

Appendix 1

Total charge for credit rules; and certain exemptions

1.4 Exemption for high net worth borrowers and hirers and exemption relating to businesses

Exemption for high net worth borrowers and hirers

- App 1.4.1** **R** (1) For the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order*, 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 ■ CONC App 1.4.6R.
- (1A) For the purposes of ■ CONC 1.2.10R, 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*, must comply with ■ CONC App 1.4.2R and ■ 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, a statement in relation to the income or assets of the *borrower* or *hirer* (referred to in this section as a statement of high net worth) must comply with ■ CONC App 1.4.3 R, ■ CONC App 1.4.4 R and ■ CONC App 1.4.7 R.
- (3) For the purposes of articles 60H(1)(e) and 60Q(d) of the *Regulated Activities Order* and of ■ CONC 1.2.10R, the statement in (2) must be made during the period of one year ending with the day on which the agreement was made.
- 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 shall

- (1) be set out in the *credit agreement* or *consumer hire agreement* no less prominently than other information in the agreement and be readily distinguishable from the background medium; and
- (2) be signed by the *borrower* or *hirer*, unless the agreement is so signed.

App 1.4.3 R

- (1) Subject to ■ CONC App 1.4.4 R, a statement of high net worth shall be signed by
 - (a) the *lender* or *owner*; or
 - (b) an accountant who is a member of any of the bodies listed in (2).
- (2) The bodies referred to in (1)(b) are:
 - (a) the Institute of Chartered Accountants in England and Wales;
 - (b) the Institute of Chartered Accountants of Scotland;
 - (c) the Institute of Chartered Accounts in Ireland;
 - (d) the Association of Chartered Certified Accountants;
 - (e) the Chartered Institute of Management Accountants;
 - (f) the Chartered Institute of Public Finance and Accountancy;
 - (fa) the Association of International Accountants;
 - (fb) the Association of Accounting Technicians;
 - (fc) the Institute of Financial Accountants; and
 - (g) a professional body for accountants established in a jurisdiction outside the United Kingdom.

App 1.4.4 R A *person* who is

- (1) the *lender* or *owner*;
- (2) an employee or agent of the *lender* or *owner* or a *person* who otherwise acts on behalf of the *lender* or *owner* in relation to the *credit agreement* or *consumer hire agreement*; or
- (3) an *associate* of the *lender* or *owner*,

may only make a statement of high net worth if the *lender* or *owner* is a *person* who has *Part 4A permission* to accept deposits.

Declaration for exemption relating to businesses**App 1.4.5 R**

A declaration for the purposes of articles 60C or 60O of the *Regulated Activities Order* shall

- (1) comply with ■ CONC App 1.4.8 R;
- (2) be set out in the *credit agreement* or *consumer hire agreement* no less prominently than other information in the agreement and be readily distinguishable from the background medium; and

(3) be signed by the *borrower* or *hirer* or where the *borrower* or *hirer* is a *partnership* or unincorporated body of persons be signed by, or on behalf of, the *borrower* or *hirer*, unless the agreement is so signed.

Declaration by high net worth borrower or hirer

App 1.4.6 R 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.

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 the Financial Services and Markets Act 2000 or the Consumer Credit Act 1974 if this agreement 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 borrower.*

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”.

**This section should be omitted in the case of a consumer hire agreement*

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 ■ CONC 1.2.10R must have the following form and content-

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

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of ■ CONC 1.2.10R in the *FCA’s Consumer Credit sourcebook*.

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 the Financial Services and Markets Act 2000, except for those that transposed or implemented the Mortgage Credit Directive (Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property).

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.”

Statement of high net worth

App 1.4.7 R A statement of high net worth for the purposes of articles 60H(1)(d) and 60Q(c) of the *Regulated Activities Order*, and **CONC 1.2.10R**, 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/CONC 1.2.10R*)

I/We* (insert full name) of (insert address and postcode)..... confirm that I am/we* are a person qualified to make a statement of high net worth under rules made by the Financial Conduct Authority, by virtue of the fact that

In my/our* opinion (insert full name of borrower or hirer)

.....

of (insert address and post code of borrower or hirer)

.....

.....

is an individual of high net worth because he/she*

(a) received during the previous financial year net income totalling an amount of not less than £150,000*; and/or

(b) had throughout that year net assets with a total value of not less than £500,000*.

(insert one of the following declarations as appropriate)

I/We* declare that I am/we are* not connected to [insert name of the lender(s)/owner(s)][any person who is a lender/owner offering credit agreements/consumer hire agreements*].

I/We* declare that I am/we are* [connected to] [insert name of lender(s)/owner(s)] as I am/we are* [the lender(s)/owner(s)/an employee of/an agent of the lender(s)//owner(s)/a person who otherwise acts on behalf of the lender(s)//owner(s) in relation to the credit agreement/consumer hire agreement/an associate of the lender(s)//owner(s)].*

I/We declare that I am/we are*/[a/an] lender(s)/owner(s) offering credit agreements/ consumer hire agreements/ an employee of/an agent of/a person who otherwise acts on behalf of/ an associate of lender(s)/owner(s) offering credit agreements/ consumer hire agreements.*

In this statement-

(a) “associate” shall be construed in accordance with article 60L of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

(b) “financial year” means a period of one year ending with 31st March;

(c) "net assets" shall not include -

(i) the value of the borrower's or hirer's primary residence or any loan secured on that residence;

(ii) any rights of the borrower or hirer under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and

(iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the borrower or hirer or on his retirement and to which he is (or his dependents are), or may be, entitled.

(d) "net income" means the total income of the borrower or hirer from all sources reduced by the amount of income tax and national insurance contributions payable in respect of it; and

(e) "previous financial year" means the financial year immediately preceding the financial year during which the statement is made".

**Delete as appropriate.*

Declaration for exemption relating to businesses

App 1.4.8 **R** A declaration for the purposes of articles 60C or 60O of the *Regulated Activities Order* must have the following form and content

"Declaration for exemption relating to businesses

(articles 60C and 60O of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)

I am/We are* entering this agreement wholly or predominantly for the purposes of a business carried on by me/us or intended to be carried on by me/us.

I/We* understand that I/We* will not have the benefit of the protection and remedies that would be available to me/us* under the Financial Services and Markets Act 2000 or under the Consumer Credit Act 1974 if this agreement were a regulated agreement under those Acts.

I/We* 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 borrower.**

I am/We are aware that, if I am/we are in any doubts as to the consequences of the agreement not being regulated by the Financial Services and Markets Act 2000 or the Consumer Credit Act 1974, then I/we* should seek independent legal advice."

**Delete as appropriate.*

***This section should be omitted in the case of a consumer hire agreement.*