Chapter 8A

Directions and determinations by the FCA waiving, varying or disapplying CCA requirements

8A.1 Application, purpose and interpretation

8A.1.1 D This chapter applies to every *firm* which:

(1) is subject to the requirements as to the form and content of regulated agreements under the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553) and the Consumer Credit (Agreements) Regulations (SI 2010/1014) made under section 60(1) of the *CCA* that wishes to apply for a direction from the *FCA* waiving or varying those requirements;

(2) is subject to the requirement under section 64(1)(b) of the *CCA* to send debtors or hirers a notice of their rights to cancel a cancellable agreement within the seven days following the making of that agreement that wishes to apply for a determination by the *FCA* that that requirement can be dispensed with; and

(3) wishes to apply for a direction from the *FCA* that the *hirer's* rights to terminate a *regulated consumer hire agreement* under section 101 of the *CCA* do not apply to *regulated consumer hire agreements* made by that *firm*.

8A.1.2 G This chapter explains how the regime works for obtaining:

(1) a direction from the *FCA* waiving or varying the requirements as to the form and content of regulated agreements under the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553) and the Consumer Credit (Agreements) Regulations (SI 2010/1014) made under section 60(1) of the *CCA*;

(2) a determination by the *FCA* that the requirement under section 64(1)(b) of the *CCA* to send debtors or hirers a notice of their rights to cancel a cancellable agreement within the seven days following the making of that agreement can be dispensed with; and

(3) a direction from the *FCA* that the hirer's rights to terminate a *regulated consumer hire agreement* under section 101 of the *CCA* do not apply to *regulated consumer hire agreements* made by the relevant *firm*.

8A.1.3 G Unless italicised, and except where the contrary intention appears, expressions used in this chapter have the same respective meanings as in the *CCA*.

8A.2 Introduction and conditions

Directions under section 60(3) of the CCA

8A.2.1 G Under section 60(3) of the *CCA*, if, on an application made to the *FCA* by a *firm* carrying on a consumer credit business or a consumer hire business, it appears to the *FCA* impracticable for the *firm* to comply with any requirement of the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553) or the Consumer Credit (Agreements) Regulations (SI 2010/1014) in a particular case, it may direct that the requirement be waived or varied in relation to the regulated agreement and subject to such conditions (if any) as it may specify.

8A.2.2 G Under section 60(4) of the *CCA*, the *FCA* will make the direction only if it is satisfied that to do so would not prejudice the interests of debtors or hirers.

8A.2.3 G An application may be made under section 60(3) of the *CCA* only if it relates to:

(1) a consumer credit agreement secured on land; or

(2) a consumer credit agreement under which a person takes an article in *pawn*; or

(3) a consumer credit agreement under which the creditor provides the debtor with a credit that exceeds £60,260; or

(4) a consumer credit agreement entered into by the debtor wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him; or

(5) a consumer hire agreement.

Determinations under section 64(4) of the CCA

8A.2.4 G The requirement under section 64(1)(b) of the *CCA* to send debtors or hirers a notice of their rights to cancel a cancellable agreement within the seven days following the making of that agreement does not apply in the case of the agreements described in ■ SUP 8A.2.5 G, if:

(1) on application by a *firm* to the *FCA*, the *FCA* has determined, having regard to:

(a) the manner in which antecedent negotiations for the relevant agreements with the *firm* are conducted; and

(b) the information provided to debtors or hirers before those agreements are made;

the requirement can be dispensed with without prejudicing the interests of debtors or hirers; and

(2) any conditions imposed by the *FCA* in making the determination are complied with.

8A.2.5 G A determination under 64(4) of the *CCA* may only be made in respect of agreements specified in the Consumer Credit (Notice of Cancellation Rights) (Exemptions) Regulations 1983.

Directions under section 101(8) of the CCA

8A.2.6 G If on an application made to the *FCA* by a *firm* carrying on a consumer hire business, it appears to the *FCA* that it would be in the interests of hirers to do so, the *FCA* may direct that subject to such conditions (if any) as it may specify, section 101 of the *CCA* shall not apply to consumer hire agreements made by that *firm*.

