

# Implementation of the Mortgage Credit Directive: Consequential Changes to the Consumer Credit Sourcebook (CONC)

July 2015





# Contents

Abbreviations used in this paper	3
<b>1</b> Overview	5
<b>2</b> Summary of feedback and our responses	8
<b>Annex</b>	
<b>1</b> List of non-confidential respondents	13
<b>Appendix</b>	
<b>1</b> Made rules (legal instrument)	14

In this Policy Statement we report on the main issues arising from the MCD elements of Consultation Paper 15/6 (*Consumer credit – proposed changes to our rules and guidance*) and publish the final rules.

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## Abbreviations used in this paper

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<b>BTL</b>	Buy to Let
<b>CBA</b>	Cost Benefit Analysis
<b>CCA</b>	Consumer Credit Act 1974
<b>CONC</b>	Consumer Credit Sourcebook
<b>CP</b>	Consultation Paper
<b>ESIS</b>	European Standardised Information Sheet
<b>EU</b>	European Union
<b>FEES</b>	Fees Manual
<b>HMT</b>	Her Majesty's Treasury
<b>HNW</b>	High Net Worth
<b>MCD</b>	Mortgage Credit Directive
<b>MCOB</b>	Mortgages and Home Finance: Conduct of Business sourcebook
<b>PERG</b>	Perimeter Guidance Manual
<b>PS</b>	Policy Statement
<b>RAO</b>	Regulated Activities Order

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# 1. Overview

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## Introduction

- 1.1** In February 2015 we published CP 15/6<sup>1</sup>, which set out proposed amendments to our Consumer Credit sourcebook (CONC) to implement the Mortgage Credit Directive (MCD). In this Policy Statement we summarise the feedback we received on the MCD elements of the consultation and our response. In general, respondents agreed with our proposed amendments and we are publishing final rules, the majority of which come into effect on 21 March 2016. Our response to the non-MCD changes to CONC we consulted on in CP15/6 will be published later this year.

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## Who does this affect?

- 1.2** This Policy Statement will primarily interest authorised firms carrying out regulated activities currently captured by our consumer credit rules, in addition to firms involved with niche forms of lending for the purchase or retention of property (or rights in property) which is not secured by a regulated mortgage contract. We use the term 'MCD lending not secured on the home' to refer to lending within the meaning of Article 3(1)(b) of the MCD.<sup>2</sup>

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## Is this of interest to consumers?

- 1.3** The amendments in this Policy Statement are primarily technical changes and we do not think they will be of significant interest to consumers. Nevertheless, some consumers may be affected, such as those with a first charge mortgage less than £25,000 entered into prior to 31st October 2004 which is currently subject to the Consumer Credit Act 1974 ("CCA") ("first charge CCA mortgages") or those seeking an MCD loan not secured on the home.

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## Context

- 1.4** The MCD is an EU Directive that introduces a framework of conduct rules for firms entering into both first and second charge mortgages, in addition to some other forms of property lending not secured on the home. Second charge mortgages are currently regulated as consumer credit, but the Government has decided to move the regulation of second charge mortgages

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<sup>1</sup> CP15/6, *Consumer credit – proposed changes to our rules and guidance* (February 2015)

<sup>2</sup> Article 3 of the MCD sets out the scope of the MCD; Article 3(1)(b) covers lending for the purposes of acquisition or retention of property rights in land or in an existing or projected building.

into the new mortgage regime from 21 March 2016 as part of implementation of the MCD. We published our final rules implementing the MCD in March 2015.

- 1.5** In CP15/6 we consulted on proposed changes to CONC and our Mortgages and Home Finance Conduct of Business Sourcebook (“MCOB”) flowing from these changes to the regulation of second charge mortgages and MCD loans not secured on the home. We also consulted on a minor amendment to our Perimeter Guidance Manual (“PERG”).

### Summary of feedback and our response

- 1.6** In general, respondents welcomed the proposed consequential amendments to CONC. Some respondents raised questions about the forms of secured lending which remain within CONC, which we address in Chapter 2.
- 1.7** A number of respondents asked for clarification on the future regulatory treatment of first charge CCA mortgages. We have discussed this issue with HM Treasury (“HMT”), and understand that their intention is that the administration of first charge CCA mortgages should become a regulated mortgage activity. HMT are considering legislative changes to put the question beyond doubt.
- 1.8** We are exploring what further amendments to our rules are necessary in light of these changes. We will consult on them later this year.
- 1.9** Many respondents welcomed our approach to implementing the MCD for lending not secured on the home. Some asked for more time to implement the necessary changes. We are obliged to implement the MCD by 21 March 2016, and therefore cannot provide more time for firms to comply with the rules. However, we have made several minor amendments to our rules, including amending CONC 1.2.8 from the version consulted upon to remove reference to CONC 11.
- 1.10** There was very little feedback on the proposed change to PERG we proposed, but what feedback there was, was largely supportive.
- 1.11** In summary, we have made a number of changes to the draft rules we consulted on in CP15/6 (outlined in Chapter 2); however we do not believe that the rules we have made differ from the draft rules in a way which is significant.

