# MORTGAGES (RESPONSIBLE LENDING) 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 (General rule-making power);
(2) section 137T (General supplementary powers); and
(3) section 139A (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 28 October 2019.

**Amendments to the Handbook**

D. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with Annex A to this instrument.

E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

**Citation**

F. This instrument may be cited as the Mortgages (Responsible Lending) Instrument 2019.

By order of the Board
24 October 2019

## Annex A

## Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

### 11 Responsible lending, and responsible financing of home purchase plans

…

### 11.4 Application

Who?

…

11.4.2 R This table belongs to *MCOB* 11.4.1R

| (1) Category of firm | (2) Applicable section |
|---|---|
| … | … |
| *home purchase provider* | Whole chapter except *MCOB* 11.6.1G(2), *MCOB* 11.6.5R(3) and (4), *MCOB* 11.6.18R, *MCOB* 11.6.19G, *MCOB* 11.6.20R(2) and *MCOB* 11.6.20R(9), *MCOB* 11.6.40G to *MCOB* 11.6.59G, *MCOB* 11.6.60R(2)(e), (3) and (4), ~~and~~ *MCOB* 11.7.3R and *MCOB* 11.9. |
| *mortgage administrator* | *MCOB* 11.9.2R and *MCOB* 11.9.14R. |

Insert the following new section, MCOB 11.9, after MCOB 11.8 (Customers unable to change regulated mortgage contract, home purchase plan or provider). The text is not underlined.

### 11.9 Remortgaging with the same or a different lender with no additional borrowing

Application and purpose

11.9.1 R (1) Subject to (2), this section applies to a *firm* in relation to a *customer* who:

(a) is a borrower under a *regulated mortgage contract* ("the existing *regulated mortgage contract*"), whether with that *firm* or a different *firm*; and

(b) wishes to enter into a new *regulated mortgage contract* ("the proposed *regulated mortgage contract*") with that *firm* to replace the existing *regulated mortgage contract*.

(2) But this section only applies if:

(a) the proposed *regulated mortgage contract* would not involve the *customer* borrowing:

(i) a capital amount greater than that outstanding under the existing *regulated mortgage contract* at the date of the *customer*'s application for the proposed *regulated mortgage contract*; or

(ii) where a purpose of the proposed *regulated mortgage contract* is to replace two or more existing *regulated mortgage contracts*, a capital amount greater than the cumulative capital amount outstanding under those contracts at that date;

disregarding any increase that is exclusively for the purpose of financing a product fee or arrangement fee for the proposed *regulated mortgage contract* or a fee charged by a *mortgage intermediary* for *arranging* or *advising on regulated mortgage contracts* in relation to the proposed *regulated mortgage contract*;

(b) the proposed *regulated mortgage contract* is to be secured on the same property as the existing *regulated mortgage contract*;

(c) on the date on which the *customer* applies for the proposed *regulated mortgage contract*:

(i) there is no sum that has become due under the terms of the existing *regulated mortgage contract* that constitutes a *payment shortfall*; and

(ii) at no point in the period of 12 *months* ending on that date has there been a sum that has become due under the terms of the existing *regulated mortgage contract* that constituted a *payment shortfall*;

(d) the written policy required by *MCOB* 11.6.20R (responsible lending policy) addresses how the *firm* will apply the *rules* in this section; and

(e) the *firm* has and operates an internal switching policy (see *MCOB* 11.9.12R).

(3) For the purposes of this section, *linked borrowing* which is linked to an existing *regulated mortgage contract* is to be treated as if it were an existing *regulated mortgage contract*.

11.9.2 R *MCOB* 11.9.14R (notice to customers) also applies to a *firm* that has *permission* for *administering a regulated mortgage contract*.

11.9.3 G (1) The purpose of this section is to facilitate borrowers switching mortgages, provided that they are not taking out additional borrowing. But the mortgage does not have to be exactly like-for-like and the borrower can, for example:

(a) extend the term of the mortgage, for example to replace a mortgage with 10 years remaining with a new mortgage with a 25-year term;

(b) consolidate a *first charge regulated mortgage contract* and one or more *second charge regulated mortgage contracts* into the proposed *regulated mortgage contract* (but unsecured loans and other debts cannot be consolidated, unless the unsecured loan or debt is *linked borrowing* which is linked to an existing *regulated mortgage contract*);

(c) move from an *interest-only mortgage* to a *repayment mortgage* (provided it is more affordable); or

(d) take a mortgage with a different type of interest rate, for example to move from a variable rate to a fixed rate.

