

CONSUMER CREDIT (AMENDMENT) INSTRUMENT 2014**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 137R (Financial promotion rules);
 - (3) section 137T (General supplementary powers); and
 - (4) 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 26 September 2014.

Amendments to the FCA Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

A	B
Banking: Conduct of Business sourcebook (BCOBS)	Annex A
Supervision manual (SUP)	Annex B
Consumer Credit sourcebook (CONC)	Annex C

Amendments to the Perimeter Guidance manual

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

Notes

- F. In Annex C the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Consumer Credit (Amendment) Instrument 2014.

By order of the Board of the Financial Conduct Authority
25 September 2014

Annex A

Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

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

3.2 E Commerce

...

Requirements relating to the placing and receipt of orders

3.2.6 R A *firm* must (except when otherwise agreed by parties who are not *consumers*):

(1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:

...

(b) whether or not the concluded contract will be ~~filed in~~ filed by the *firm* and whether it will be accessible;

...

...

Annex B

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

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21R

REPORTING FIELDS

...

2 SPECIFIC REPORTING FIELD

...

(e) High-cost short-term credit and home credit loan agreements

...

Data reporting field	Code (where applicable)	Notes
...		
APR	Numeric % 2 dp	Provide the annual percentage rate of charge in relation to the credit agreement calculated in accordance with <i>CONC</i> App 1.2 in the Consumer Credit sourcebook. <u>Where a firm calculates the APR to one decimal place, it should add a further zero in the APR reporting field.</u>

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Annex C

Amendments to the Consumer Credit sourcebook (CONC)

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

2.5 Conduct of business: credit broking

...

Unfair business practices: credit brokers

2.5.8 R *A firm* must not:

...

(12A) secure credit for a customer at a higher rate of interest than was requested, where the object of doing so is for, or can reasonably be concluded as having been for, the personal gain of the firm or of a person acting on its behalf, rather than in the best interests of the customer;

[Note: paragraph 4.26e of CBG]

...

...

2.8 E-commerce

...

Requirements relating to the placing and receipt of orders

2.8.6 R *A firm* must (except when otherwise agreed by parties who are not consumers):

(1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:

...

(b) whether or not the concluded contract will be ~~filled in~~ filed by the *firm* and whether it will be accessible;

...

...

...

3.5 Financial promotions about credit agreements not secured on land

...

Other financial promotions requiring a representative APR

3.5.7 R (1) A *financial promotion* must include the *representative APR* if it:

(a) indicates in any way, whether expressly or by implication, including by means of the name given to the business or the product or of an address used by a business for the purposes of electronic communication, that:

...

(ii) any of the terms on which *credit* is available is more favourable (either for a limited period or generally) than corresponding terms applied in any other case or by any other ~~lenders~~ lender; or

(iii) the way in which the *credit* is offered is more favourable (either for a limited period or generally) than corresponding ways used in any other case or by any other ~~lenders~~ lender; or

[**Note:** regulation 6 of *CCAR 2010*]

...

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3.6 Financial promotions about credit agreements secured on land

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Annual percentage rate of charge

3.6.6 R (1) A *financial promotion* must specify the *typical APR* if the promotion:

...

(c) indicates in any way, whether expressly or by implication, including by means of the name given to a business or of an address used by a business for the purposes of *electronic communication*, that:

...

(ii) any of the terms on which *credit* is available is more

favourable (either for a limited period or generally) than corresponding terms applied in any other case or by any other *lenders* lender; or

- (iii) the way in which the *credit* is offered is more favourable (either for a limited period or generally) than corresponding ways used in any other case or by any other *lenders* lender; or

...

...

...

3.9 Financial promotions and communications: debt counsellors and debt adjusters

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Contents of financial promotions and communications

- 3.9.3 R A *firm* must ensure that a *financial promotion* or a communication with a *customer* (to the extent a previous communication to the same *customer* has not included the following information) includes:

...

- (13) where entry into a *debt solution* with the *firm* will lead to a period when payments to a *customer's lenders* or owners (in whole or in part) are not made or are retained by the *firm*, a warning of the likelihood of falling into arrears or increasing arrears and an explanation of when distributions would be made to *lenders* or owners;

- (14) a statement of the risks of entering into an individual voluntary arrangement or a protected trust deed, as the case may be, including of the following risks:

...

- (d) the *customer's lenders* or owners may not approve the individual voluntary arrangement or the protected trust deed; and

...

...

- 3.9.5 R A *financial promotion* or a communication with a *customer* by a *firm* must not:

...

- (4) claim or imply that the *firm* can guarantee a favourable outcome in negotiations with a *lender* or owner concerning the *customer's* debts;

[Note: paragraph 3.18m of *DMG*]

...

...