## Next steps

### What do you need to do next?

- 1.12** Firms involved in lending that is currently subject to CONC, but which will be subject to MCOB from 21 March 2016, will need to consider how these changes affect them. Virtually all agreements secured on land will now be subject to MCOB, and affected firms should consider how our new rules apply to their business and implement the changes necessary to comply within the appropriate deadlines
- 1.13** Firms who currently hold an interim permission for credit-related regulated activities in relation to second charge mortgages will need to apply for the appropriate mortgage permission(s) if they wish to continue with this activity after 21 March 2016.<sup>3</sup> Authorised firms will need to

<sup>3</sup> For further information on authorisation please see our dedicated MCD web page [www.fca.org.uk/firms/firm-types/mortgage-brokers-and-home-finance-lenders/mcd](http://www.fca.org.uk/firms/firm-types/mortgage-brokers-and-home-finance-lenders/mcd)

apply for a variation of permissions to add relevant mortgage permissions if not already held. Firms should apply in good time before 21 March 2016 to enable us to consider and determine their application.

- 1.14** Firms conducting activities relating to MCD lending not secured on the home will require consumer credit permissions and may need to apply for the new permission of advising on MCD lending not secured on the home if they are providing advice on such loans.

**What will we do?**

- 1.15** In September we will consult on minor changes to the Handbook to address outstanding issues relating to MCD lending not secured on the home, including whether to amend the definition of “credit related regulated activity” to include the activity of advising borrowers in respect of this type of lending and whether to apply the cancellation rights in CONC 11.
- 1.16** Later in the year we will consult on the further changes needed as a result of the Government’s decision to make the administration of first charge CCA mortgages a regulated mortgage activity.

## 2. Summary of feedback and our responses

- 2.1** In this chapter we outline the feedback received to the MCD proposals made in CP15/6 and set out our responses.

**Q19: *Do you have any comments on the proposed changes to CONC resulting from the transfer of the second charge regime?***

- 2.2** The majority of respondents agreed with the proposed changes to CONC, and many generally welcomed the transfer of the second charge regime to MCOB.
- 2.3** Two respondents asked for clarification of the regulatory treatment of first charge CCA mortgages, pointing out an inconsistency between HMT's response to their consultation on implementation of the MCD and the proposed guidance at CONC 1.2.7G.
- 2.4** Three respondents requested that CONC be amended to reflect that the credit broking exclusion in Article 36E of the Regulated Activities Order ("RAO") has been extended to investment property loans, meaning that a consumer credit permission will no longer be needed for broking on buy-to-let ("BTL") agreements from March 2016. One respondent observed that refinancing a BTL agreement for the purposes of debt consolidation requires a consumer credit permission, which they considered unreasonable.
- 2.5** One firm questioned the status of pre-2008 second charge BTL mortgages under the MCD Order.
- 2.6** One trade association asked for clarity on the statement "virtually all agreements secured on land will be taken out of CONC", which we made in Chapter 6 of the CP.
- 2.7** Three consumer representatives raised concerns about the loss of certain CCA protections for second charge borrowers, namely Time Orders and the unfair credit relationships test. Another consumer body expressed concern about the Government's decision to move second charge mortgages into the mortgage regime, as they believe that the previous regime provides more appropriate consumer protection.
- 2.8** One lender expressed the view that second or subsequent charge mortgages, taken out in addition to a CCA-exempt first charge mortgage should also be exempt from regulation and asked that CONC 1.2.7G be amended accordingly.

### Our response

The Government intends to clarify that the administration of first charge CCA mortgages will be a regulated mortgage activity. We will consult as soon as possible on any further changes we consider necessary as a result. In the meantime we have amended the proposed CONC 1.2.7G to remove the reference to these loans.

We acknowledge that Article 36E of the RAO has been extended to investment property loans and we propose to consult in September on consequential changes to CONC and PERG. However, depending on the circumstances, firms refinancing BTL agreements for the purposes of debt consolidation may still need the relevant permission.

We have spoken to HMT about pre-2008 second charge BTL mortgages and they have confirmed that the intent of the MCD Order is not to bring any previously exempt BTL mortgages within the scope of “consumer credit back book mortgage” and therefore into regulation. HMT intends to make a legislative clarification to ensure that the regulation of back book BTL mortgages remains unchanged.

The transfer of second charge mortgages into the mortgage regime means that the vast majority of secured lending will not be subject to CONC, but there are some agreements secured on land which may still be within CONC and this is reflected at CONC 1.2.7G.

The regulatory treatment of second charge mortgages was set out in CP 14/20, and we addressed the concerns on the loss of CCA protections in our response to consultation feedback in PS15/9. The Government decided to remove CCA protections going forward as it was content that consumers would be adequately protected under MCOB, which has a number of provisions that will mitigate the loss of the CCA. We also believe that MCOB provides the most appropriate form of protection for secured lending. We clarified in PS15/9 that Time Orders continue to be available to consumers, although we think their use will diminish in the second charge market with the application of MCOB 13 to these loans.

In addition, the MCD Order makes express provision at Article 29 to preserve key CCA protections for second charge mortgages entered into before 21 March 2016.

We are unable to provide an exemption for second and subsequent charge loans taken out in addition to CCA-exempt pre-2004 first charge mortgages. This is a decision solely for Government.

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**Q20: Do you agree with our approach to implementing the MCD for lending not secured on the home?**

- 2.9** The majority of respondents welcomed our proposals for implementing the MCD for lending not secured on the home.

