and consumer hire and a new Chapter 17 on consumer credit debt counselling.

- The Unfair Contract Terms Regulatory Guide (UNFCOG) to reflect the role of the Competition and Markets Authority.

The instrument also annexes the new Variation of Permission forms.

#### Action points

Firms now have all they need to ensure they are ready for CC regulation FCA-style. FCA has made it clear it will be a tough but proportionate regulator. There is no excuse for falling behind with compliance arrangements.

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