FINANCIAL CONDUCT AUTHORITY

Handbook Notice No 104

November 2022

Contents

1	Overview	2
2	Summary of changes	4
3	Consultation feedback	6
4	Additional information	13

1 Overview

Legislative changes

1.1 On 28 October 2022, the Board of the Financial Conduct Authority (FCA) made the relevant changes to the Handbook as set out in the instrument listed below.

CP	Title of instrument	Instrument No	Changes effective
CP22/3	Pension Schemes (Information to Dashboards) Instrument 2022	FCA 2022/38	30/03/2023

1.2 On 24 November 2022, the Board of the Financial Conduct Authority (FCA) made the relevant changes to the Handbook as set out in the instruments listed below.

CP	Title of instrument	Instrument No	Changes effective
CP22/10	Prudential Standards for Investment Management Firms (Amendment) Instrument 2022	FCA 2022/39	25/11/2022
CP22/10	Conduct of Business Sourcebook (Annuitant Mortality Amendment) Instrument 2022	FCA 2022/40	01/10/2023
CP22/17	Consumer Credit and Mortgages (High Net Worth) Instrument 2022	FCA 2022/41	25/11/2022

Summary of changes

1.3 The legislative changes referred to above are listed and briefly described in Chapter 2 of this Notice.

Feedback on responses to consultations

1.4 Consultation feedback is published in Chapter 3 of this Notice or in separate Policy Statements.

FCA Board dates for 2022

1.5 The table below lists forthcoming FCA board meetings. These dates are subject to change without prior notice.

FCA board meetings		
December	15	2022

FCA Board dates for 2023

1.6 The table below lists forthcoming FCA board meetings. These dates are subject to change without prior notice.

FCA board meetings		
January	26	2023
February	23	2023
March	30	2023
April	27	2023
May	25	2023
June	29	2023
July	27	2023
September	28	2023
October	26	2023
November	23	2023
December	14	2023

2 Summary of changes

2.1 This Handbook Notice describes the changes to the FCA Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 28 October 2022 and 24 November 2022. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the Prudential Regulation Authority (PRA) please see https://www.bankofengland.co.uk/news/publications.

Pension Schemes (Information to Dashboards) Instrument 2022

2.2 Following consultation in CP22/3, the FCA Board has made changes to the Handbook sections listed below:

Glossary
COBS 19.11, 19 Annex 6, TP 2

2.3 In summary, this instrument amends the Handbook in order to make pensions dashboards a reality for consumers.

2.4 This will support consumer decision-making by providing them with information to make them better placed to engage in retirement planning, get advice or guidance and ultimately make informed decisions.

2.5 This instrument comes into force on 30 March 2023. Feedback is published in a separate Policy Statement.

Prudential Standards for Investment Management Firms (Amendment) Instrument 2022

2.6 Following consultation in CP22/10, the FCA Board has made changes to the Handbook sections listed below:

IPRU-INV 5.8

2.7 In summary, this instrument provides clarity for firms calculating their liquid capital under IPRU-INV 5.8.

2.8 This instrument comes into force on 25 November 2022. Feedback is published in Chapter 3 of this Notice.

Conduct of Business Sourcebook (Annuitant Mortality Amendment) Instrument 2022

2.9 Following consultation in CP22/10, the FCA Board has made changes to the Handbook sections listed below:

COBS 13 Annex 2, 19 Annex 4C

2.10 In summary, this instrument updates the annuitant mortality tables in COBS to provide better annuity income information to consumers.

2.11 This instrument comes into force on 1 October 2023. Feedback is published in Chapter 3 of this Notice.

Consumer Credit and Mortgages (High Net Worth) Instrument 2022

2.12 Following consultation in CP22/17, the FCA Board has made changes to the Handbook sections listed below:

CONC 1.2, App 1.4
MCOB 14

2.13 This instrument also makes changes to the following sections outside of the Handbook:

PERG 2.7, 4.10A

2.14 In summary, this instrument makes clear that 'article 3(1)(b) credit agreements' can now be treated as exempt agreements for the purposes of consumer credit lending activity, provided that certain conditions are met.

2.15 The changes are required to reflect a statutory instrument laid by HM Treasury to clarify the treatment of lending to high-net-worth individuals under Article 60H of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

2.16 This instrument comes into force on 25 November 2023. Feedback is published in Chapter 3 of this Notice.

3 Consultation feedback

3.1 This chapter provides feedback on consultations that will not have a separate policy statement published by the FCA.

Prudential Standards for Investment Management Firms (Amendment) Instrument 2022

Background

3.2 Chapter 5 of the Interim Prudential sourcebook for Investment Businesses (IPRU-INV) sets out our rules on the financial resources requirements for firms subject to IPRU-INV 5. For these firms, IPRU-INV 5.8 specifically sets out how they are to calculate their own funds and liquid capital. As part of their liquid capital calculation, firms are required to deduct illiquid assets from their Tier 3 capital amount in accordance with row 10 of the table in IPRU-INV 5.8.2R.