- 2.10** Two respondents questioned the appropriateness of applying the MCD rules to lending secured on asset portfolios to raise capital sometimes used for the acquisition or retention of rights in land. Both respondents indicated that this lending is usually subject to an exemption under the CCA/CONC for high net worth (“HNW”) individuals at present, and their view is that such individuals do not need protections offered under MCD rules. The proposed rules will mean new systems, processes, and staff training costs for affected firms, which were not identified in the cost benefit analysis (“CBA”) included in CP 15/6. One respondent speculated that the imposition of the proposed rules may lead to some firms exiting the market.
- 2.11** There was generally positive feedback on our proposal to give firms the option to elect to comply with MCOB or CONC in some areas. Some firms welcomed being able to elect to comply with one set of rules where CONC and MCOB overlap, whilst others were pleased that the discretionary element has been limited to financial promotions rules. Respondents generally welcomed our proposals to apply additional MCOB protections beyond those implementing the MCD. One trade association noted that firms will be likely to comply with the record keeping requirements at MCOB 13.3.9R despite the rule not applying to this lending.
- 2.12** Although respondents agreed that MCOB 14 should only apply to loans where firms know or have reasonable cause to suspect the purpose of the credit agreement is to acquire or retain property rights in land or in an existing or projected building, some sought further clarity on this point. One large bank asked whether they need to monitor the ongoing use of the credit, and what the impact on open ended credit agreements such as overdrafts or credit cards might be. One trade association asked if the proposed rule at MCOB 14.1.2R applies at the point the contract is entered into, and not where the lender later discovers a loan has been used for these purposes.
- 2.13** Some respondents expressed disappointment that a new activity is being introduced for advising on MCD loans not secured on the home. There was a concern that this had not been clearly communicated by the FCA.
- 2.14** Three respondents commented on the drafting of MCOB 14, suggesting that it was difficult to follow. One trade association suggested minor drafting amendments to make it clearer. Another trade association requested that we provide a model ESIS document for this form of lending.
- 2.15** One bank requested that we consider implementing transitional provisions to allow firms until March 2017 to deliver the changes, or revert to the proposed MCOB 14 set out in CP14/20, which they felt provided more flexibility for firms.
- 2.16** One bank asked for confirmation that MCD lending not secured on the home agreements can be provided on a non-advised or execution only basis.
- 2.17** One bank asked whether the cancellation rights set out in CONC 11 could be disclosed via the ESIS document, and one trade body questioned whether the cancellation rights conferred by CONC 11 should be applied to this lending at all in addition to the seven day right of reflection required by the MCD and conferred by MCOB 6A.3.4R(1) (which is applied by MCOB 14.1.3R(1) (i) in the attached instrument).

## Our response

We welcome the views of respondents on the impact of our proposed approach to implementing the MCD for lending not secured on the home. It was particularly useful to hear about forms of lending, such as portfolio lending, which may be affected by the new MCOB 14. We accept that some forms of MCD protection are disproportionate for transactions involving HNW borrowers; however, the MCD does not include an exemption for HNW borrowers. MCOB 14.1.7R and CONC 1.2.12R do however set out a HNW exemption for all MCOB and CONC rules except those that implement the MCD. Similarly we are unable to provide any flexibility on the date that firms must comply with rules stemming from the Directive. We are also unable to revert to the proposals set out in CP14/20, as this high level approach provided flexibility to firms that we are not able to provide due to the requirements of the MCD, i.e. we cannot offer a choice between “MCD MCOB” and comparable CONC requirements.

In the CBA for MCOB 14 in CP 15/6 we said the proposed rules would not increase costs for firms or that any increase in costs would be of minimal significance. This was because the rules are broadly aligned with the CONC/CCA requirements that currently apply to lending of this type.

However, we recognise that our rules implementing MCD are likely to impose additional costs for firms currently dealing with HNW customers. Nevertheless, as we stated in CP14/20 there is no exemption in the MCD for firms conducting transactions with HNW individuals. This means that the MCD applies in full, and that the exemption available under the consumer credit regime cannot be applied to our MCOB rules implementing MCD. We also note that we have limited discretion about how and when we implement the MCD. CP14/20 set out our general approach to implementation for transactions involving HNW individuals and that general approach was incorporated within the CBA to that CP. The HNW exemption is however still in place for the CONC and non-MCD MCOB requirements relating to MCD lending not secured on the home. Furthermore, this activity will no longer be subject to the CCA.

With this in mind we are of the view that the consultation would likely have resulted in the same outcome even if the all the costs to those firms had been fully identified. We also consider that further consultation would lead to uncertainty among firms as to our final approach in advance of the implementation deadline on 21 March 2016, which could lead to further costs.

Given the majority of respondents welcomed our proposed MCOB 14 rules we will proceed with the proposed approach, meaning that firms are free to meet the record keeping standards in MCOB 13.3.9R on a voluntary basis.

We have considered the feedback we received on the application of CONC 11 to this lending and we will consult further on this point in the forthcoming September QCP before deciding whether to make rules which apply CONC 11 cancellation rights to this type of lending. In the meantime, we have amended the draft CONC 1.2.8R to remove the reference to CONC 11.

