

## Regulator Assessment: Qualifying Regulatory Provisions

**Title of proposal:** Changes to the unfair terms legislation sections of the FCA Handbook

**Lead regulator:** FCA (in respect of the financial services sector)

**Date of assessment:** 29 September 2016

**Commencement date:** The [consultation](#) was published on 5 June 2015 and the [Handbook Notice](#) was published in September 2015 (CRA in force from 1 October 2015)

**Origin:** Domestic (however the domestic legislation implements the EU Directive on unfair terms in consumer contracts (93/13/EEC))

**Does this include implementation of a Cutting Red Tape review?** No

**Which areas of the UK will be affected?** All

### Brief outline of proposed new or amended regulatory activity

The Consumer Rights Act (CRA), which came into force on 1 October 2015, was a major reform of UK consumer law. The CRA revoked and replaced the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) which had implemented the unfair terms in consumer contracts directive (93/13/EEC). It also introduced some changes to unfair terms law.

The Department for Business, Energy and Industrial Strategy (BEIS) is responsible for implementing unfair terms legislation in the UK. The CMA plays a leadership role in relation to unfair terms legislation and the FCA is a “regulator” along with other organisations under the CRA (including OFCOM and OFGEM).

As a result of the CRA, the FCA made some changes to the Unfair Contract Terms Regulatory Guide (UNFCOG). UNFCOG is the part of the FCA Handbook which contains information/guidance on how the FCA exercises its powers under the CRA in relation to unfair terms and consumer notices. The FCA also made some changes to the Enforcement Guide and other conduct of business sourcebooks (these were generally limited to references to the new legislation and dates).

The changes FCA made to UNFCOG include the following:

- changing the title so that it became the Unfair Contract Terms and Consumer Notices

Regulatory Guide;

- replacing all references to the UTCCRs with references to the CRA, and all references to provisions under the UTCCRs to corresponding or new provisions under the CRA;
- explaining that the UTCCRs still apply to contracts entered into before 1 October 2015;
- explaining that we may review terms whether or not they have been individually negotiated; and
- clarifying that we can now assess consumer notices for fairness under the CRA.

**Which type of business will be affected? How many are estimated to be affected?**

All financial services firms which deal with retail consumers. The FCA regulates more than 56,000 firms, the majority of which have contractual relationships with retail consumers.

| Price base year | Implementation date | Duration of policy (years) | Business Net Present Value | Net cost to business (EANDCB) | BIT score |
|-----------------|---------------------|----------------------------|----------------------------|-------------------------------|-----------|
| 2016            | 1 October 2015      | 10                         | 0                          | 0                             | 0         |

**Please set out the impact to business clearly with a breakdown of costs and benefits**

In January 2014, BEIS (then BIS) published its final revised impact assessment on the Consumer Rights Bill titled [Consumer Rights Bill: Proposals on Unfair Terms](#). This assessment set out the likely costs and benefits of firms complying with the Bill across all firms selling either goods or services to consumers. The impact assessment estimated that businesses would incur one-off familiarisation costs of £1.32 million, one-off costs of updating terms and conditions of £11.25 million, and a one-off initial increase in legal advice costs of £3.46 million. The benefits to business were estimated as £0.32 million ongoing from cheaper complaint handling, ongoing savings from reduction in issues escalating to court proceedings of £1.07 million, and annual savings of £0.25 million from revising simpler terms and conditions. These estimates were included within the BEIS BIT assessment, considered by the RPC in [RPC13-BIS-1731](#).

Since the CRA represents a legal requirement for financial services firms, the changes to

FCA Handbook imposed no additional legal obligations on firms (i.e. firms would have had to comply with the CRA in the counterfactual scenario).

The FCA therefore considers, as stated in the cost-benefit analysis in Consultation Paper 15/9, that changes to the CRA sections of the FCA Handbook did not give rise to any costs additional to firms' costs of complying with the CRA or that any such additional costs would be of minimal significance. As such, the FCA does not consider there is an impact to business.

**Please provide any additional information (if required) that may assist the RPC to validate the BIT Score.**

N/A