

CONSUMER CREDIT (AMENDMENT NO 3) INSTRUMENT 2016

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137R (Financial promotion rules);
 - (3) section 137T (General supplementary powers); and
 - (4) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. Part 1 of Annex A and Annex B to this instrument come into force on 31 May 2016.
- D. Part 2 of Annex A to this instrument comes into force on 1 July 2016.

Amendments to the Handbook

- E. The Consumer Credit sourcebook (CONC) is amended in accordance with Annex A to this instrument.

Amendments to material outside the Handbook

- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex B to this instrument.

Notes

- G. In Annex A to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- H. This instrument may be cited as the Consumer Credit (Amendment No 3) Instrument 2016.

By order of the Board
26 May 2016

Annex A

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Part 1: Coming into force on 31 May 2016

2 Conduct of business standards: general

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2.7 Distance marketing

...

Terms and conditions, and form

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- 2.7.7 G (1) Activities in relation to a *consumer hire agreement* are not financial services within the meaning of the *Distance Marketing Directive* and do not fall within *CONC 2.7*. Instead such agreements fall within the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334) if they were made before 13 June 2014, or the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (SI 2013/3134) if they were made on or after that date.

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...

3 Financial promotions and communications with customers

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3.5 Financial promotions about credit agreements not secured on land

...

Content of financial promotions

- 3.5.3 R ...

(2A) Paragraph (1)(a) also does not apply where the *financial promotion* relates only to *credit agreements* in respect of which the *APR* is 0%.

...

Guidance on showing interest rates and cost of credit

- 3.5.4 G (1) A rate of interest for the purpose of *CONC 3.5.3R(1)* is not limited to an annual rate of interest but would include a *monthly* or daily rate or an *APR*. It would also include reference to *0% credit* (but where the *APR is 0%* and *CONC 3.5.3R(2A)* applies, a representative example is not required). An amount relating to the *cost of credit* would include the amount of any fee or charge, or any *repayment of credit* (where it includes interest or other charges).

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...

Other financial promotions requiring a representative APR

- 3.5.7 R ...
- (3) This *rule* does not apply to a *financial promotion*:
- (a) for an *authorised non-business overdraft agreement*; or
- (b) for a credit agreement in respect of which the APR is 0%; or
- (c) for a credit agreement to be entered into by a community finance organisation as lender.

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6 Post contractual requirements

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6.7 Post contract: business practices

...

Credit card and store card requirements

...

- 6.7.12 R (1) ~~A firm under a regulated credit agreement for a credit card or store card must notify a customer at least 30 days before an increase in the rate of interest under the agreement comes into effect.~~

~~[Note: paragraph 6.18) of ILG]~~

- (2) Paragraph (1) does not apply in the following cases where in relation to an agreement:

- (a) the interest rate is set to directly track the movement in an

~~external index (such as a base rate), which was adequately explained under CONC 4.2.15R and was clearly stated in the agreement; or~~

- ~~(b) the period of a promotional interest rate has come to an end. [deleted]~~

...

6.8 Post contract business practices: credit brokers

...

Refunds of brokers' fees

6.8.3 G (1) Under section 155 of the *CCA* an *individual* has a right to a refund of the *firm's* fee (less £5) (or for that fee not to be payable) where, ~~following an introduction~~ the *individual* has not entered into an agreement to which section 155 applies within six months of an introduction:

(a) to a source of *credit* or of bailment (or in Scotland of hire); or the *individual* has not entered into an agreement to which section 155 applies within six months of an introduction

(b) to another *firm* that carries on *credit broking* of the kind specified in article 36A(1)(a) to (c) of the *RAO* disregarding the effect of paragraph (2) of that article (that is, the effecting of an introduction to a *lender* or an *owner*, or to another *person* who effects such introductions by way of *business*).

...

...