3.3 Row 10(f) of the table in IPRU-INV 5.8.2R states that loans, other debtors and accruals not falling due to be repaid within 90 days, or which are more than one month overdue by reference to their reference date, are illiquid assets.

3.4 'Other debtors' in this context means all debtors that are not loans or accruals. However, we note that the UK Generally Accepted Accounting Practice (UK GAAP) differentiates between trade debtors and other debtors.

3.5 In Consultation Paper (CP) 22/10, we proposed to clarify that trade debtors that are not due to be repaid within 90 days, or that are more than 1 month overdue by reference to the contractual payment date, are also illiquid assets.

Summary of proposals

3.6 In our CP, we proposed to amend the Handbook text in row 10(f) of the table in IPRU-INV 5.8.2R to expressly refer to trade debtors in this part of the definition of illiquid assets.

3.7 This means that firms calculating their liquid capital amount under IPRU-INV 5.8 must ensure that trade debtors that are not due to be repaid within 90 days, or that are more than 1 month overdue by reference to the contractual payment, are also included as an illiquid asset, and thus deducted when they calculate their liquid capital amount.

Feedback

3.8 One respondent provided feedback on our proposal in CP22/10.

3.9 Overall, the respondent welcomed the change and suggested the introduction of a Glossary definition for trade debtors.

3.10 The respondent also asked the following questions:

- whether corporation tax and VAT receivables would qualify for IPRU(INV)
- what loans would qualify for IPRU(INV)

3.11 With regard to the second question, the respondent further suggested that some guidance would helpful regarding the treatment of loans where the repayment date is either not specified or on demand.

Our response

3.12 The respondent's request for a separate Glossary term has been considered. We have not introduced a Glossary term for trade debtors. The meaning of trade debtors will continue to follow that of the UK GAAP.

3.13 With regard to the other 2 points raised, the treatment of corporation tax, VAT receivables and all loans should follow the accounting practices used by the firm and be reported to us as such.

Cost benefit analysis

3.14 CP22/10 included a cost benefit analysis for the amendment we consulted on. We remain satisfied that there will be minimal impact on firms' compliance costs, as the amendment has been made to clarify a deduction that firms should already be making.

Equality and diversity statement

3.15 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

Conduct of Business Sourcebook (Annuitant Mortality Amendment) Instrument 2022

Background

3.16 In our Conduct of Business sourcebook (COBS), we have rules which require firms to use specific mortality assumptions when they provide consumers with information about the income that could be provided by an annuity. The mortality assumptions in the Handbook are intended to be broadly representative of the mortality assumptions that firms that sell annuities use in annuity pricing.

3.17 In general, we expect firms that sell annuities will use recent annuitant mortality experience together with expected mortality improvements for pricing annuities.

3.18 New annuitant mortality tables have been published by the Continuous Mortality Investigation (CMI), a subsidiary of the Institute and Faculty of Actuaries. The tables reflect more recent experience, so we consider that it is appropriate to update the Handbook rules to require firms to use the most up-to-date tables available when providing consumers with information about annuity income.

Summary of proposals

3.19 When firms prepare a projection for a pension to show the amount that might be available in retirement, we require them to illustrate the annuity income that could be generated by the projected pot. Pension providers must include projections when preparing key features illustrations at point of sale and may provide projections at other times. We want consumers to receive estimates of annuity income that reflect the mortality assumptions used by annuity providers. As such, we proposed that firms should update the mortality tables used in projections to the most recent annuitant mortality tables (the ‘16’ series tables) published by the CMI.

3.20 We proposed the same update to the mortality tables used when preparing a transfer value comparator (TVC). Firms must give consumers a TVC when they give defined benefit (DB) transfer advice. The TVC estimates the amount consumers would need in their pot to replicate the benefits of their DB scheme, using an annuity.

3.21 The mortality assumptions are a combination of the relevant mortality tables and future improvement factors. The existing rules require firms to update the improvement factors annually each 6 April, even when the mortality table remains unchanged. We proposed that firms must use the new mortality tables in projections prepared from 6 April 2023. This means that firms would need to replace the mortality tables they use in their systems at the same time as they update the improvement factors.

Feedback

3.22 We received 3 responses, 2 of which were from trade bodies and 1 from a firm. All the respondents agreed with updating the mortality tables.