(2) This section permits *firms* to choose to modify certain provisions when assessing a *customer*'s ability to afford a mortgage. The provisions capable of modification are grouped (such as the provisions linked to the assessment of income and expenditure). *Firms* can choose whether to adopt all, some, or none of the modifications in this section, on a case-by-case basis (though they cannot modify some provisions in a group and not others). However, we would expect *firms* to have regard to *Principle* 6 ("A *firm* must pay due regard to the interests of its *customers* and treat them fairly") and not unfairly apply *rules* in one case but not another where the *customers*' circumstances are otherwise the same.

(3) But the *firm* must have an internal switching policy in place and operate in accordance with it, if it wishes to rely on the *rules* in this section. This means that, if the *firm* has allowed a *customer* to remortgage to it, it will allow the *customer* the benefit of the *rules* in this section again, or rely on *MCOB* 11.6.3R or *MCOB* 11.7 (if relevant), if the *customer* wants to switch again to a more affordable product with the *firm* (see *MCOB* 11.9.12R). In addition, the *firm*'s

responsible lending policy (see *MCOB* 11.6.20R) must set out how the *firm* will apply the *rules* in this section.

(4) Where a *customer* has a *payment shortfall* and has entered into a repayment arrangement with their current *mortgage lender*, the *customer* should be treated as having a *payment shortfall* until such time as the shortfall is repaid. This would be the case even though the *customer* may have started to have a *payment shortfall* more than 12 *months* before the date on which they apply for the proposed *regulated mortgage contract* but they are (and have been) up to date with payments under the repayment arrangement. Where a *payment shortfall* has been capitalised in accordance with *MCOB* 13, the *firm* may treat the *customer* as eligible provided that the capitalisation occurred more than 12 *months* before the date on which the *customer* applies for the proposed *regulated mortgage contract* and the *customer* has made all the payments due under the mortgage contract during those 12 *months* on time.

The assessment of affordability

11.9.4 R (1) A *firm* may elect that the modifications to the *rules* in *MCOB* specified in (2) are to apply in relation to the proposed *regulated mortgage contract*. The *firm* may not elect that only some of those modifications apply in relation to the proposed *regulated mortgage contract* but not others.

(2) (a) *MCOB* 11.6.2R does not apply, but *MCOB* 11.9.5R applies in its place.

(b) *MCOB* 11.6.3R and 11.6.4E do not apply.

(c) *MCOB* 11.6.5R and 11.6.6R do not apply.

11.9.5 R (1) The *firm* must not enter into the proposed *regulated mortgage contract* unless that contract is more affordable for the *customer* (and any guarantor) than the existing *regulated mortgage contract*.

(2) The proposed *regulated mortgage contract* is more affordable than the existing *regulated mortgage contract* if:

(a) the aggregate amount of:

(i) the monthly payments due from the *customer* under that contract in respect of any discounted or introductory period, or (where there is no discounted or introductory period) in respect of the term of the proposed *regulated mortgage contract*; and

(ii) any product fee or arrangement fee due from the *customer* in relation to that contract, and any fee charged by a *mortgage intermediary* for *arranging* or *advising on* *regulated mortgage contracts* in relation to that contract, which the *customer* intends to pay without including it in the amount being lent under the proposed *regulated mortgage contract*;

is less than the aggregate amount due from the *customer* under the existing *regulated mortgage contract* (or all the existing *regulated mortgage contracts*, if more than one) in respect of the proposed *regulated mortgage contract*'s discounted or introductory period or (where there is no discounted or introductory period) in respect of the term of each existing *regulated mortgage contract*;

(b) the monthly payment that was due from the *customer* under the existing *regulated mortgage contract* (or the aggregate of the monthly payments due under all the existing *regulated mortgage contracts*, if more than one) in each of the 12 *months* before the date on which the *customer* applies for the proposed *regulated mortgage contract*, ignoring any atypical payments, was greater than:

(i) the typical monthly payment which would be due from the *customer* under the proposed *regulated mortgage contract* in any discounted or introductory period; or

(ii) (where there is no discounted or introductory period) the typical monthly payment which is expected to be due for the term of the proposed *regulated mortgage contract*; and

(c) the interest rate applicable under the proposed *regulated mortgage contract*:

(i) in respect of any discounted or introductory period; or

(ii) (where there is no discounted or introductory period) that which is expected to apply during the term of the contract;

is lower than the interest rate currently applicable under the existing *regulated mortgage contract* (or each existing *regulated mortgage contract*, if more than one).

11.9.6 G (1) *MCOB* 11.6.7G does not apply in relation to a *regulated mortgage contract* entered into under *rules* disapplied by virtue of *MCOB* 11.9.4R.

(2) *MCOB* 11.9.5R(2) determines whether one *regulated mortgage contract* is more affordable than another. The references in that *rule*:

(a) to a discounted or introductory period include, for example, any fixed rate period after which a different interest rate applies, and any period in respect of which interest is deferred. Where interest is due in respect of a discounted or introductory period but is deferred, it is the gross rate payable that should be considered for the purposes of the conditions in *MCOB* 11.9.5R(2), as if interest were not deferred;

(b) to a typical monthly payment should be taken to ignore any payment in respect of a period greater or less than a *month* (for example, where a first payment is larger, or smaller, than that which would normally be due because it relates to a period greater or less than a *month*);

(c) to aggregate amounts due under the existing *regulated mortgage contract* should be taken to be on the assumption that that contract would not be redeemed early and would not incur an *early repayment charge*; and

(d) to future payments or interest rates should be taken to be on the assumption that there is no variation to the reference rate in question, unless the *regulated mortgage contract* expressly provides for a variation (for example, when considering a lifetime Bank of England base rate tracker, it should be assumed that the Bank of England base rate will remain unchanged).

Assessment of income and expenditure

11.9.7 R (1) A *firm* may elect that the modifications to the *rules* in *MCOB* specified in (2) are to apply in relation to the proposed *regulated mortgage contract*. The *firm* may not elect that only some of those modifications apply in relation to the proposed *regulated mortgage contract* but not others.

(2) (a) *MCOB* 11.6.8R, 11.610R and 11.6.12R (income and expenditure) do not apply.

(b) *MCOB* 11.6.14R (future changes to income and expenditure) does not apply, but if the term of the proposed *regulated mortgage contract* extends beyond the date on which the *customer* (or, where there are joint borrowers, one of them) expects to retire or, where that date is not known, the date on which the *customer* will reach the state pension age, the *firm* must consider whether the *customer*'s income beyond that date would be sufficient to enable them to meet their commitments under the contract.

(c) *MCOB* 11.6.18R (considering the effect of future interest rate rises) does not apply.

11.9.8 G (1) *MCOB* 11.9.7R modifies the affordability assessment required by *MCOB* 11.6, in line with the modification to *MCOB* 11.6.2R made by *MCOB* 11.9.4R. This is on the basis that a *customer* who has evidenced an ability to afford a mortgage at a higher monthly payment than that which would be charged under the proposed *regulated mortgage contract* may be treated as likely to be able to afford the proposed *regulated mortgage contract*.

(2) *MCOB* 11.6.9G, 11.6.11G, 11.6.13G and 11.6.15G do not apply in relation to a *regulated mortgage contract* entered into under *rules* which are disapplied by virtue of *MCOB* 11.9.7R.

(3) If the term of the proposed *regulated mortgage contract* extends beyond the date on which the *customer* (or, where there are joint borrowers, one of them) expects to retire or, where that date is not known, will reach the state pension age, the *firm* should take a prudent and proportionate approach to considering whether the *customer*'s income beyond that date would be sufficient to enable them to meet their commitments under the contract. The degree of scrutiny to be adopted may vary according to the period of time remaining to retirement when the assessment is made. The closer the *customer* is to retiring, the more robust the evidence of the level of income in retirement should be. For example, where retirement is many years in the future, it may be sufficient merely to confirm the existence of some pension provision for the *customer* by requesting evidence such as a pension statement; where the *customer* is close to retirement, the more robust steps may involve considering expected pension income from a pension statement.

