

CONSUMER CREDIT (RENT-TO-OWN COST CAP) INSTRUMENT 2019

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137C (FCA general rules: cost of credit and duration of credit agreements);
 - (3) section 137D (FCA general rules: product intervention);
 - (4) section 137T (General supplementary powers); and
 - (5) section 139A (The FCA’s power to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2019.

Amendments to the Handbook

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

Notes

- E. In the Annex to this instrument, the note (indicated by “**Note:**”) is included for the convenience of readers but does not form part of the legislative text.

Citation

- F. This instrument may be cited as the Consumer Credit (Rent-to-Own Cost Cap) Instrument 2019.

By order of the Board
28 February 2019

Annex

Amendments to the Consumer Credit sourcebook (CONC)

After CONC 5A (Cost cap for high-cost short-term credit) insert the following new chapter, CONC 5B. The text is not underlined.

5B Cost cap for rent-to-own agreements

5B.1 Application and guidance

Application

5B.1.1 R This chapter applies:

- (1) to a **RTO firm** with respect to any **RTO agreement** that has been entered into on or after one of the following dates:
 - (a) for a **RTO agreement** that relates to *goods* that have not been offered or made available to *consumers* by the **RTO firm** immediately before 1 April 2019, that date; or
 - (b) for a **RTO agreement** that relates to any other *goods*, the earliest of the following dates:
 - (i) any date on or after 1 April 2019 on which the **RTO firm** has increased the *cash price* of the *goods* to which the agreement relates; or
 - (ii) 1 July 2019.
- (2) to a **RTO firm** with respect to an arrangement to vary or supplement an existing **RTO agreement** so as to supply one or more additional or different *goods* under that agreement, that has been entered into on or after one of the following dates:
 - (a) for an arrangement that relates to additional or different *goods* that have not been offered or made available to *consumers* by the **RTO firm** immediately before 1 April 2019, that date; or
 - (b) for an arrangement that relates to any other additional or different *goods*, the earliest of the following dates:
 - (i) any date on or after 1 April 2019 on which the **RTO firm** has increased the *cash price* of the additional or different *goods*; or
 - (ii) 1 July 2019.

- (3) Where an **RTO firm** is a *micro-enterprise* the references in *CONC 5B.1.1R(1)(b)(ii)* and *CONC 5B.1.1R(2)(b)(ii)* to 1 July 2019 are to be read instead as references to 1 October 2019, and all other references to those provisions are to be read accordingly.
- 5B.1.2 G (1) This chapter applies to **RTO firms** when they are entering into new **RTO agreements**, and when they are varying or supplementing an existing **RTO agreements** so as to supply additional or different *goods* under the agreement. This chapter does not therefore apply where the variation or supplementation of an existing **RTO agreement** does not involve the supply of additional or different *goods*.
- (2) Where *CONC 5B.1.1R(2)* applies, this chapter does not apply in relation to *goods* that had been supplied under an existing **RTO agreement** prior to the relevant date as provided in *CONC 5B.1.1R(2)(a)* and (b).
- 5B.1.3 G **RTO firms** are reminded that, as set out in *GEN 2.2.1R*, the provisions of this chapter have to be interpreted in light of their purpose.

Guidance on application and interpretation

- 5B.1.4 G In this chapter, a word or term in bold (other than in headings and titles) has the meaning given in *CONC 5B.7*.

5B.2 Prohibition on RTO firms from entering into RTO agreements

Entering into, varying or supplementing agreements: requirements as to the cash price of new goods

- 5B.2.1 R A **RTO firm** must not enter into, vary or supplement a **RTO agreement** where the *cash price* of the *goods* (which are not second-hand *goods*) supplied under the agreement exceeds the **benchmarked price**.
- 5B.2.2 R Except where *CONC 5B.2.4R(1)* applies, a **RTO firm** must establish the **benchmarked price** by taking the following steps:
- (1) The **RTO firm** must find three benchmarking *cash prices*.
 - (2) A benchmarking *cash price*:
 - (a) must be a *cash price* at which the *goods* are currently offered or available for sale to *consumers* in the *United Kingdom*, but not by another **RTO firm** or an **associate** of the **RTO firm** establishing the **benchmarked price**;
 - (b) save where paragraph (3) applies, must be for the same *goods* as the **RTO firm** intends to supply under the **RTO agreement**;

