

Factsheet

No.039

For first charge mortgage intermediaries

New regulation affecting firms arranging or advising on mortgages

The regulatory framework is changing as we implement the European Mortgage Credit Directive (MCD), which sees new rules apply from 21 March 2016 to firms that deal with mortgages. This factsheet highlights some of the points that first charge mortgage intermediaries should consider in getting ready for these changes. It will also be of interest to mortgage lenders that carry out mortgage intermediation.

What are the main changes?

There are some important changes to the Mortgage and Home Finance: Conduct of Business (MCOB) rules that firms need to be aware of. Firms will also need to factor in the amendments being made to other FCA sourcebooks, including Training and Competence (TC) and the prudential sourcebook for mortgages (MIPRU). To view the rules that will apply from 21 March 2016 you can use the 'time travel' function¹ on the [FCA handbook website](#).

Some of the changes for first charge mortgage firms are:

- the need to provide a binding offer and seven day reflection period
- an adequate explanation of a product's essential features
- new disclosure requirements.

The majority of the changes apply from 21 March 2016, although firms can choose to comply with the new rules (rather than some of the existing ones) from 21 September 2015.

Disclosure (MCOB 5A)

The new rules require firms to issue a European Standardised Information Sheet (ESIS), a mandatory product disclosure document that is replacing the Key Facts Illustration (KFI). Firms must comply with the requirement to issue an ESIS by 21 March 2019 at the latest, although they can choose to use the ESIS before then. Firms which issue a KFI rather than an ESIS must from 21 March 2016 provide the following additional information to the customer (MCOB TP 1.1.45 and 46):

- information on the new seven day right of reflection
- where the interest rate is variable, information on the the Annual Percentage Rate of Charge (APRC) and the borrowing rate (including warnings about the variability of these rates)

¹ To view a consolidated version of the FCA Handbook as it will be at a particular date in the future, use the 'Show timeline' calendar at the left side of the page and choose the relevant future date.

- where applicable, extra information for foreign currency loans, including an illustration of the impact of a 20% change in the exchange rate.

Adequate explanations (MCOB 4A.2)

Firms will have to provide an adequate explanation of the proposed mortgage contract and any ancillary services, and the explanation must include the pre-contract information, the essential features of the product, and the potential impact on the consumer (including the consequence of default). The manner and extent of the explanation can vary depending on the circumstances of the sale. Firms will need to consider what changes they need to make to their processes for both advised and execution-only sales.

Commission disclosure (MCOB 4.4A and 4A.1)

Requirements include that firms paid by commission must tell consumers that they have the right to ask for information on the commissions paid by different lenders, and ensure that they have access to relevant market data to allow them to respond to such a request.

Remuneration (MCOB 2A.1)

The MCD introduces some more extensive requirements, including that remuneration of advisers cannot be contingent on sales targets.

Second charge mortgage business

FCA rules do not require firms to broaden their scope of service to include second charge as well as first charge mortgages. But, where a firm does offer both, it will need to take all these products into account when giving advice. If an existing mortgage holder wishes to borrow more, the rules require firms to make the customer aware that other forms of borrowing are available that may also meet the need (e.g. a second charge mortgage if a customer is considering a further advance).² However, firms are not required to provide advice on the suitability of possible alternative options if these are outside the scope of service they have chosen to offer.

² See MCOB 4.4A.8AR.

What does this mean for me?

You should now be considering the extent to which your business is affected by the changes.

You will need to review your existing processes and make any necessary changes to ensure they are **compliant with the new rules and remain fit for purpose**, for example to ensure you are able to access and issue the alternative disclosure documents that lenders may use and consider how your existing sales process might need modifying to deliver the adequate explanation.

The new rules introduce changes for lenders as well as intermediaries.³ We encourage you to **understand lenders' approach to the changes** to see if they have plans that mean you need to make any changes to your systems, processes or anything else. For example, will you be able to meet the lender's chosen approach to product disclosure (KFI and 'top up' disclosure or the ESIS), and ensure you have the information you require to make an adequate explanation? This is particularly important to think about now as you or lenders may decide to comply with the new rules early.⁴

Your existing mortgage permissions will permit you to arrange or advise on **second charge mortgages**, and the FCA will contact you in the first quarter of 2016 to confirm whether you intend to do so. If you do intend to undertake second charge activity you will need to be aware of the new requirements involved as second charge mortgage regulation becomes subject to FCA mortgage rules. More details on the changes to second charge mortgage regulation are set out in a separate factsheet.⁵

³ Link to 1C lender factsheet in footnote.

⁴ Firms can decide to comply with the new rules up to six months early - any time from 21 September 2015.

⁵ <https://www.fca.org.uk/firms/firm-types/mortgage-brokers-and-home-finance-lenders/mcd/factsheet-no-041>

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How can I manage pipeline applications received before 21 March 2016, when the MCD regulations take effect, but where the agreement comes into existence after this date?

The MCD does not provide transitional arrangements for 'pipeline' applications. The rules implementing the MCD will apply to the granting of credit from 21 March 2016, unless the credit is granted under an agreement existing before that date. This will be the case even if the sales process started before 21 March 2016. You should plan for how you might deal with such cases to ensure that they progress smoothly and to minimise the need for duplicated disclosure. It is up to firms to decide how best to do this, whilst having regard to both the regulatory requirements and the customer experience.

To help firms manage their sales pipeline, those with mortgage permissions can choose to apply the new rules up to six months early, from 21 September 2015.⁶ The FCA encourages those planning to adopt early to maintain dialogue with their business partners (e.g. lenders) in the sales process.

What are the key milestones I need to consider ahead of these regulatory changes?

The following are some of the key dates for first charge mortgage intermediaries.

Milestone	Date
Voluntary early adoption of post-March 2016 rules	From 21 September 2015
Deadline for intermediaries who wish to offer mortgage intermediation in another EEA country through a branch to apply to the FCA in order to have a passport in place by 21 March 2016	23 December 2015
Deadline for intermediaries who wish to offer mortgage intermediation in another EEA country on a cross-border services basis to apply to the FCA in order to have a passport in place by 21 March 2016	23 January 2015
Authorised mortgage firms contacted to confirm whether they undertake second charge mortgage activities	1st Quarter 2016

⁶ See [MCOB TP 1.1](#).

Milestone	Date
MCD implementation - firms are required to meet the new rules for mortgages made from this date	21 March 2016
Disclosure document can be either European Standardised Information Sheet (ESIS) or Key Facts Illustration (KFI) with 'top up' disclosure	21 March 2016 until 20 March 2019
Transitional arrangements for MCD knowledge and competency requirements	Until 21 March 2017
Professional experience of staff can be relied upon to meet MCD knowledge and competency requirements	Until 21 March 2019
Disclosure document must be European Standardised Information Sheet (ESIS)	21 March 2019

Where can I find out more information?

The information provided in this factsheet is not exhaustive. Full details of the changes are set out in the FCA's Policy Statement [PS15/9](#) (and the accompanying Consultation Paper [CP14/20](#)) as well as in the FCA handbook – all of which are available on the FCA website. To view the rules that will apply from 21 March 2016 you can use the 'time travel' function⁷ on the [FCA handbook website](#). You will want to familiarise yourself with the detail of all the changes in order to understand the changes you will need to make.

If you cannot find the information you need on the FCA website and accompanying documents, you can contact us on 0300 500 0597 or mcdqueries@fca.org.uk

⁷ To view a consolidated version of the FCA Handbook as it will be at a particular date in the future, use the 'Show timeline' calendar at the left side of the page and choose the relevant future date.