(4) This section does not prevent a *firm* from undertaking an investigation of the *customer*'s financial circumstances before offering to enter into a *regulated mortgage contract* with the *customer*. Where a *firm* does so, it may take into account that the *customer* is not in *payment shortfall* and that the proposed *regulated mortgage contract* is more affordable than the existing *regulated mortgage contract* when determining the nature and degree of that investigation. In particular, the *firm* may also wish to consider whether it is necessary to require the same information from the *customer* as it would from a *customer* who does not currently have a *regulated mortgage contract*.

(5) If the *firm* is considering the effect of future interest rate rises on the prospect of the *customer* meeting their obligations under the proposed *regulated mortgage contract*, the *firm* may wish to have regard to the extent to which the interest rate applicable to the existing *regulated mortgage contract* is higher than that applicable to the proposed *regulated mortgage contract*. The *firm* may also wish to have regard to the fact that the *customer* is not in *payment shortfall* in relation to the existing *regulated mortgage contract*.

Interest-only mortgages

11.9.9 R (1) A *firm* may elect that all of *MCOB* 11.6.41R, 11.6.43R, 11.6.46E, 11.6.46AR, 11.6.48R and 11.6.50R do not apply in relation to the proposed *regulated mortgage contract*.

(2) But a *firm* may not make an election under (1) if:

(a) the existing *regulated mortgage contract* is a *repayment mortgage* and the proposed *regulated mortgage contract* is an *interest-only mortgage*; or

(b) under the terms of the proposed *regulated mortgage contract*, the capital amount that will be outstanding at the end of that contract may be higher than that which would be outstanding at the end of the existing *regulated mortgage contract* (or the aggregate of that which would be outstanding at the end of each existing *regulated mortgage contract*, if more than one).

11.9.10 G (1) *MCOB* 11.6.40G, 11.6.40AG, 11.6.42G, 11.6.44G, 11.6.45G, 11.6.47G, 11.6.51G and 11.6.52G do not apply in relation to a *regulated mortgage contract* entered into under *rules* which are disapplied by virtue of *MCOB* 11.9.9R.

(2) *MCOB* 11.6.49R (review during the term of interest-only mortgages) applies to an *interest-only mortgage* entered into by a *firm* which has made an election under *MCOB* 11.9.9R(1).

Explanation of affordability assessment, and accompanying warning

11.9.11 R (1) This *rule* applies if a *firm* makes an election under any of the following *rules*:

(a) *MCOB* 11.9.4R (assessment of affordability);

(b) *MCOB* 11.9.7R (assessment of income and expenditure);

(c) *MCOB* 11.9.9R (interest-only mortgages).

(2) The *firm* must provide the *customer* with an explanation which indicates:

(a) what steps the *firm* has taken to ascertain that the proposed *regulated mortgage contract* is more affordable than the existing *regulated mortgage contract*; and

(b) how the steps it has taken differ from the steps it would have taken under *MCOB* 11.6 if the *firm* had not applied *rules* in this section.

(3) The *firm* must accompany the explanation with a warning (as relevant to the individual case) that:

(a) interest rates may increase and the *customer* could end up paying a higher interest rate than they are currently paying under the existing *regulated mortgage contract*, even though the *firm* has assessed that the proposed *regulated mortgage contract* is currently more affordable;

(b) the *firm*'s assessment that the proposed *regulated mortgage contract* is currently more affordable has not taken into account any *early repayment charges* that the *customer* may incur in relation to repaying their existing *regulated mortgage contract*; and

(c) where the term of the proposed *regulated mortgage contract* is to end later than the term of the existing *regulated mortgage contract*, the *customer* may end up paying more in interest overall as a result of entering into the proposed *regulated mortgage contract*.

(4) The *firm* must provide the explanation and the warning:

(a) in a *durable medium*; and

(b) no later than the *firm* provides the *customer* with an *offer document*.

