

Chapter 5A

MCD Pre-application disclosure



5A.4 Provision of a European Standardised Information Sheet (ESIS)

Timing

5A.4.1

R

- (1) A *firm* must provide the *consumer* with an *ESIS* for an *MCD regulated mortgage contract* before the *consumer* submits an application for that *MCD regulated mortgage contract* to an *MCD mortgage lender*, unless an *ESIS* for that *MCD regulated mortgage contract* has already been provided.
- (2) Except in the circumstances in ■ MCOB 5A.4.2 R, a *firm* must provide the *consumer* with an *ESIS* for an *MCD regulated mortgage contract* when any of the following occurs, unless an *ESIS* for that *MCD regulated mortgage contract* has already been provided:
 - (a) the *firm* advises the particular *consumer* to enter into that *MCD regulated mortgage contract*, then an *ESIS* must be provided at the point the advice is given, unless the advice is given by telephone, in which case the *firm* must provide an *ESIS* within five *business days*; or
 - (b) the *consumer* requests an *ESIS* for that *MCD regulated mortgage contract*, unless the *firm* is aware that it is unable to offer that *regulated mortgage contract* to them; or
 - (c) as part of an *execution-only sale* (or potential *execution-only sale*) the *consumer* has provided the *firm* with the information in ■ MCOB 4.8A.14R (1) to ■ MCOB 4.8A.14R (3) to indicate which *MCD regulated mortgage contract* they wish to enter into.
- (3) Except in the circumstances in ■ MCOB 5A.4.2 R, and unless an *ESIS* for that *MCD regulated mortgage contract* has already been provided, a *firm* must provide the *consumer* with an *ESIS* for an *MCD regulated mortgage contract*:
 - (a) without undue delay after the *consumer* has given the necessary information on his needs, financial situation and preferences under ■ MCOB 11.6.5R (2) (assessment of affordability) and ■ MCOB 11.6.34R (2) (alternative provisions for loans with high net worth mortgage customers); and
 - (b) in good time before the *consumer* is bound by any *MCD regulated mortgage contract* or offer.

[Note: article 14(1) of the *MCD*]

- 5A.4.2** **R** A *firm* need not provide an *ESIS*:
- (1) in relation to a *direct deal*;
 - (2) if the *consumer* refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the *consumer* is not interested in pursuing the enquiry; or
 - (3) if the *firm* does not wish to do business with the *consumer*.
- 5A.4.3** **R** If the *firm* chooses not to give an *ESIS* in the circumstances in ■ MCOB 5A.4.2R (1), where it has given advice on a *direct deal*, the *firm* must give the *consumer* a written record of the advice.
- 5A.4.4** **G** In the circumstances in ■ MCOB 5A.4.2R (2), the *rule* in ■ MCOB 5A.4.1R (1) will mean that the *consumer* may not make an application for an *MCD regulated mortgage contract*, as an *ESIS* has not been provided.
- 5A.4.5** **G** The effect of ■ MCOB 5A.2.1 R and ■ MCOB 5A.4.1R (1) is that, if a *consumer's* application to enter into an *MCD regulated mortgage contract* with a *MCD mortgage lender*, made through an *MCD credit intermediary*, is subsequently passed by that *firm* to another *MCD mortgage lender*, then the *firm* must ensure that the application is amended and the *consumer* is provided with an *ESIS* for the other *MCD mortgage lender's MCD regulated mortgage contract* before the application is passed to the other *MCD mortgage lender*.
- 5A.4.6** **G** If a *firm* chooses to issue an *offer document* in addition to an *ESIS*, it will need to comply with MCOB 6A.3.1R (MCD Mortgages: content of the offer document).
- 5A.4.7** **R** A *firm* must not undertake any action that commits the *consumer* to an application (including accepting product-related fees for the *MCD regulated mortgage contract* concerned) until the *consumer* has had the opportunity to consider an *ESIS*.
- 5A.4.8** **G** The effect of ■ MCOB 5A.4.1R (1) and ■ MCOB 5A.4.7 R is that a *consumer* will be deemed to be committed to an application if, for example, they pay a product-related fee (including a valuation fee) or provides electronic or verbal authority to process an application. It is not necessary for a *consumer* to provide an *MCD mortgage lender* with a completed application form to submit an application for an *MCD regulated mortgage contract*.
- 5A.4.9** **R** The *firm* dealing directly with the *consumer* is responsible for ensuring compliance with the content and timing requirements, ie, an *MCD mortgage lender* is not responsible for ensuring that a *consumer* has received an *ESIS* before accepting an application from an *MCD mortgage credit intermediary*.
- 5A.4.10** **R** Where a *firm* has already provided an *ESIS* under ■ MCOB 5A.4.1 R and the terms for the proposed *regulated mortgage contract* are subsequently materially altered or different, the *firm* must ensure that the *consumer* is