MCOB 14.1.2R makes it clear that a firm is only required to treat a transaction as involving MCD lending not secured on the home where it knows or has reasonable cause to suspect that this is the case, and this was welcomed by

respondents. This rule is intended to apply at the point the contract is entered into. As with any contract firms should, prior to the agreement, satisfy themselves as to the nature of the proposed contract, and where there are reasonable grounds to suspect that it might be a 3(1)(b) agreement the firm should treat the agreement accordingly. However our rules do not impose an obligation on firms to monitor the ongoing purpose of the loan.

There is no requirement for advice to be given to borrowers on MCD lending not secured on the home. However, firms should note that they will need the new RAO Article 53DA permission if they wish to provide such advice. Though it was not mentioned in CP14/20 we consulted on the fees for the new 53DA activity of advising on a credit agreement for the purposes of land in the November Fees CP.<sup>4</sup> We have treated the new RAO Article 53DA activity as a “credit-related regulated activity” for the purposes of FEES but not, as yet, for other modules of our Handbook. We are considering whether it would be appropriate to extend that treatment to the rest of the Handbook; if so, we will consult on the necessary amendment to our Glossary and any associated amendments as soon as possible.

We are not considering providing firms with a template/example ESIS for MCD lending not secured on the home. We have provided a number of example documents in previous publications.

Following requests from respondents we have redrafted MCOB 14.1.3R and CONC 1.2.8R in order to make them easier to read.

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***Q21: Do you agree with the additional MCD changes proposed?***

- 2.18** The vast majority of firms agreed with the proposed PERG change.
- 2.19** One lender raised a question about the intent behind the amendment and whether it reflected a change in the underlying policy intent around which contingent liability facilities would fall within scope.

**Our response**

Given the widespread support for our rules, we will proceed with the proposed approach. The PERG guidance describes when a contingent liability is within the perimeter which in part hinges upon the provision of credit. This reflects our long-standing policy position.

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<sup>4</sup> CP14/26: Regulatory fees and levies: policy proposals for 2015/16 (<http://fca.org.uk/your-fca/documents/consultation-papers/cp14-26>)

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# Annex 1

## List of non-confidential respondents

Advice NI

Amigo Loans

Association of Mortgage Intermediaries

Citizens Advice

Council of Mortgage Lenders

Finance and Leasing Association

Financial Services Consumer Panel

Lloyds Banking Group

Money Advice Trust

National Association of Commercial Finance Brokers

National Consumer Federation

Nottinghamshire Building Society

Royal Bank of Scotland

# Appendix 1

## Made rules (legal instrument)

## CONSUMER CREDIT (MORTGAGE CREDIT DIRECTIVE) INSTRUMENT 2015

### Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ('the Act'):
- (1) section 137A (The FCA's general rules);
  - (2) section 137R (Financial promotion rules);
  - (3) section 137T (General supplementary powers); and
  - (4) section 139A (The FCA's power to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force as follows:
- (1) Part 1 of Annex A (MCOB) comes into force on 21 September 2015 immediately after Part 1 of Annex D to the Mortgage Credit Directive Instrument 2015 (FCA 2015/18) comes into force; and
  - (2) the remainder of this instrument comes into force on 21 March 2016.

### Amendments to the FCA Handbook

- D. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with Annex A to this instrument.
- E. The Consumer Credit sourcebook (CONC) is amended in accordance with Annex B to this instrument.

### Amendments to material outside the Handbook

- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex C to this instrument.

### Notes

- G. In Annexes A and B to this instrument, the "notes" (indicated by "*Editor's Note:*" or "**Note:**") are included for the convenience of readers but do not form part of the legislative text.

**Citation**

- H. This instrument may be cited as the Consumer Credit (Mortgage Credit Directive) Instrument 2015.

By order of the Board of the Financial Conduct Authority  
30 July 2015

## Annex A

### Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text unless otherwise stated.

#### Part 1: Comes into force on 21 September 2015

##### TP1.1 Transitional Provisions

[*Editor's Note:* Rows 45 to 52 of this table are to be added on 21 March 2016 by virtue of the Mortgage Credit Directive Instrument 2015 (FCA 2015/18).]

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
20	<i>MCOB</i> TPs 22, 24, 26, 28, 30, 32, 34, 36, 38, <del>and 40, 53 and 55</del>	G	The purpose of TPs 22, 24, 26, 28, 30, 32, 34, 36, 38, <del>and 40, 53 and 55</del> is to allow <i>firms</i> to apply certain sets of provisions that implement <i>MCD</i> requirements early. A <i>firm</i> may adopt any set of provisions, it need not adopt all of the sets at the same time.	21 September 2015 to 20 March 2016	21 March 2016
21	<i>MCOB</i> TPs 22, 24, 26, 28, 30, 32, 34, 36, 38, <del>and 40, 53 and 55</del>	R	An election to apply any of TP 22, 24, 26, 28, 30, 32, 34, 36, 38, <del>and 40, 53 and 55</del> does not imply an election to apply any other of TP 22, 24, 26, 28, 30, 32, 34, 36, 38, <del>and 40, 53 and 55</del> .	21 September 2015 to 20 March 2016	21 March 2016
...					
<u>53</u>	<u><i>MCOB</i> 14</u>	<u>R</u>	<u>A <i>firm</i> to which <i>MCOB</i> 14 will apply from 21 March 2016 may elect to comply with <i>MCOB</i> 14 from 21 September 2015. If so, from the date of that election:</u> <u>(i) the <i>rules</i> and other</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>