- (c) where paragraph (3) applies, must be for *goods* comparable, by reference to any features or characteristics of the *goods* that might reasonably be expected to affect the *cash price*, to those which the **RTO firm** intends to supply under the **RTO agreement**; and
 - (d) may be a *cash price* charged by a **retail revolving credit business** provided the other two benchmarking *cash prices* are not.
- (3) This paragraph applies where, following a reasonable search of the market, the **RTO firm** has been unable to find three benchmarking *cash prices* that satisfy the requirements in paragraph (2)(b).
 - (4) Where paragraph (2)(d) applies, the median of the three benchmarking *cash prices* is the **benchmarked price**.
 - (5) Where paragraph (2)(d) does not apply, the highest of the three benchmarking *cash prices* is the **benchmarked price**.
 - (6) Each item of *goods* being supplied under one **RTO agreement** must be benchmarked individually except where the **RTO firm** is offering a bundle of *goods* to be supplied for one *cash price*.
 - (7) Except where paragraph (8) applies, where a bundle of *goods* is being supplied under one **RTO agreement** for one *cash price*, the **RTO firm** must benchmark against other *goods* supplied as bundles, in the way described in paragraphs (1) and (2) above.
 - (8) This paragraph applies where:
 - (a) a **RTO firm** wishes to supply a bundle of *goods* under one **RTO agreement** for one *cash price*;
 - (b) the **RTO firm** has been unable to find three benchmarking *cash prices* based on the same bundle of *goods*; and
 - (c) any comparable bundle of *goods* that the **RTO firm** would need to rely upon to establish a **benchmarked price** contains one or more *goods* of significantly different value from those in the bundle that the **RTO firm** wishes to supply.
 - (9) Where paragraph (8) applies the **RTO firm** must:
 - (a) separately benchmark each item in accordance with paragraphs (1) and (2) above; and
 - (b) set separate *cash prices* for each of those items.
 - (10) Where a **RTO firm** reasonably considers that a particular *cash price* is so far outside the range of *cash prices* it has found that no

reasonably-informed *UK consumer* is likely to pay that *cash price*, the **RTO firm** must not use that *cash price* as a benchmarking price.

- (11) In assessing whether a particular *cash price* is so far outside the range of *cash prices* it has found that no reasonably-informed *UK consumer* is likely to pay that *cash price* a **RTO firm** must, in particular, consider:
- (a) the difference between that *cash price* and the other two benchmarking *cash prices* the **RTO firm** has found;
 - (b) evidence suggesting that the *cash price* is out of date, for example where the item is no longer in stock; and
 - (c) any other factors suggesting that the seller does not expect to sell the *goods* at that *cash price*.

- 5B.2.3 G (1) New *goods* are *goods* which are not second-hand *goods* and include, for example, ex-display *goods*.
- (2) The range of features which **RTO firms** might consider under *CONC* 5B.2.2R(2)(c) when identifying comparable *goods* includes brand, quality, functionality, performance, size and colour, but only where these features could reasonably be expected to affect the *cash price*.
- (3) In relation to *CONC* 5B.2.2R(10), examples of cases where the *FCA* would expect a **RTO firm** to exclude a *cash price* include, but are not limited to:
- (a) *cash prices* that have been set primarily for a non-*UK* market; and
 - (b) *cash prices* that have clearly been set in error.

Establishing a benchmarked price for goods that will be new to the UK market

- 5B.2.4 R (1) This paragraph applies to *goods*:
- (a) that will not be sold exclusively by a **RTO firm**;
 - (b) that are not currently offered for sale on the *UK* market; and
 - (c) that have features so technologically different from those of *goods* currently for sale on the *UK* market that it is not possible to identify *goods* that are genuinely comparable.
- (2) Where paragraph (1) applies, a **RTO firm** must establish a **benchmark price** for the *goods* that is reasonable, having regard in particular to:
- (a) any price at which the *goods* have been advertised in the

United Kingdom prior to launch;

- (b) any recommended retail price for the *goods*;
- (c) any other recommended price for the *goods* that has been provided by a supplier;
- (d) where the *goods* replace an existing model:
 - (i) the *cash price* at which the existing model was first offered for sale in the *United Kingdom*; and
 - (ii) where the existing model replaced a previous model, the difference between the *cash price* of the previous model and the *cash price* of the existing model at the time the existing model was first offered for sale.

