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).

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
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</thead>
<tbody>
<tr>
<td>Banking: Conduct of Business sourcebook (BCOBS)</td>
<td>Annex A</td>
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<td>Supervision manual (SUP)</td>
<td>Annex B</td>
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<td>Consumer Credit sourcebook (CONC)</td>
<td>Annex C</td>
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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 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 by the firm and whether it will be accessible;

…
Annex B

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

16
Annex
21R

REPORTING FIELDS

... 

2 SPECIFIC REPORTING FIELD

... 

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

...

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

[Note: regulation 6 of CCAR 2010]

3.6 Financial promotions about credit agreements secured on land

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 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 lender; or

3.9 Financial promotions and communications: debt counsellors and debt adjusters

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

...
…

(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

…

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

…

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.

…
6.7 Post contract: business practices

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 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.

6.8 Post contract business practices: credit brokers

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

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]

8 Debt advice

8.1 Application

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.
14 Requirement in relation to agents

... 

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.
2.3 The business element

... 

2.3.7 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). 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.

...