			<p><u>provisions in CONC will cease to apply to the firm with respect to the conduct governed by MCOB 14, except for CONC 1.2.8R, the rules applied by CONC 1.2.8R, and any related provisions (for example, CONC 1.2.10R); and</u></p> <p><u>(ii) the firm must comply with MCOB 14 with respect to its lending under MCD article 3(1)(b) credit agreements or, as the case may be, its MCD article (3)(1)(b) intermediation activity.</u></p>			
54	<u>MCOB TP 1.53</u>	<u>G</u>	(1)	<p><u>MCOB TP 1.53 allows a firm to apply the MCD requirements relating to lending under MCD article 3(1)(b) credit agreements and MCD article (3)(1)(b) intermediation activity early.</u></p>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>
			(2)	<p><u>A firm should generally make one election under MCOB TP 1.53 for all of its MCD article (3)(1)(b) credit intermediation activity, or all of its lending under MCD article 3(1)(b) credit agreements, at any given time.</u></p>		
			(3)	<p><u>Where a firm wishes to make different elections for different types of MCD article (3)(1)(b) credit intermediation activity or lending under MCD article 3(1)(b) credit agreements, it should maintain processes to ensure that the rules</u></p>		

			<p><u>applicable to each type of activity and each agreement or customer are clearly identifiable to its staff and, on request, to customers and the FCA. Its processes should also ensure that each agreement or customer is dealt with in compliance with the rules applicable to it or them.</u></p>		
55	<u>MCOB TP1.20 to TP 1.53</u>	R	<p><u>If a firm elects under MCOB TP 1.20 to TP 1.53 to comply with provisions of the FCA Handbook which, but for this section, would not be in force before 21 March 2016, those provisions, and any other provisions in the Handbook which they apply or on which they depend, are to apply in respect of the firm from the date of the election but in the form in which they will appear in the Handbook on 21 March 2016.</u></p>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>

**Part 2: Comes into force on 21 March 2016**

Insert the following new chapter after MCOB 13. The text is not underlined.

**14 MCD article 3(1)(b) credit agreements**

**14.1 Handbook provisions which apply in respect of MCD article 3(1)(b) credit agreements**

14.1.1 G The purpose of MCOB 14 is to apply *rules* and *guidance* in MCOB (including, but not restricted to, *rules* that implement the MCD) to:

- (1) *MCD article 3(1)(b) creditors*; and

(2) *MCD article 3(1)(b) credit intermediaries;*

and to identify *rules* and *guidance* in *CONC* that also apply, or may (subject to the election in *MCOB* 14.1.5R) apply, to them.

- 14.1.2 R A *firm* must treat a proposed *credit agreement* as an *MCD article 3(1)(b) credit agreement* if the *firm* knows, or has reasonable cause to suspect, that the purpose of the *credit agreement* is to acquire or retain property rights in land or in an existing or projected building.
- 14.1.3 R Subject to *MCOB* 14.1.5R and *MCOB* 14.1.7R:
- (1) *MCD article 3(1)(b) creditors* and *MCD article 3(1)(b) credit intermediaries* must comply with the following provisions in *MCOB*. These provisions apply with such changes as are necessary to apply them to *MCD article 3(1)(b) credit agreements* and activity undertaken in relation to those agreements (see *MCOB* 14.1.4G):
- (a) *MCOB* 1.2.19G (identifying MCD credit agreements);
  - (b) *MCOB* 2.3 (inducements);
  - (c) *MCOB* 2.5A (the customer's best interests);
  - (d) *MCOB* 2A (Mortgage Credit Directive) except for *MCOB* 2A.1.4R;
  - (e) *MCOB* 3A.1 to *MCOB* 3A.5 (financial promotions and communications with customers);
  - (f) *MCOB* 3B (MCD general information);
  - (g) *MCOB* 4A.2 (adequate explanations);
  - (h) *MCOB* 5A (MCD pre-application disclosure);
  - (i) *MCOB* 6A (MCD disclosure at the offer stage);
  - (j) *MCOB* 7.5 (mortgages: statements);
  - (k) *MCOB* 7A (additional MCD disclosure: start of contract and after sale);
  - (l) *MCOB* 7B (MCD: further advances);
  - (m) *MCOB* 10A (MCD Annual Percentage Rate of Charge);
  - (n) *MCOB* 11.6 (responsible lending and financing);
  - (o) *MCOB* 11A (additional MCD responsible lending requirements);

