

Chapter 1

Application and purpose and
guidance on financial difficulties

1.2 Who? What? Where?

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*.

1.2.2 **R** A *firm* must:

- (1) ensure that its employees and agents comply with *CONC*; and
- (2) take reasonable steps to ensure that other *persons* acting on its behalf comply with *CONC*.

Guidance on appointed representatives

1.2.3 **G**

- (1) Although *CONC* does not apply directly to a *firm's appointed representatives*, a *firm* will always be responsible for the acts and omissions of its *appointed representatives* in carrying on business for which the *firm* has accepted responsibility (section 39(3) of the *Act*). In determining whether a *firm* has complied with any provision of *CONC*, anything done or omitted by a *firm's appointed representative* (when acting as such) will be treated as having been done or omitted by the *firm* (section 39(4) of the *Act*).
- (2) *Firms* should refer to ■ SUP 12 (Appointed representatives), which sets out requirements which apply to *firms* using *appointed representatives*.

1.2.4 **G** The *credit-related regulated activities* comprise *consumer credit lending, credit broking, debt counselling, debt adjusting, debt administration, debt collecting, providing credit information services, providing credit references, operating an electronic system in relation to lending* (but, other than in *FEES* and *SUP*, only insofar as it relates to a borrower or prospective borrower under a *P2P agreement*) and *consumer hiring*.

Where?

1.2.5 **R** *CONC*, except in relation to ■ CONC 3, applies with respect to activities carried on by a *firm*:

- (1) with a *customer* whose habitual residence is in the *UK* from an *establishment* maintained by the *firm* (or its *appointed representative*) in the *UK*; or

- (2) with a *customer* whose habitual residence is in the *UK* from an *establishment* of the *firm* (or its *appointed representative*) outside the *UK*.

1.2.6 **R** [deleted]

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 exempt. There are also some other secured *credit agreements* which are exempt, 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* (unless it is also acting as an *MCD article 3(1)(b) creditor* and carrying out a direct sale of the proposed *article 3(1)(b) credit agreement*):
- (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).

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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

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- (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 conditions in paragraph (2) are met.
- (2) The conditions referred to in paragraph (1) are:
- (a) the agreement is either secured on land or for credit which exceeds £60,260;
 - (b) the agreement includes a declaration, made by the *borrower*, which provides that the *borrower* agrees to waive the protections and remedies applicable to *regulated credit agreements* except for those that transposed or implemented the *MCD* as it applied to the *United Kingdom* before *IP completion day*, and which complies with ■ *CONC App 1.4*;
 - (c) a statement has been made in relation to the income or assets of the *borrower* which complies with ■ *CONC App 1.4*; and

(d) a copy of the statement required by sub-paragraph (c) was provided to the *lender* before the agreement was entered into.

1.2.11

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The regulatory status of *article 3(1)(b) credit agreements* entered into with high net worth individuals is dependent on several factors due to the different treatment of these agreements over time.

(1) An *article 3(1)(b) credit agreement* is exempt under article 60H of the *Regulated Activities Order*:

(a) if at the time it was entered into, the conditions set out in article 60H(1) were met; and

(b) if entered into on or after 21 March 2016 (whether before or after 21 July 2022), it was outside the scope of the *MCD* as implemented in the *United Kingdom* (such agreements are currently set out in section 423A(3) of the *Act* and article 60HA(2) of the *Regulated Activities Order*).

(2) Where an *article 3(1)(b) credit agreement* not falling within paragraph (1)(b) is entered into on or after 21 July 2022:

(a) if the *borrower* is *UK* resident or treated as present in the *United Kingdom* when the agreement is entered into (see ■ PERG 2.7.19J), the agreement is an exempt agreement where the conditions in article 60H(1) of the *Regulated Activities Order* are met.

(b) if the *borrower* is not *UK* resident or treated as present in the *United Kingdom* when the agreement is entered into, the agreement will not be an exempt agreement under article 60H. The *borrower* can, however, elect to waive the protections and remedies applicable to *regulated credit agreements* except for those that transposed or implemented the *MCD* as it applied to the *United Kingdom* before *IP completion day*. This will mean the agreement will not be subject to *CONC* but some *rules* in *MCOB* will still apply (see ■ CONC 1.2.9G).

(3) An *article 3(1)(b) credit agreement* not falling within paragraph (1) entered into on or after 21 March 2016 and before 21 July 2022 cannot be an exempt agreement under article 60H, but the *borrower* could elect to waive the protections and remedies applicable to *regulated credit agreements* except those that transposed or implemented the *MCD*. This will mean the agreement will not be subject to *CONC* but some *rules* in *MCOB* will still apply (see ■ CONC 1.2.9G).

(4) The ability of a *borrower* to waive the protections and remedies applicable to *regulated credit agreements* – except those that transposed or implemented the *MCD* – is set out in ■ CONC 1.2.10R (as it applied when the agreement was entered into).

Application where home financing agreements are facilitated by a P2P platform

1.2.12

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CONC does not apply to a *P2P platform operator* in circumstances where *MCOB* applies by virtue of ■ MCOB 1.2.22R(1).

1.2.13

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■ MCOB 1.2.22R(1) provides that a rule in *MCOB* that applies to a *mortgage lender*, a *home purchase plan provider*, a *reversion provider* or a *SRB agreement provider* also applies to a *P2P platform operator* facilitating a *regulated mortgage contract*, *home purchase plan*, *home reversion plan* or *regulated sale and rent back agreement* where the lender, plan provider, *reversion provider* or agreement provider does not require permission to enter into the transaction. It applies subject to the provisions in ■ MCOB 15.