3.23 Two of the respondents proposed that the implementation of the new tables should be delayed until October 2023. They said this would enable firms to adopt the new mortality table in their projection software at the same time as it was introduced for annual benefit statements which would make the update simpler. The assumptions for annual benefit statements are owned by the Financial Reporting Council (FRC). The FRC consulted this year on changes to the assumptions, including the mortality tables, with effect from October 2023.

Our response

3.24 Given the support for the mortality table update, we have proceeded with our proposals. We note the comments on the changes to annual benefit statements which have now been confirmed by the FRC.

3.25 We considered the feedback we received and recognise that maintaining 2 sets of mortality assumptions within projection software could complicate calculation routines. We have therefore delayed implementation until 1 October 2023.

Cost benefit analysis

3.26 Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when making rules unless, in accordance with section 138L(3) of FSMA, we believe that there will be no increase in costs or that the increase will be of minimal significance. Further, under section 138I(8) of FSMA, we are not required to publish an estimate of costs and benefits if these cannot be reasonably estimated or it is not reasonably practicable to estimate them.

3.27 In Quarterly Consultation No 36, we explained that we were satisfied that implementing our proposed changes in April 2023 would result in minimal costs for firms. We have reconsidered the CBA in light of the revised implementation date. We remain satisfied that the cost of implementing our proposals will not be significant.

3.28 We are also satisfied that this proposal advances the consumer protection objective, as it would enhance consumers ability to make better informed decisions about their pensions.

Equality and diversity statement

3.29 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

Consumer Credit and Mortgages (High Net Worth) Instrument 2022

Background

3.30 On 29 June 2022, His Majesty's Treasury (HMT) laid a statutory instrument (SI) to clarify the treatment of lending to high-net-worth individuals under Article 60H of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO).

3.31 Specifically, the amendments relate to credit agreements that are not residential mortgages (and so fall under the consumer credit perimeter rather than constituting regulated mortgage activity) but whose purpose is to acquire or retain property rights in land or in an existing or projected building. Such agreements are known as 'article 3(1)(b) credit agreements', after the article of the EU 2014 Mortgage Credit Directive (MCD) that ensured these loans were largely subject to the same regulatory requirements as residential mortgages.

3.32 The SI came into force on 21 July 2022 and amended the 'high-net-worth' exemption from the consumer credit regulatory perimeter. This exemption applies in respect of borrowers who meet certain conditions, chiefly related to their income and assets.

3.33 The MCD did not allow for exemptions based on the worth of the borrower; as such, article 3(1)(b) agreements were taken outside of its scope, though we provided for a lighter touch Handbook regime for these loans such that they were only subject to requirements that implemented MCD.

3.34 The recent legislative changes (building on earlier HMT changes that were not fully effective) enable the exemption to now apply to high-net-worth borrowers, provided that they meet an additional residency requirement (essentially, they must be in the UK for 183 days or more in the year before the agreement is entered into).

3.35 We consulted on some minor rule changes in our September QCP (CP22/17) to reflect these legislative changes in our rules.

Summary of proposals

3.36 We proposed amendments to the Perimeter Guidance manual (PERG) to ensure it reflects the changes to the perimeter made by the Treasury. We proposed including additional provisions in PERG 4 (which contains guidance on the mortgages perimeter) to supplement the existing explanation of the effect of the MCD on the regulatory perimeter.

3.37 We also proposed amending the Consumer Credit sourcebook (CONC) and the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) to reflect the changes made by the Treasury's amendments and to ensure continuity of treatment in respect of borrowers who do not meet the new UK residence requirements. In essence, this will mean that agreements that would fall under the high-net-worth exemption were it not for the UK residence requirement can continue to be subject to a lighter-touch regulatory regime in which only Handbook requirements that implemented the MCD would apply.

3.38 Finally, we proposed an amendment to the Glossary definition of 'exempt article 3(1)(b) credit agreement' to reflect these changes.

Feedback

3.39 We received one response regarding the proposed rule changes via a UK trade body, asking for clarity and confirmation on a small number of technical points. The first was whether a customer's declaration that they are UK resident (or treated as present in the UK) must be contained in the statement of income and assets required under article 60H(1)(d) of the RAO, as this is arguably suggested in HMT's De Minimis assessment accompanying the SI. The proposed amendments to our Handbook did not provide for this.

3.40 The second was whether the amendments we proposed to CONC 1.4.6AR ('Declaration by high-net-worth borrower under an MCD article 3(1)(b) credit agreement'), which refers to a borrower agreeing to waive certain rights and remedies except those that implemented the MCD, are consistent with HMT's intent to allow some high-net-worth agreements to be fully exempt under the RAO (and so outside the scope of MCOB).