- (p) *MCOB* 12.3 (early repayment charges);
  - (q) *MCOB* 12.5 (excessive charges); and
  - (r) *MCOB* 13 (arrears, payment shortfalls and repossessions) except for *MCOB* 13.3.9R;
- (2) *MCD article 3(1)(b) credit intermediaries* must additionally comply with the following provisions in *MCOB*. These provisions apply with such changes as are necessary to apply them to *MCD article 3(1)(b) credit agreements* and activity undertaken in relation to those agreements:
- (a) *MCOB* 4.4A.1R(1) and (2) (initial disclosure requirements);
  - (b) *MCOB* 4.4A.4R(1)(a) and (3) (initial disclosure requirements);
  - (c) *MCOB* 4.4A.8R(1)(a), (c), (d) and (2)(e) (initial disclosure requirements); and
  - (d) *MCOB* 4A.1 (additional disclosure by MCD mortgage credit intermediaries); and
- (3) *MCD article 3(1)(b) credit advisers* must additionally comply with the following provisions in *MCOB*. These provisions apply with such changes as are necessary to apply them to *MCD article 3(1)(b) credit agreements* and activity undertaken in relation to those agreements:
- (a) *MCOB* 2A.1.4R (Mortgage Credit Directive);
  - (b) *MCOB* 4.7A (advised sales) except for:
    - (i) *MCOB* 4.7A.1G(2) to (4);
    - (ii) *MCOB* 4.7A.11R to *MCOB* 4.7A.14E; and
    - (iii) *MCOB* 4.7A.24R to *MCOB* 4.7A.25R; and
  - (c) *MCOB* 4A.3 (adequate explanations).
- 14.1.4 G The changes that *MCOB* 14.1.3R requires to be made to *rules* applied by that *rule* include the following:
- (1) any reference to ‘land’ includes a reference to property rights in an existing or projected building;
  - (2) any reference to *regulated mortgage contract* or *MCD regulated mortgage contract* includes a reference to an *MCD article 3(1)(b) credit agreement*; and

- (3) any reference to *qualifying credit* includes a reference to an *MCD article 3(1)(b) credit agreement*.
- 14.1.5 R An *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* must elect to comply with either:
- (1) *MCOB 3A.1* to *MCOB 3A.5* (financial promotions and communications with customers); or
  - (2) *MCOB 3A.2*, *MCOB 3A.5* and *CONC 3* (financial promotions and communications with customers) (except for *CONC 3.4*, *CONC 3.5.3R* to *CONC 3.5.10R*, *CONC 3.6.6R*, and *CONC 3.9*);
- and having made an election, the *firm* must comply with the provisions with which it has elected to comply.
- 14.1.6 G (1) A *firm* should generally make one election under *MCOB 14.1.5R* for all of its *MCD article 3(1)(b) credit intermediation activity* or all of its lending under *MCD article 3(1)(b) credit agreements*, at any given time.
- (2) Where a *firm* wishes to make different elections for different types of *MCD article 3(1)(b) credit intermediation activity* or lending under *MCD article 3(1)(b) credit agreements*, it should maintain processes to ensure that the *rules* applicable to each type of activity and each agreement or *customer* are clearly identifiable to its staff and, on request, to *customers* and the *FCA*. Its processes should also ensure that each agreement or *customer* is dealt with in compliance with those *rules*.
- 14.1.7 R The following provisions do not apply to an *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* where the conditions in *CONC 1.2.10R(1)* and (2) are fulfilled: *MCOB 7.5* (mortgages: statements) and *MCOB 13* (arrears, payment shortfalls and repossessions) (except for *MCOB 13.3.1AR* to *MCOB 13.3.1BG*, *MCOB 13.3.2AR* to *MCOB 13.3.8G*, and *MCOB 13.6.1R* to *MCOB 13.6.2G*, which apply even where those conditions are fulfilled).
- [**Note:** article 60H(2) of the *Regulated Activities Order*]
- 14.1.8 G *CONC 1.2.10R(1)(a)* relates to high net worth borrowers; the purpose of *MCOB 14.1.7R* is to enable a high net worth borrower under an *MCD article 3(1)(b) credit agreement* to waive the protections and remedies applicable to *regulated credit agreements*, except for those that implement the *MCD*.
- 14.1.9 G *MCD article 3(1)(b) creditors* and *MCD article 3(1)(b) credit intermediaries* are also subject to certain provisions in *CONC*: see *CONC 1.2.8R*.

## Annex B

### Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 1.2.1 R Subject to CONC 1.2.8R and MCOB 14.1.5R, CONC applies to a firm with respect to carrying on credit-related regulated activities and connected activities, unless otherwise stated in, or in relation to, a rule.

...

#### Agreements secured on land

- 1.2.7 G (1) CONC does not apply to credit agreements secured on land, with some limited exceptions as set out in (3) and (4), below.
- (2) Agreements secured by a second or subsequent charge on the customer's home are, where regulated, governed by MCOB from 21 March 2016 (subject to transitional provisions allowing for the earlier adoption of MCOB). For detailed guidance on the regulation of secured lending, see PERG 4.
- (3) The agreements secured on land to which CONC may apply include the following agreements (unless the agreement in question, or activity in relation to it, is otherwise exempt or excluded):
- (a) an agreement under which the borrower is a relevant recipient of credit (within the meaning of article 60L of the Regulated Activities Order) but is not one or more individuals or trustees; for example, a partnership comprising two or three partners, one but not all of the partners in which is a body corporate; and
- (b) an MCD article 3(1)(b) credit agreement secured on land, less than 40% of which is used as or in connection with a dwelling (whether by the borrower or anyone else) to the extent specified in CONC 1.2.8R.
- (4) Broking in relation to the above agreements may be credit broking under article 36A of the Regulated Activities Order, whether the agreement is regulated or an exempt agreement. There are also some other secured credit agreements which are exempt agreements, but the broking of which may still constitute credit broking, because some exemptions are disregarded by article 36A of the Regulated Activities Order. One example is a loan of more than £25,000 entered into wholly or predominantly for the purposes of a borrower's business and secured by a second or subsequent charge on the borrower's home: such a loan is not a regulated mortgage contract because it is a second charge business loan (as defined by

article 61A of the *Regulated Activities Order*), and is an exempt agreement by virtue of article 60C(3) of the *Regulated Activities Order*; article 36A(4)(a) of the *Regulated Activities Order* disregards that exemption.

