

MORTGAGE CREDIT DIRECTIVE (AMENDMENT NO 3) INSTRUMENT 2016**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 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA 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 1 August 2016.

Amendments to the 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) below:

(1)	(2)
Glossary of definitions	Annex A
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex B
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Supervision manual (SUP)	Annex D

Notes

- E. In the Annexes to this instrument, the "notes" (indicated by "**Note:**") are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Mortgage Credit Directive (Amendment No 3) Instrument 2016.

By order of the Board
28 July 2016

Annex A**Amendments to the Glossary of definitions**

In this Annex, underlining indicates new text.

Home State ...

(15) (for an *MCD credit intermediary*):

(a) where the *MCD credit intermediary* is a natural person, the *EEA State* in which his head office is situated; or

(b) where the *MCD credit intermediary* is a legal person, the *EEA State* in which its registered office is situated or, if under its national law it has no registered office, the *EEA State* in which its head office is situated.

[Note: article 4(19) of the *MCD*]

Host State ...

(6) (for an *MCD credit intermediary*) the *EEA State*, other than the *Home State*, in which the *MCD credit intermediary* has a branch or provides services.

[Note: article 4(20) of the *MCD*]

Annex B

Amendments to the Prudential Sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

In this Annex, underlining indicates new text.

1 Application and general provisions

...

1.3 Remuneration and property valuation requirements for MCD creditors

Application

1.3.1 R *MIPRU 1.3 applies to an MCD creditor other than an incoming EEA firm.*

...

Annex C

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.

1 Application and purpose

...

1.3 General application: where?

Location of the customer

1.3.1 R Except as set out in this section, *MCOB* applies if the *customer* of a *firm* carrying on *home finance activities* is resident in:

- (1) the *United Kingdom*; or
- (2) another *EEA State*, ~~but in this case only if~~ where the activity is carried on from an establishment maintained by the *firm* (or *its appointed representative*) in the *United Kingdom*;

at the time that the *home finance activity* is carried on.

1.3.1A R (1) The provisions of *MCOB* listed in *MCOB* 1.3.1AR(2) apply to a *UK firm* where it carries on *MCD credit intermediation activity* for a *customer* who is resident in another *EEA State* through an establishment maintained by the *firm* in that State.

(2) The provisions mentioned in *MCOB* 1.3.1AR(1) are:

- (a) *MCOB* 2A.1.1R(2);
- (b) *MCOB* 2A.1.4R;
- (c) *MCOB* 2A.2.1R and 2A.2.2G; and
- (d) *MCOB* 7.6.28R.

[Note: article 34(2) of the *MCD*]

Incoming EEA credit intermediaries

1.3.1B R (1) The application of *MCOB* to an *incoming EEA firm* that is an *MCD credit intermediary* is modified to the extent necessary to be compatible with European law.

(2) MCOB 1.3.1BR(1) overrides every other rule in this sourcebook.

[Note: article 34 of the MCD]

1.3.1C G Guidance on MCOB 1.3.1AR and MCOB 1.3.1BR is in MCOB 1 Annex 5. For applicable rules in relation to knowledge and competence requirements for staff, incoming EEA firms should also refer to TC 2.1.5AR to TC 2.1.5FG and to the territorial application rules in TC Appendices 1 and 2.

...

After MCOB 1.6 insert the following new Annex. The text is new and is not underlined.

1 Annex 5G Guidance on the application of MCOB for incoming EEA MCD credit intermediaries and for UK firms carrying out MCD credit intermediation activities in another EEA State

- 1.1 Under article 34(1) of the *MCD*, the *Home State* is responsible for supervising the activities of *MCD credit intermediaries* providing *cross border services*. If a *UK firm* provides services into another *EEA State*, the *rules* applying to *MCD credit intermediation activities* therefore apply to it. For an *incoming EEA firm* providing *cross border services*, *rules* do not apply to the *firm* where the *rule* covers a matter dealt with by the *MCD*. Instead the *Home State's* rules will apply.
- 1.2 Under article 34(2) of the *MCD*, ensuring compliance with the obligations in articles 7(1), 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39 of the *MCD* by *incoming EEA firms* doing business through branches is the responsibility of the *Host State*. These articles contain most of the conduct requirements imposed on *credit intermediaries* under the *MCD*, for example advisory standards and the obligation to provide an *ESIS*. Responsibility for ensuring compliance with all other obligations in the *MCD* is the responsibility of the *Home State*. This means that, in so far as a *rule* imposes obligations on *MCD credit intermediaries* that are contained in the articles listed above, that *rule* applies to *incoming EEA firms* doing business through branches. A *rule* that imposes obligations contained in any other article of the *MCD* does not apply in relation to such an *incoming EEA firm*, and its equivalent *Home State* rule applies instead. Conversely, such a *rule* would apply in relation to an *EEA branch* of a *UK firm*.
- 1.3 For all *incoming EEA firms*, where *MCOB* imposes obligations that go beyond what is required by the *MCD* (as permitted under article 2 of the *MCD*), the *firm* is required to comply with those additional obligations.
- 1.4 The tables in *MCOB 1 Annex 5.1.6G* provide non-exhaustive guidance as to how the obligations imposed under the *MCD* relate to *MCOB* provisions. In general, *MCOB* applies as follows:
- (1) In relation to an *incoming EEA firm* acting as an *MCD credit intermediary* on a branch basis, all provisions of *MCOB* that apply to *MCD credit intermediaries* may apply, except for the provisions in Table 2.