Timing

- 5B.2.5 R A **RTO firm** must establish the **benchmarked price** for *goods*:
- (1) by the time it offers to supply the *goods* under a **RTO agreement** for the first time;
 - (2) by the time it increases the *cash price* at which it offers to supply the *goods* under a **RTO agreement**;
 - (3) where a **benchmarked price** has been established under *CONC* 5B.2.4R(2), by the end of the period of 3 *months* that begins on the day on which the *goods* were first offered for sale on the *UK* market; and
 - (4) no later than 12 *months* after the last time it established a **benchmarked price** in accordance with any provision of this *rule*.
- 5B.2.6 G The fact that a **benchmarked price** for *goods* has been established before the coming into force of *CONC* 5B does not prevent it satisfying the requirements of *CONC* 5B.2.5R(1). Subsequent benchmarking then has to be carried out in accordance with 5B.2.5R(2), (3) or (4) in the normal way.

Entering into, varying or supplementing agreements: requirements as to the cash price of delivery and installation of goods

- 5B.2.7 R A **RTO firm** must not enter into:
- (1) a **RTO agreement**;
 - (2) an arrangement to vary or supplement an existing **RTO agreement** by the supply of additional or different *goods* under that agreement; or
 - (3) a **connected agreement**,

where the *cash price* for delivery and/or the *cash price* for installation exceeds the relevant **benchmarked price**.

- 5B.2.8 R (1) A **RTO firm** must establish the **benchmarked price** for delivery or installation of *goods* supplied under a **RTO agreement** by selecting the *cash prices* charged for, as relevant, delivery or installation of the same category of *goods* by three retailers (who must not include a **RTO firm** or an **associate** of the **RTO firm** establishing the **benchmarked price**) and taking the median of those prices.
- (2) A **RTO firm** must establish the **benchmarked price** for delivery and/or installation:
- (a) by the time it offers to supply the relevant *goods* under a **RTO agreement** for the first time;
 - (b) by the time it increases the *cash price* at which it offers to provide delivery or installation in relation to *goods* supplied under a **RTO agreement**; and
 - (c) no later than 12 *months* after the last time it established a **benchmarked price** in accordance with any provision of this *rule*.

5B.2.9 G The fact that a **benchmarked price** for delivery and/or installation has been established before the coming into force of *CONC 5B* does not prevent it satisfying the requirements of *CONC 5B.2.8R(2)(a)*.

- 5B.2.10 G (1) The *FCA* does not expect **RTO firms** to identify the *cash prices* for delivery and/or installation of identical goods. It will be sufficient for **RTO firms** to select *cash prices* for the delivery and/or installation of the category of *goods*. For example, **RTO firms** would need to find *cash prices* for the delivery and/or installation of washing machines but not for a particular model of washing machine.
- (2) When selecting benchmarking *cash prices* for delivery, **RTO firms** should select prices which apply in comparable circumstances to those that apply to the **RTO firm**, for example in terms of distance or timing.

Entering into, varying or supplementing agreements: total cost of credit cap

- 5B.2.11 R (1) A **RTO firm** must not enter into a **RTO agreement** for *goods* that provides for the payment by the *borrower* of one or more **charges** that, alone or in combination with any other **charge** under the **RTO agreement** or a **connected agreement**, exceed or are capable of exceeding the *cash price* of the *goods* plus, where relevant:
- (a) the *cash price* for delivery;

- (b) the *cash price* for installation; and
- (c) the *cash price* of *goods* or services supplied under a **connected agreement**.

(2) A **RTO firm** must not enter into an arrangement to vary or supplement a **RTO agreement** by the supply of additional or different *goods*, where the arrangement provides for the payment by the *borrower*, in relation to the additional or different *goods*, of one or more **charges** that, alone or in combination with any other **charge** under the **RTO agreement** or a **connected agreement**, exceed or are capable of exceeding the *cash price* of the additional or different *goods* supplied, plus, where relevant:

- (a) the *cash price* for delivery;
- (b) the *cash price* for installation; and
- (c) the *cash price* of *goods* or services supplied by a **connected agreement**.