(5) The *firm* need not provide an explanation or a warning under this *rule* if a *mortgage intermediary* has already provided the explanation and the warning to the *customer* in relation to the proposed *regulated mortgage contract.*

Internal switching policy

11.9.12 R (1) An internal switching policy is a policy which:

(a) is made or approved by the *governing body* of the *firm*; and

(b) commits or obliges the *firm*:

(i) to permit an eligible *customer* to enter into a more affordable *regulated mortgage contract* (see *MCOB* 11.9.5R(2)); and

(ii) to apply such of the *rules* in this section as may be necessary to enable that *customer* to enter into that contract (though the *firm* may apply other *rules* in addition if it wishes), or to rely on *MCOB* 11.6.3R or *MCOB* 11.7 (if relevant) to enable that *customer* to enter into that contract.

(2) For the purposes of an internal switching policy, a *customer* must be eligible if:

(a) the *firm* has entered into the existing *regulated mortgage contract* as the lender;

(b) the *firm* chose to apply one or more of the *rules* in this section in relation to the existing *regulated mortgage contract*;

(c) the *customer* wishes to enter into a more affordable *regulated mortgage contract* with the *firm* (see *MCOB* 11.9.5R(2)); and

(d) the *customer* meets the conditions in *MCOB* 11.9.1R(2)(c)(i) and (ii).

11.9.13 E If a *firm* has an internal switching policy but does not, without good reason:

(1) permit an eligible *customer* to enter into a more affordable *regulated mortgage contract*; or

(2) apply *MCOB* 11.6.3R or *MCOB* 11.7 (if relevant) or such of the *rules* in this section as may be necessary to enable that *customer* to enter into the more affordable *regulated mortgage contract*;

this may be relied on as tending to show contravention of *Principle* 6.

Notice to customers

11.9.14 R (1) For the purpose of this *rule*, a *customer* is a notifiable *customer* if, when the *firm* makes the determination required by this *rule*:

(a) the *customer* meets the conditions in *MCOB* 11.9.1R(2)(c)(i) and (ii), and there is no fee or charge which has become payable under the *regulated mortgage contract* and remains unpaid beyond the date on which it was due to be paid;

(b) the *customer*'s *regulated mortgage contract* is:

(i) not a *lifetime mortgage*; and

(ii) for residential purposes, and the *customer* does not have the lender's consent to let the property; and

(c) the *regulated mortgage contract* had a discounted or introductory period which has expired (such that the interest rate payable by the *customer* under that contract is a reversion or standard variable rate).

(2) A *firm* with *permission* for *administering a regulated mortgage contract* must have, and operate in accordance with, a strategy for:

(a) determining whether each of the *customers* in relation to whom the *firm* is carrying on that activity for an unregulated owner is a notifiable *customer*; and

(b) giving the notice required by this *rule* at least once to each such notifiable *customer*.

(3) For the purposes of (2), an unregulated owner is a *person* who does not have *permission* for *entering into a regulated mortgage contract* and:

(a) who entered into the *regulated mortgage contract* as lender; or

(b) to whom the rights of the lender under *regulated mortgage contract* have passed by legal or equitable assignment, or by operation of law.

(4) A *firm* which has *permission* for *entering into a regulated mortgage contract* but is no longer carrying on that activity in relation to a particular portfolio or book of *regulated mortgage contracts* must have, and operate in accordance with, a strategy for:

(a) determining whether each of the *customers* in that portfolio or book is a notifiable *customer*; and

(b) giving the notice required by this *rule* at least once to each such notifiable *customer*.

(5) The notice must:

(a) include a statement to the effect that it has recently become simpler for a *customer* to enter into a more affordable mortgage with another lender if the *customer* is not looking to borrow any more than they currently owe under their mortgage and has kept up to date with their mortgage payments over the last 12 *months*; and

(b) refer the *customer* to sources of information about how to switch their mortgage to a lender who applies the *rules* in this section.

(6) A notice under this *rule* must be in a *durable medium*.

(7) A *firm* is not required to give a notice under this *rule* to a *customer* in relation to a *regulated mortgage contract* if another *person* has given such a notice to the *customer* in relation to that contract.