Transitional provision

8A.2.7 G Under article 53 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013, any of the following given or made by the Office of Fair Trading which were in effect immediately before 1 April 2014 have effect as if they had been given or made by the *FCA*:

(1) a direction given under section 60(3) of the *CCA* (form and content of agreements);

(2) a determination made under section 64(4) of the *CCA* (duty to give notice of cancellation rights) and the Consumer Credit (Notice of Cancellation Rights) (Exemptions) Regulations 1983;

(3) a direction given under section 101(8) or (8A) of the *CCA* (right to terminate hire agreement).

8A.3 Applying for a direction or determination by the FCA waiving, varying or disapplying CCA requirements

Publication

8A.3.1 G The *FCA* intends to include any direction or determination made by the *FCA* waiving, varying or disapplying *CCA* requirements in the public register under section 347 of the *Act*.

Form and method of application

8A.3.2 D A *firm* wishing to apply for a direction under section 60(3) of the *CCA*, must complete the application form in ■ SUP 8A Annex 1 D and submit it to the *FCA* in the way set out in ■ SUP 15.7.4 R, ■ SUP 15.7.5A R, ■ SUP 15.7.6A G and ■ SUP 15.7.9 G.

8A.3.3 D A *firm* wishing to apply for a determination under section 64(4) of the *CCA* must apply to the *FCA* in the way set out in ■ SUP 15.7.4 R, ■ SUP 15.7.5A R, ■ SUP 15.7.6A G and ■ SUP 15.7.9 G.

8A.3.4 D A *firm* wishing to apply for a direction under section 101(8) of the *CCA* must complete the application form in ■ SUP 8A Annex 2 D and the information form in ■ SUP 8A Annex 3 D, and submit them to the *FCA* in the way set out in ■ SUP 15.7.4 R, ■ SUP 15.7.5A R, ■ SUP 15.7.6A G and ■ SUP 15.7.9 G.

Procedure on receipt of an application

8A.3.5 G The *FCA* will acknowledge an application promptly and, if necessary, will seek further information from the *firm*. The time taken to determine an application will depend on the issues it raises. A *firm* should make it clear in the application if it needs a decision within a specific time.

8A.3.6 G The *FCA* will treat a *firm's* application as withdrawn if it does not hear from the *firm* within 20 *business days* of sending a communication which requests or requires a response from the *firm*. The *FCA* will not do this if the *firm* has made it clear to the *FCA* in some other way that it intends to pursue the application.

8A.3.7 G If the *FCA* decides not to give a direction or a determination, it will give reasons for the decision.

8A.3.8 G A *firm* may withdraw its application at any time up to the giving of the direction or determination. In doing so, a *firm* should give the *FCA* its reasons for withdrawing the application.

8A.4 Notification of altered circumstances relating to directions or waivers

8A.4.1 R A *firm* which has applied for or has been granted a direction or determination must notify the *FCA* immediately if it becomes aware of any matter which could affect the continuing relevance or appropriateness of the application or the direction or determination.

8A.4.2 G *Firms* are also referred to ■ SUP 15.6 (Inaccurate, false or misleading information). This requires a firm to notify the *FCA* if false, misleading, incomplete or inaccurate information has been provided (see ■ SUP 15.6.4 R). This would apply in relation to information provided in an application for a direction or a determination.

8A.5 Revoking or varying directions and determinations

8A.5.1 G The *FCA* may revoke or vary any of the directions or determinations referred to in this chapter.

Application form for a direction under section 60(3) of the CCA

This annex consists only of one or more forms. Forms are to be found through the following address:

Application form for a direction under section 60(3) of the CCA

Application form for a direction under section 101(8) of the CCA

This annex consists only of one or more forms. Forms are to be found through the following address:

Application form for a direction under section 101(8) of the CCA

Information form in support of an application for a direction under section 101(8) of the CCA

This annex consists only of one or more forms. Forms are to be found through the following address:

Information form in support of an application for a direction under section 101(8) of the CCA