3.41 Finally, we were asked if any statements of high net worth prepared before the proposed amendment to CONC App 1.4.7R took effect would remain valid for the year after they were made.

Our response

3.42 We can confirm that while it is possible for a high-net-worth customer's residence declaration to be contained in the same document as the statement of income and assets (provided the statement itself is still set out as required in CONC App 1.4), this is not required under the Handbook rules. The two are separate, and the RAO, as amended, does not prescribe a role for the FCA in specifying the necessary form and manner of the declaration.

3.43 In terms of the separate declaration required under CONC 1.4.6AR, this is only applicable to customers who do not meet the residence/present in the UK test that is required for an agreement with a high-net-worth borrower to be an exempt agreement under the RAO. A borrower who does meet this requirement would prepare a declaration under CONC 1.4.6R instead; this is made for the purposes of article 60H of the RAO, rather than CONC 1.2.10R, and would enable the agreement to be fully exempt if the other requirements of article 60H are met.

3.44 Regarding the continuing validity of statements of high net worth, CONC App 1.4.1R makes clear that this statement must be made within 'the period of one year ending with the day on which the agreement was made'. This requirement is not being amended. We have made a slight amendment to the prescribed heading of the statement to enable the person preparing it to make clear the purpose for which it has been prepared (ie, to enable the agreement to be an exempt agreement under the RAO or to engage the lighter-touch regime under CONC). Any statements previously prepared for RAO purposes will not need to be reissued to include the new heading reference to CONC 1.2.10R.

Cost benefit analysis

3.45 Section 138I(2)(a) of Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when making rules. Section 138L(3) of FSMA states that section 138I(2)(a) does not apply if we consider that there will be no increase in costs or the increase will be of minimal significance.

3.46 In our CP, we set out that we considered our proposed changes would not result in an increase in costs, or that where they did, this would be of minimal significance. As such, in our view, no cost benefit analysis was therefore required. No comments were received on this, and thus our CBA remains the same.

3.47 We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. The amendments advance our operational objective of securing an appropriate degree of consumer protection and promoting effective competition in the interests of consumers. We are satisfied that any burdens or restrictions are proportionate to the expected benefits, as these amendments are focused on reflecting and providing clarity on recent changes to the regulatory perimeter.

Equality and diversity statement

3.48 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

4 Additional information

Making corrections

4.1 The FCA reserves the right to make correctional or clarificatory amendments to the instruments made at the Board meeting without further consultation should this prove necessary or desirable.

Publication of Handbook material

4.2 This Notice is published on the FCA website and is available in hard copy.

4.3 The formal legal instruments (which contain details of the changes) can be found on the FCA's website listed by date, reference number or module at www.handbook.fca.org.uk/instrument. The definitive version of the Handbook at any time is the version contained in the legal instruments.

4.4 The changes to the Handbook are incorporated in the consolidated Handbook text on the website as soon as practicable after the legal instruments are published.

4.5 The consolidated text of the Handbook can be found on the FCA's website at www.handbook.fca.org.uk/. A print version of the Handbook is available from The Stationery Office's shop at www.tsoshop.co.uk/Financial-Conduct-Authority-FCA/.

4.6 Copies of the FCA's consultation papers referred to in this Notice are available on the FCA's website.

Obligation to publish feedback

4.7 This Notice, and the feedback to which paragraph 1.4 refers, fulfil for the relevant text made by the Board the obligations in sections 138I(4) and (5) and similar sections of the Financial Services and Markets Act 2000 ('the Act'). These obligations are: to publish an account of representations received in response to consultation and the FCA's response to them; and to publish (where applicable) details of any significant differences between the provisions consulted on and the provisions made by the Board, with a cost benefit analysis and a statement under section 138K(4) of the Act if a proposed altered rule applies to authorised persons which include mutual societies.

Comments

4.8 We always welcome feedback on the way we present information in the Handbook Notice. If you have any suggestions, they should be sent to handbookfeedback@fca.org.uk (or see contact details at the end of this Notice).

Handbook Notice 104

This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 28 October 2022 and 24 November 2022.

It also may contain information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

Contact names for the individual modules are listed in the relevant Consultation Papers and Policy Statements referred to in this Notice.

General comments and queries on the Handbook can be addressed to:

Meghan Beller

Tel: 020 7066 2111

Email: Meghan.Beller@fca.org.uk

However, queries on specific requirements in the Handbook should be addressed first to your normal supervisory contact in the FCA. For most firms this will be the FCA's Contact Centre:

Tel: 0300 500 0597

Fax: 0207 066 0991

Email: firm.queries@fca.org.uk

Post: Contact Centre
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 0790 or email publications_graphics@fca.org.uk or write to Editorial and Digital Department, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.