6.8.4A R If a *customer* has not entered into an agreement referred to in section 155(2) of the *CCA* within six months of the *customer* being introduced by the *firm* to a potential source of *credit* or of bailment (or in Scotland of hire), or to another *firm* that carries on *credit broking* of the kind specified in article 36A(1)(a) to (c) of the *RAO* (disregarding the effect of paragraph (2) of that article), as soon as reasonably practicable after the expiry of that six-month period a *firm* must by any method clearly bring to the *customer's* attention:

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...

11 Cancellation

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11.1 The right to cancel

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11.1.2 R (1) For a *credit agreement* there is no right to cancel under *CONC* 11.1.1R, unless (2) or (3) applies, in respect of:

...

(c) a *credit agreement* cancelled under regulation 15(1) of the Consumer Protection (Distance Selling) Regulations 2000 (automatic cancellation of a related credit agreement) or under regulation 38 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (effects of withdrawal or cancellation on ancillary contracts);

...

...

(4) In the case of a *distance contract* comprising an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the right to cancel under *CONC* 11.1.1R applies only to the initial service agreement.

[Note: article 1(2) of the *Distance Marketing Directive*]

(5) In this rule:

(a) “initial service agreement” includes the opening of a bank account or the making of a *credit-token agreement*; and

(b) “operations” includes the deposit or withdrawal of funds to or from a bank account and payments by a credit card or store card.

...

App 1 Total charge for credit rules; and certain exemptions

...

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

Exemption for high net worth borrowers and hirers

...

App 1.4.3 R (1) ...

(2) The bodies referred to in (1)(b) are:

...

(fa) the Association of International Accountants; and

...

...

Part 2: Coming into force on 1 July 2016

Insert the following new section after CONC 3.7 Financial promotions and communication: credit brokers. The text is all new and is not underlined.

3.7A Financial promotions and communications: P2P agreements

Application

3.7A.1 R This section applies to a *firm* with respect to *operating an electronic system in relation to lending*.

Status

3.7A.2 R (1) A *firm* must, in any relevant communication, indicate the extent of its powers, in particular whether it works exclusively with one or more *lenders* (including, for example, if it works exclusively with *lenders* who are participants in the electronic system that the *firm* operates) or whether it works as an independent broker.

[**Note:** article 21(a) of the *Consumer Credit Directive*]

(2) In this *rule*, a “relevant communication” means a *financial promotion* or a document which:

(a) is intended for *borrowers* or prospective *borrowers*; and

(b) relates to a *P2P agreement*:

(i) that is, or would be, a *regulated credit agreement*; and

(ii) in respect of which the *lender* is, or would be, acting by way of business.

Amend the following as shown.

4 Pre-contractual requirements

...

4.3 Adequate Pre-contractual requirements and adequate explanations: P2P agreements

Application

- 4.3.1 R This section applies to a *firm* with respect to *operating an electronic system in relation to lending* ~~in relation to a borrower or a prospective borrower under a P2P agreement.~~

...

Pre-contractual requirements

- 4.3.3A R (1) This rule applies if the lender, or the prospective lender, under a P2P agreement is, or would be, carrying on by way of business the regulated activity of entering into a regulated credit agreement as lender by entering into the agreement.
- (2) Any fee to be paid by the borrower to the operator of an electronic system in relation to lending must be agreed between the borrower and the operator, and that agreement must be recorded in writing or other durable medium before the P2P agreement is entered into.
- (3) The operator of an electronic system in relation to lending must disclose to the lender the fee, if any, for its activity payable by the borrower for the purpose of enabling the lender to calculate the annual percentage rate of charge for the P2P agreement.

[Note: article 21(b) and (c) of the Consumer Credit Directive]

Annex B

Amendment to the Perimeter Guidance manual (PERG)

Amend the following as shown.

2 Authorisation and regulated activities

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2.3 The business element

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Whether someone is carrying on his or her own business

...

2.3.7 G ...

- (6) The degree to which the services supplied by the individual to the principal *firm* are ones that the individual supplies to other clients as well. If the individual supplies services to more than one client (~~principal *firm*~~), it is very likely that the individual is in the business of providing those services generally and that, as a result, he is carrying on his own business and hence needs *authorisation* or an exemption from the *general prohibition*.

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