5B.2.12 G Where more than one item of *goods* and/or services is supplied under one **RTO agreement**, the total amount of the **charges** that may be payable by the *borrower* under that agreement should be calculated with reference to the sum of the *cash price* of each of the *goods* and, where relevant, services. For example, where a **RTO agreement** covers the supply of a washing machine and dryer, and delivery and installation of both:

Washing machine:	<i>cash price</i>	=	£200
Dryer:	<i>cash price</i>	=	£250
Delivery:	<i>cash price</i> total	=	£30
Installation:	<i>cash price</i> total	=	£20
The sum of the <i>cash prices</i>		=	£500
The total amount of charges that may, in addition, be payable by the <i>borrower</i> must not exceed £500.			

5B.3 Anti-avoidance

- 5B.3.1 R **RTO firms** must not attempt to recover revenue that may be lost due to compliance with the total cost of credit cap *rules* through the price for other *goods* or services provided by the **RTO firm** in connection with a **RTO agreement**.
- 5B.3.2 G (1) For example, **RTO firms** should not seek to increase the price of theft or accidental damage insurance, or extended warranties in order to recover revenue lost due to the cost cap *rules*.

- (2) **RTO firms** are also reminded of the *rule* in *CONC 7.7.5R* which states that *firms* must not impose charges on *customers* in default or arrears difficulties unless the charges are no higher than necessary to cover the reasonable costs to the *firm*.

5B.4 Policies and procedures for establishing benchmarked prices

5B.4.1 R A **RTO firm** must:

- (1) establish, implement and maintain clear and effective policies and procedures to enable it to establish **benchmarkd prices** under *CONC 5B.2.2R*, *CONC 5B.2.4R* and *CONC 5B.2.8R*;
- (2) set out the policies and procedures in (1) in writing, and have them approved by its *governing body* or *senior personnel*;
- (3) assess and periodically review:
 - (a) the effectiveness of the policies and procedures in (1); and
 - (b) the **RTO firm's** compliance with those policies and procedures and with its obligations under *CONC 5B*; and
- (4) in the light of (3), take appropriate measures to address any deficiencies in the policies and procedures or in the **RTO firm's** compliance with its obligations.

Obligations in competition law

5B.4.2 G **RTO firms** are reminded of their obligations to ensure compliance with competition law (including the prohibitions against anti-competitive agreements and abuse of a dominant position in Chapters 1 and 2 of the Competition Act 1998 and the criminal cartel offence in Section 188 of the Enterprise Act 2002 as amended by the Enterprise and Regulatory Reform Act 2013). Those obligations include:

- (1) not entering into any agreements with other firms where the agreement has as its object or effect an appreciable prevention, restriction or distortion of competition – for example to agree sale prices or to allocate customers. For example, if a **RTO firm** director called another **RTO firm** or a non-**RTO firm** and agreed to sell their products at a certain price, this would be restrictive of competition and illegal. The individuals involved could also be prosecuted for the criminal cartel offence; and
- (2) not disclosing to, or accepting from, competitors any commercially sensitive information such as pricing or price planning, customer or market information or company strategy. For example, if a **RTO firm's** employee met or called another **RTO firm's** employee to find out any current or future pricing information whatsoever, that was not otherwise publicly available, whether for the purpose of

attempting to fulfil any obligation under these *rules* or not, that could be illegal anti-competitive activity, even if the recipient of the information stayed silent.

5B.4.3 G **RTO firms** should also note the following points.

- (1) The disclosure or receipt of commercially sensitive information may amount to a breach of competition law and could lead to infringement findings and fines not only in relation to the firm disclosing the information but also in relation to other firms receiving the information.
- (2) A person commits the criminal cartel offence if they agree with one or more others to make or implement (or cause to be made or implemented) certain prohibited cartel arrangements relating to two or more businesses, namely price fixing, market sharing, bid-rigging, and limiting output. The maximum penalty on conviction for the criminal cartel offence is five years imprisonment and/or an unlimited fine.
- (3) It is the responsibility of each firm to assess its own position under competition law (for example by taking its own legal advice) and to ensure all its staff are compliant with competition law and in particular that they know what is, and is not, lawful practice.
- (4) Relevant guidance on competition law has been published by the Competition and Markets Authority.