Application to MCD article 3(1)(b) creditors and MCD article 3(1)(b) credit intermediaries

1.2.8

R Subject to *CONC 1.2.10R*:

- (1) the following provisions of *CONC* apply to an *MCD article 3(1)(b)* creditor and to an *MCD article 3(1)(b)* credit intermediary:
  - (a) *CONC 1.2* and *CONC 1.3* (application and purpose and guidance on financial difficulties);
  - (b) *CONC 2.2* (general principles for credit-related regulated activities);
  - (c) *CONC 2.7* (distance marketing);
  - (d) *CONC 2.8* (e-commerce); and
  - (e) *CONC 2.9* (prohibition of unsolicited credit tokens);
- (2) the following provisions of *CONC* additionally apply to an *MCD article 3(1)(b)* creditor:
  - (a) *CONC 2.4* (credit references: conduct of business: lenders and owners);
  - (b) *CONC 2.10* (mental capacity guidance);
  - (c) *CONC 4.6* (pre-contract disclosure: continuous payment authorities);
  - (d) *CONC 6.4* (appropriation of payments);
  - (e) *CONC 6.5* (assignment of rights); and
  - (f) *CONC 6.7* (post contract: business practices); and
- (3) the following provisions of *CONC* additionally apply to an *MCD article 3(1)(b)* credit intermediary:
  - (a) *CONC 2.5* (conduct of business: credit broking);
  - (b) *CONC 4.4.2R(4)* (pre-contractual requirements: credit brokers);
  - (c) *CONC 5.4* (conduct of business: credit brokers), and the reference in that rule to *credit broking* includes a reference to *advising on regulated credit agreements for the acquisition*

of land; and

(d) CONC 6.8 (post contract business practices: credit brokers).

1.2.9     G     MCD article 3(1)(b) creditors and MCD article 3(1)(b) credit intermediaries are also subject to rules in MCOB, in accordance with MCOB 14.1.3R to MCOB 14.1.5R.

1.2.10    R     (1)    CONC 1.2.8R and the rules applied by CONC 1.2.8R do not apply to an MCD article 3(1)(b) creditor or MCD article 3(1)(b) credit intermediary where the MCD article 3(1)(b) credit agreement would be an exempt agreement pursuant to article 60H(1) of the Regulated Activities Order but for:

(a)       paragraph (1)(b)(ii)(bb) of article 60H of the Regulated Activities Order (which relates to high net worth borrowers); or

(b)       article 60HA of the Regulated Activities Order (exemptions not permitted under the MCD).

(2)       Agreements of the kind referred to in paragraph (1)(a) are excluded from CONC 1.2.8R and the rules applied by CONC 1.2.8R only if the rules in CONC App 1.4.1R to CONC App 1.4.4R, and the rules to which those rules refer, are complied with.

[Note: article 60H(2) of the Regulated Activities Order]

1.2.11    G     The purpose of CONC 1.2.10R(1)(a) is to enable a high net worth borrower under an MCD article 3(1)(b) credit agreement to waive the protections and remedies applicable to regulated credit agreements, except for those that transpose or implement the MCD. The MCD does not contain an exemption or derogation in respect borrowing above a certain amount, unlike the Consumer Credit Directive: the EUR75,000 threshold in that Directive has been implemented in the form of the exemption for high net worth borrowers in article 60H of the Regulated Activities Order.

...

2.2.2     G     ...

[Note paragraph 7.14 of ILG and 6.3 of SCLG] ...

...

4.2.2     G     ...

[Note: section 55A(6) of CCA and paragraphs 3.1(box) of ILG and 3.5 of

~~SCLG]~~

...

7.3.17 R ...  
 [~~Note: paragraphs 7.14 of ILG; and 3.7t of DCG and 6.3 of SCLG]~~

...

7.3.19 G *Firms seeking to recover debts under regulated credit agreements secured by second or subsequent charges on land* in England and Wales should have regard to the requirements of the relevant pre-action protocol (PAP) issued by the Civil Justice Council. ...

...

## 15 ~~Second charge lending~~ Agreements secured on land

...

15.1.2 G *Firms which carry on consumer credit lending or credit broking should comply with all rules which apply to that regulated activity in CONC and other parts of the Handbooks Handbook. For example, CONC 7 applies to matters concerning arrears, default and recovery (including repossession) and applies generally, including to agreements to which this chapter applies. This chapter sets out specific additional requirements and guidance that apply in relation to agreements credit agreements secured on land (see CONC 1.2.7G). Regulated mortgage contracts and home purchase plans are not regulated credit agreements and are excluded, to the extent specified in article 36E of the Regulated Activities Order, from credit broking.*

### Conduct

15.1.3 G ...  
 [~~Note: paragraph 3.2 of SCLG]~~

15.1.4 G ...  
 [~~Note: paragraph 3.8 of SCLG]~~

15.1.5 R (1) ...  
 [~~Note: paragraph 2.1 of SCLG]~~

(2) ...  
 [~~Note: paragraph 3.4 of SCLG]~~

(3) ...