4.2 Pre-contract disclosure and adequate explanations

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Adequate explanations in relation to particular regulated credit agreements

- 4.2.15 R The following information must be provided by the *lender* or a *credit broker* as part of, and in addition to that provided under, the adequate explanation required by *CONC* 4.2.5R, where applicable, in the specified cases:

- (1) for *credit token agreements*:

...

- (c) interest rates or charges may be increased;

...

...

...

5.3 Conduct of business in relation to creditworthiness and affordability

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Unfair business practices: lenders

- 5.3.4 R A *firm* must not base its *creditworthiness assessment*, or its assessment required under *CONC* 5.2.2R(1), primarily or solely on the value of any *security* provided by the *customer*, but this *rule* does not apply in relation to a *regulated credit agreement* under which the *firm* takes an article in *pawn* and the *customer's* total financial liability (including capital, interest and all other charges) is limited under the agreement to the proceeds of sale which would represent the true market value (within the meaning of section 121 of the CCA) of the article or articles pawned by the customer plus interest on the credit and there are no additional charges.

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6.7 Post contract: business practices

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Credit card and store card requirements

6.7.4 R A *firm* must first allocate a *repayment* to the debt subject to the highest rate of interest (and then to the next highest rate of interest and so on) for:

...

...

6.7.9 R ~~(1)~~ A *firm* under a *regulated credit agreement* for a credit card or store card must notify the *customer* of a proposed increase in the *credit limit* under the agreement at least 30 days before the a *credit limit* increase under the agreement comes into effect, except where:

[Note: paragraph 6.17 of *ILG*]

(1) the increase is at the express request of the *customer*: or

(2) the increase is proposed by the *firm*, but the *customer* agrees to it at that time and wishes it to come into effect in less than 30 days.

~~(2) Paragraph (1) does not apply where a customer requests a temporary *credit limit* increase to deal with an emergency situation and, where *CONC 6.2.1R* applies, the *firm* carries out the required creditworthiness assessment in relation to any such increase.~~

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6.8 Post contract business practices: credit brokers

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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*, 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:

(1) the right to request a refund under section 155 of the *CCA*; and

(2) how to exercise the right to request the refund.

[Note: paragraph 6.19d of the *CBG*]

6.8.4B G The *FCA* would consider it to be reasonably practicable to comply with *CONC 6.8.4AR* within five working days of the expiry of the six-month period.

...

7.9 Contact with customers

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Debt collection visits

- 7.9.12 R Unless it is not practicable to do so, a firm must ensure that a *person* visiting a *customer* on its behalf:
- (1) clearly explains to the *customer* the purpose and intended outcome of the proposed visit; and

[Note: paragraph 3.12 of DCG]
 - (2) gives the *customer* adequate notice of the date and likely time (at a reasonable time of day) of the visit.

[Note: paragraph 3.13g of DCG]]
- 7.9.13 G Failure to explain the purpose and intended outcome of a proposed initial visit to the customer or to give adequate notice prior to a proposed initial visit to the customer may not contravene *CONC 7.9.12R*, provided that if the customer is happy to speak to the person pursuing recovery of the debt at that time. However, where, at the initial visit the customer indicates a preference to use the first visit to agree a more convenient time for a future visit, the person pursuing recovery of the debt should respect the customer's wishes. It is important that the customer is given reasonable time to prepare for a visit and should not be coerced or pressurised into immediate discussions or decisions.

[Note: paragraph 3.13g (box) of DCG]

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8 Debt advice

8.1 Application

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- 8.1.2 G *CONC 8.10* (Conduct of business: providing credit information services) sets out that that section applies to every *firm* with respect to *providing credit information services* and with respect to *operating an electronic system in relation to lending in relation to activities specified in article 36H(3)(e) to (h) of the Regulated Activities Order which are similar to providing credit information services.*

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14 Requirement in relation to agents

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- 14.1.3 G (1) A *firm* in *CONC* 14.1.2R would need to have a *Part 4A permission* for every activity the individual carries on as its agent for which the *firm* would need permission if it were carrying on the activity itself.
- (2) *CONC* 14 uses the expression “individual” in its natural meaning as referring to a single human being.

Annex D

Amendments to the Perimeter Guidance manual (PERG)

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

2.3 The business element

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2.3.7 G In the *FCA's* view the following factors are relevant in deciding whether a *person* (referred to in this paragraph as an “individual”) is to be treated as carrying on his own business ...

...

- (3) The degree to which the individual takes on the financial risks and rewards of an independent business (the more the individual takes on such risks the more likely it is that the *general prohibition* ~~does not apply~~ applies). For example, one might take into account whether the individual provides his own equipment; whether he hires his own helpers; what degree of financial risk he takes; what degree of responsibility for investment and management he has; whether and how far he has an opportunity of profiting from sound management in the performance of his task.

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