[**Note:** for example, see:

Competition Law Risk a Short Guide at:

<https://www.gov.uk/government/publications/competition-law-risk-a-short-guide>

Limiting risk in relation to competitors' information at:

<https://www.gov.uk/government/publications/limiting-risk-in-relation-to-competitors-information>

Quick Guide to Complying with Competition Law at:

[https://www.gov.uk/government/publications/how-small-businesses-can-comply-with-competition-law.](https://www.gov.uk/government/publications/how-small-businesses-can-comply-with-competition-law)]

5B.5 Record keeping

5B.5.1 G **RTO firms** are reminded of their obligations in SYSC 9.1.1R to keep orderly records, which must be sufficient to enable the *FCA* to monitor the *firm's* compliance with the requirements of the *regulatory system*. Records which the *FCA* would consider to be sufficient to show compliance with the

benchmarking requirements in *CONC 5B* include:

- (1) point-in-time evidence of other benchmarking *cash prices* such as screengrabs or outputs of third party benchmarking data, together with evidence establishing the point in time to which it relates;
- (2) evidence to show how the **RTO firm** took reasonable steps to ascertain whether the same item of *goods* or bundle of *goods* was available for sale by other retailers; and
- (3) evidence to show how the **RTO firm** established that *goods* benchmarked against were comparable to those supplied by the **RTO firm**.

5B.6 Consequences of contravention of the total cost of credit cap

5B.6.1 R Where a **RTO firm** enters into a **RTO agreement** in contravention of a *rule* in *CONC 5B.2.11R*:

- (1) an obligation in or under a **RTO agreement** that requires the *borrower* to pay **charges** which in total would exceed the total cost of credit cap, is unenforceable in its entirety; and
- (2) the *borrower* is entitled to recover any amount paid in **charges**. If that is the case, at the written or oral request of the *borrower*, the **RTO firm** must, as soon as reasonably practicable following the request and in any case within *7 days* of the request, repay to the *borrower* any **charges** paid by the *borrower* under or in connection with the **RTO agreement**.

5B.6.2 G Taking the example in *CONC 5B.2.12G*, if the agreement provided that the total amount of **charges** that may be payable by the *borrower* were £600 (so exceeding the sum of the *cash prices* which was £500), the obligation to pay the £600 **charges** would be unenforceable, and where a *customer* had paid part or all of the £600, they would be entitled to have the amount of **charges** they had paid refunded by the **RTO firm**.

5B.7 Interpretation

5B.7.1 R In this chapter, words or terms used in *CONC 5B* which appear in bold (other than headings and titles) have the following meanings:

- (1) “**associate**” means any *person* whose business or domestic relationship with a **RTO firm**, whether directly or indirectly, might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with *consumers*;
- (2) “**benchmarked price**” means a price calculated in accordance with *CONC 5B.2.2R*, *CONC 5B.2.4R* or *CONC 5B.2.8R*;

- (3) “**charge**” is a charge payable, by way of interest or otherwise, in connection with the provision of *credit* under a **RTO agreement**, whether or not the agreement itself makes provision for this, and whether or not the *person* to whom it is payable is a party to the **RTO agreement** or an *authorised person*, and which would form part of *the total charge for credit*;
- (4) “**connected agreement**” is an agreement:
- (a) for delivery and/or installation of *goods* supplied under a **RTO agreement**; and/or
 - (b) which provides for a payment in connection with a **RTO agreement** where that payment would form part of the *total charge for credit*;
- (5) “**household goods**” means *goods* which are normally found in a residential home and includes but is not limited to furniture, kitchen appliances (such as cookers, washing machines and dryers, microwaves, refrigerators and freezers), electronic and technological goods (such as vacuum cleaners, televisions and accessories, music systems and accessories, games consoles and accessories, computers, tablets and accessories, and mobile phones);
- (6) “**retail revolving credit business**” means a *person*:
- (a) whose business comprises or includes the sale of *goods* financed by a form of *retail revolving credit*; and
 - (b) whose business does not comprise or include the sale of such *goods* from one or more physical stores.
- (7) “**RTO agreement**” means a *regulated credit agreement* which is a *hire-purchase* or *conditional sale agreement* that supplies one or more items of **household goods**, but excluding those in relation to *goods* acquired principally for business purposes; and
- (8) “**RTO firm**” means a *firm* whose business comprises or includes the *regulated activity* of *entering into a regulated credit agreement as lender* and/or *exercising or having the right to exercise the lender’s rights and duties under a regulated credit agreement*, in relation to one or more **RTO agreements**, as defined in *CONC 5B.7.1R(7)* and in relation to more than one category of **household goods**.