5A.4.11

G

provided with a revised *ESIS*, before acting on the amendment, when the change occurs at the point that a *consumer* submits an application for the *MCD regulated mortgage contract*.

5A.4.12

R

Uncertainty whether a mortgage is regulated

- (1) If, at the point an *ESIS* must be provided under ■ MCOB 5A.4.1 R, a *firm* is uncertain whether the contract will be an *MCD regulated mortgage contract*, the *firm* must:
 - (a) provide an *ESIS*; or
 - (b) seek to obtain from the *consumer*, information that will enable the *firm* to ascertain whether the contract will be an *MCD regulated mortgage contract*.
- (2) Where (1)(b) applies, an *ESIS* must be provided, unless, on the basis of the information provided by the *consumer*, the *firm* has reasonable evidence that the contract is not an *MCD regulated mortgage contract*.

Providing an ESIS without delay in response to a customer request

5A.4.13

G

Where the *consumer* requests an *ESIS* for a particular *MCD regulated mortgage contract* (see ■ MCOB 5A.4.1R (2)(b)), the purpose of ■ MCOB 5A.4.14 R, ■ MCOB 5A.4.15 R and ■ MCOB 5A.4.16 G is to ensure that the *consumer* receives an *ESIS* without unnecessary delay. These requirements do not restrict the information that the *firm* may obtain from the *consumer* after it has provided the *consumer* with an *ESIS*.

5A.4.14

R

- In meeting a request for an *ESIS* under ■ MCOB 5A.4.1R (2)(b), the *firm* must not delay the provision of the *ESIS* by requesting information other than:
- (1) such information as is necessary to complete the *ESIS* in accordance with ■ MCOB 5A.5.2 R and ■ MCOB 5A.5.3 R, if the *firm* does not already know it;
 - (2) where the *firm* acts in accordance with ■ MCOB 5A.4.12R (2), such information as is necessary to ascertain whether or not the contract will be an *MCD regulated mortgage contract*;
 - (3) where the interest rates, payments or any other terms and conditions to be included in the *ESIS* are dependent on the *consumer's* credit record, such information as is necessary to produce an *ESIS*;
 - (4) where the *firm* includes a quotation for any *tied products* or compulsory insurance in the *ESIS*, such information as is necessary to produce those quotations;

(5) any of the following information where it affects the availability of the *MCD regulated mortgage contract* that the *consumer* has requested information on, or affects the information to be included in, the *ESIS*:

- (a) whether the *consumer* is a first-time buyer, a subsequent buyer moving home or entering into an *MCD regulated mortgage contract* without moving home;
- (b) whether the *MCD regulated mortgage contract* is required for a right-to-buy purchase or for a shared ownership purchase;
- (c) the location of the property to be purchased, where known; and
- (d) whether the terms are dependent on a third-party guarantee.

5A.4.15 **R** Where **■** MCOB 5A.4.14R (3) applies:

- (1) a *firm* must ask the *consumer* relevant questions about their credit history or obtain information on their credit record from a credit reference agency;
- (2) a credit reference agency must not be used unless:
 - (a) it would be quicker than asking the *consumer* the relevant questions about their credit history; or
 - (b) the *consumer* is not able to provide sufficient information on their credit history.

5A.4.16 **G** A *firm* may use information that it already holds on the *consumer* for the purpose of producing the *ESIS* (for example, if it already holds the *consumer's* credit record), providing the use of this information does not delay the *consumer* receiving the *ESIS* and the *consumer's* consent is obtained, where appropriate.

5A.4.17 **R** If, on the basis of the information obtained from the *consumer* or, on the basis of information that the *firm* already holds on the *consumer*, the *firm* would do business with the *consumer* but not on the terms requested, the *firm* may provide the *consumer* with an *ESIS* for a different *MCD regulated mortgage contract*, if it chooses to do so.