11.9.15 R (1) The *governing body* of the *firm* must adopt or approve the strategy required by *MCOB* 11.9.14R no later than 1 May 2020.

(2) The *firm* must make the determination and give the notice required by *MCOB* 11.9.14R no later than 1 September 2020.

11.9.16 G In developing and implementing their strategy for notifying relevant borrowers of the possibility of switching lender under this section, *firms* should have regard both to the purpose of this section and to the likely timescales for lenders to be ready to offer mortgages to borrowers in reliance on the *rules* in this section. For example, they should neither notify borrowers before there are lenders ready to make use of the *rules* in this section, nor delay sending notices until shortly before 1 September 2020 (as to do so might leave borrowers paying for a less affordable mortgage for longer than is necessary).

## Annex B

## Amendments to the Supervision manual (SUP)

In this Annex, striking through indicates deleted text.

**16 Reporting requirements**

…

**16 Annex 21R Reporting fields**

This is the annex referred to in SUP 16.11.7R.

…

**2 SPECIFIC REPORTING FIELDS**

…

**(c) Mortgages**

…

**Notes**

…

| **Data reporting field** | **Code (where applicable)** | **Notes** |
|---|---|---|
| **Sales Data (report for all *regulated mortgage contracts*)** | | |
| … | … | … |
| Mortgage characteristics | …<br>EL = a *second charge regulated mortgage contract* that is a *shared equity credit agreement*<br><u>RM = a remortgage under *MCOB* 11.9 which does</u> | …<br>'Cashback' should only be reported where it is not being provided as an incentive to pay legal costs and valuation fees.<br><u>'RM' or 'RR' should be used where the *mortgage lender* has relied on any of the *rules* in *MCOB* 11.9 (Remortgaging with the same or a different lender with no additional borrowing) in relation to the *regulated mortgage contract*. 'RR' should be used if the term of the</u> |

| | | |
|---|---|---|
| | not extend into retirement<br><br>RR = a remortgage under *MCOB* 11.9 which extends into retirement<br><br>NA = not applicable | proposed *regulated mortgage contract* extends beyond the date on which the *customer* (or, where there are joint borrowers, one of them) expects to retire or, where that date is not known, will reach the state pension age; otherwise, 'RM' should be used.<br><br>… |
| … | … | … |
| **Affordability data**<br><br>Do not report affordability data when affordability assessment has not been undertaken, i.e. for an *interest roll-up mortgage*.<br><br>Similarly, do not report affordability data if the *mortgage lender* has applied any of the *rules* in *MCOB* 11.9 (Remortgaging with the same or a different lender with no additional borrowing) in relation to the *regulated mortgage contract*, unless the term of the proposed *regulated mortgage contract* extends beyond the date on which the *customer* (or, where there are joint borrowers, one of them) expects to retire or, where that date is not known, will reach the state pension age. In that case, report only the following *data elements*: 'Retirement age of first borrower' and 'Retirement age of second borrower'.<br><br>… | | |
| … | … | … |

**TP 1 Transitional provisions**

…

**TP 1.10 Mortgage activities**

| **(1)** | **(2) Material to which the transitional provision applies** | **(3)** | **(4) Transitional provision** | **(5) Transitional provision: dates in force** | **(6) Handbook provision: coming into force** |
|---|---|---|---|---|---|
| … | … | … | … | … | … |
| 2 | *SUP* 16.11.3R, *SUP* 16.11.5R, *SUP* 16.11.7R, *SUP* | R | When submitting a sales data report required by *SUP* 16.11.7R in relation to a *regulated mortgage contract* entered into in | From 28 October 2019 to 31 March 2021. | On 28 October 2019. |

| | | | | | |
|---|---|---|---|---|---|
| | 16.11.8R and *SUP* 16 Annex 21R. | | reliance on the *rules* in *MCOB* 11.9, a *firm* (or its reporting agent appointed under *SUP* 16.11.11R) may, in relation to that contract, elect to comply with the provisions of *SUP* 16 Annex 21R as if:<br>(1) the amendments to that Annex made by the Mortgages (Responsible Lending) Instrument 2019 had not been made; and<br>(2) the contract were entered into in reliance on the *rules* in *MCOB* 11.7. | | |