- ~~[Note: paragraph 3.4 of SCLG]~~
- (4) ...  
~~[Note: paragraphs 3.6 and 4.4 of SCLG]~~
- (5) ...  
~~[Note: paragraph 3.6 of SCLG]~~
- 15.1.6 G ...  
~~[Note: paragraph 3.4 of SCLG]~~
- 15.1.7 R ...  
~~[Note: paragraph 3.5 of SCLG]~~
- 15.1.8 R (1) ...  
~~[Note: paragraph 4.2 of SCLG]~~
- (2) ...  
~~[Note: paragraph 3.5 of SCLG]~~
- (3) ...  
~~[Note: paragraphs 2.1 and 4.2 of SCLG]~~
- (4) ...  
~~[Note: paragraph 2.1 of SCLG]~~
- ...
- 15.1.10 G ...  
~~[Note: paragraph 3.14 of SCLG]~~
- 15.1.11 R ...  
~~[Note: paragraph 4.3 of SCLG]~~
- 15.1.12 R ...  
~~[Note: paragraph 4.4 of SCLG]~~
- 15.1.13 R ...  
~~[Note: paragraph 4.5 of SCLG]~~
- 15.1.14 G ~~Where a *firm* considers taking action to repossess a *customer's* home, it should, where permitted, establish contact with the holder of any charges in priority to the *firm's* charge to minimise adverse impacts on the *customer*.~~  
~~[Note: paragraph 6.2 of SCLG]~~  
[deleted]

15.1.15 R ...  
 [~~Note: paragraph 6.5 of SCLG~~]

...

## Appendix 1 Total charge for credit rules

App 1.3.1 R (1) ...  
 (1A) Paragraphs (2) to (5) do not apply where the applicable agreement is an MCD article 3(1)(b) credit agreement.

...

...

App 1.4.1 R (1) For the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order* and of CONC 1.2.10R(2), a declaration made by the *borrower* or *hirer* which provides that the *borrower* or *hirer* agrees to forgo the protection and remedies that would be available to the *borrower* or *hirer* if the agreement were a *regulated credit agreement* or a *regulated consumer hire agreement* must comply with CONC App 1.4.2R and either CONC App 1.4.6R or, in the case of an MCD article 3(1)(b) credit agreement, CONC App 1.4.6AR.

(2) For the purposes of articles 60H(1)(d) and 60Q(c) of the *Regulated Activities Order* and of CONC 1.2.10R(2), ...

(3) For the purposes of articles 60H(1)(e) and 60Q(d) of the *Regulated Activities Order* and of CONC 1.2.10R(2), ...

App 1.4.2 R A declaration for the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order* and of CONC 1.2.10R(2) shall ...

...

App 1.4.6 R **Declaration by high net worth borrower or hirer**  
 The declaration for the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order* must have the following form and content-  
**“Declaration by high net worth borrower or hirer**  
**(articles 60H(1) and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)**  
 I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of article 60H(1)(d) or article 60Q(c)

of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001. ...

App  
1.4.6A

**R Declaration by high net worth borrower under an MCD article 3(1)(b) credit agreement**

The declaration for the purposes of article 60H(1)(c) of the *Regulated Activities Order* and of *CONC 1.2.10R(2)* must have the following form and content-

**“Declaration by high net worth borrower under an MCD article 3(1)(b) credit agreement**

**(article 60H(1)(c) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)**

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of article 60H(1)(d) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

I understand that by making this declaration I will not have the benefit of the protection and remedies that would be available to me under

- (a) the Financial Services and Markets Act 2000, except for those that transpose or implement the Mortgage Credit Directive, Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property, or
- (b) the Consumer Credit Act 1974,

if this were a regulated agreement under those Acts.

I understand that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a credit agreement where it determines that the relationship between the lender and the borrower is unfair to the lender.

I am aware that if I am in any doubt as to the consequences of making this declaration then I should seek independent legal advice.”

App  
1.4.7

**R Statement of high net worth**

A statement of high net worth for the purposes of articles 60H(1)(d) and 60Q(c) of the *Regulated Activities Order* must have the following form and content:

**“Statement of High Net Worth**

**(articles 60H(1) and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001) ...**

## Annex C

### Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 4.4.1A G (1) Article 61(3)(c) of the *Regulated Activities Order* states that credit includes a cash loan and any other form of financial accommodation. Although 'financial accommodation' has a potentially wide meaning, its scope is limited by the terms used in the definition of a *regulated mortgage contract* set out in *PERG* 4.4.1G. Whatever form the financial accommodation may take, article 61(3)(a) envisages that it must ~~involve~~ include an obligation to repay on the part of the individual who receives it.
- (2) In the *FCA's* view, an obligation to repay implies the existence, or the potential for the existence, of a debt owed by the individual to whom the financial accommodation is provided (the 'borrower') to the *person* who provides it (the 'lender'). ~~Consequently, for any facility under which any form of financial accommodation is being provided, the test is whether it allows for the possibility that the person providing the financial accommodation may be placed in a position where he becomes a creditor of the individual to whom he is providing it.~~
- (3) For example, a bank would be providing 'credit' which, subject to the other requirements being met, could amount to a *regulated mortgage contract* if it gives a guarantee that:
- (a) creates a debt or a potential debt; and
- (b) allows for deferred payment.

**Financial Conduct Authority**



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