- (2) In relation to an *incoming EEA firm* acting as an *MCD credit intermediary* on a *cross-border services* basis, all provisions of *MCOB* that apply to *MCD credit intermediaries* may apply, except for the provisions in Tables 1 and 2.
- (3) In relation to an *EEA branch* of a *UK firm* acting as an *MCD credit intermediary*, the provisions in Table 2 (and only those provisions) may apply in relation to the *firm's MCD credit intermediation activity* in that *EEA State*.

1.5 *Incoming EEA firms* should also refer to the general application provisions in *MCOB* 1.3 and the application provisions in each chapter of *MCOB*, which set out how *MCOB* applies to *MCD credit intermediaries* in general.

1.6 Tables 1 and 2 belong to *MCOB* 1 Annex 5.1.4G.

Table 1: *MCOB* provisions relating to *MCD* obligations that apply to *MCD credit intermediaries*, for which Host State rules apply in relation to an incoming *EEA firm* doing business through branches

MCD article	Description	MCOB provisions
7(1)	Obligation to act honestly, fairly, transparently and professionally in the interests of consumers.	<i>MCOB</i> 2.5A.1R
8	Obligation to provide information free of charge to consumers.	<i>MCOB</i> 2A.6
10	General provisions applicable to advertising and marketing (obligation to require communications are fair, clear and not misleading).	<i>MCOB</i> 3A.2
11	Standard information to be included in advertising.	<i>MCOB</i> 3A.5
13	General information (to be made available about credit agreements).	<i>MCOB</i> 3B
14	Pre-contractual information.	<i>MCOB</i> 5A
15	Information requirements concerning credit intermediaries and appointed representatives.	<i>MCOB</i> 4.4A.4R, 4.4A.8R, 4.4A.9R, 4.4A.12R and 4A.1
16	Adequate explanations.	<i>MCOB</i> 4A.2

17	Calculation of the <i>APRC</i> .	<i>MCOB</i> 10A
20	Disclosure and verification of consumer information.	<i>MCOB</i> 11A.1 and 11A.3
22	Standards for advisory services.	<i>MCOB</i> 4A.3, 4.4A.4R(1)(a) and (3), <i>MCOB</i> 4.4A.9R, 4.4A.12R and <i>MCOB</i> 4.7A

Table 2: MCOB provisions relating to MCD obligations that apply to MCD credit intermediaries, for which Home State rules apply in relation to all incoming EEA firms

MCD article	Description	MCOB provisions
7(2) – (4)	Remuneration not impeding obligation to act honestly, fairly, transparently and professionally in the interests of consumers, or in the consumer's best interests when giving advice.	<i>MCOB</i> 2A.1.1R(2) and <i>MCOB</i> 2A.1.4R
12	Tying and bundling practices.	<i>MCOB</i> 2A.2.1R and 2A.2.2G
27	Information on changes in the borrowing rate.	<i>MCOB</i> 7.6.28R

Annex D

Amendments to the Supervision manual (SUP)

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

13A **Application of the Handbook to Incoming EEA Firms**
Annex
1G

1. The table below summarises the application of the <i>Handbook</i> to an <i>incoming EEA firm</i> .		
...		
...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>MCOB</i>	Applies where the activity is carried on with or for a <i>customer</i> resident in the <i>United Kingdom</i> or another <i>EEA State</i> at the time that the activity is carried on, but see the territorial scope in <i>MCOB 3.3A 1.3.1AR</i> and <i>MCOB 1 Annex 5</i> .	Applies where the activity is carried on with or for a <i>customer</i> resident in the <i>United Kingdom</i> at the time that the activity is carried on but see <i>MCOB 1.3.4R</i> (Distance contracts entered into from an establishment in another EEA State) and <i>MCOB 3.3A</i> , <i>MCOB 1.3.1AR</i> and <i>MCOB 1 Annex 5</i> .
...		

13A **Matters reserved to a Home State regulator**
Annex
2G

...

Requirements under <i>MCD</i>	
...	
11M	Ensuring compliance with the obligations in articles 7(1), 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39 of the <i>MCD</i> by <i>EEA firms</i> providing <i>cross border services</i> is the responsibility of the <i>Home State</i> .
...	