

**HANDBOOK ADMINISTRATION (DATA PROTECTION) INSTRUMENT 2018****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 provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 25 May 2018.

**Amendments to the Handbook**

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

(1)	(2)
Glossary of definitions	Annex A
Code of Conduct sourcebook (COCON)	Annex B
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Consumer Credit sourcebook (CONC)	Annex D
Prospectus Rules (PR)	Annex E

**Citation**

- E. This instrument may be cited as the Handbook Administration (Data Protection) Instrument 2018.

By order of the Board  
24 May 2018

## Annex A

### Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

*data protection legislation* the General Data Protection Regulation (EU) No 2016/679 and the Data Protection Act 2018.

## Annex B

### Amendments to the Code of Conduct sourcebook (COCON)

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

## 1 Application and purpose

### 1.1 Application

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To whom does it apply?

...

#### 1.1.2 R Table: To whom does COCON apply?

Persons to whom COCON applies	Comments
...	...
(6) Any <i>employee</i> of a <i>relevant authorised person</i> not coming within another row of this table, except one listed in column (2).	... (o) data controllers or processors under <del>the Data Protection Act 1998</del> <u>data protection legislation</u> ;

## 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.

**6 Disclosure at the offer stage**

...

**6.9 Regulated sale and rent back agreements**

...

Data protection

- 6.9.9 G *Firms* will need to consider the implications of ~~the Data Protection Act 1998~~ data protection legislation under which personal data that a *firm*, as data controller, holds about its *customer* cannot be disclosed to a third party without ~~his~~ their consent. In practice the *firm* is likely to need the *SRB agreement seller's* consent to disclosing the matters covered by *MCOB 6.9.8R* to the relevant *mortgage lender* or *home purchase provider*.

...

**11A Additional MCD responsible lending requirements**

...

**11A.3 Obtaining information for, and assessment of, affordability from the consumer and rejecting an application**

...

- 11A.3.2 G ~~Under the Data Protection Act 1998, an~~ An *MCD mortgage lender* must inform a *consumer* in advance if a database is to be consulted in conducting any assessment of affordability for an *MCD regulated mortgage contract*.

[**Note:** article 18(5)(b) of the *MCD*]

- 11A.3.3 R (1) Where an *MCD mortgage lender* rejects a *consumer's* application for an *MCD regulated mortgage contract*, the *MCD mortgage lender* must inform the *consumer* without delay:
- (a) of the rejection and, where applicable, that the decision is based on automated processing of data; and
  - (b) where the rejection is based on the result of the database consultation, of the result of such consultation and of the particulars of the database consulted.

[**Note:** article 18(5)(c) of the *MCD*]

- (2) No obligation under (1) shall be interpreted in a manner which contravenes ~~the Data Protection Act 1998~~ data protection legislation.

...

**13 Arrears, payment shortfalls and repossessions: regulated mortgage contracts and home purchase plans**

...

**13.5 Dealing with a customer in arrears or with a sale shortfall on a regulated mortgage contract**

...

Pressure on customers

...

- 13.5.6 G In relation to *MCOB* 13.5.3R, a *firm* should also have regard to the general law, including ~~the Data Protection Act 1998~~ data protection legislation, on the disclosure of information to third parties.

## Annex D

### Amendments to the Consumer Credit sourcebook (CONC)

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

## 2 Conduct of business standards: general

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## 2.5 Conduct of business: credit broking

...

Guidance on unfair business practices

### 2.5.9 G ...

- (7) A *customer's* personal data must be processed fairly and lawfully and only for specified purposes. While it may be possible to pass ~~sensitive personal data~~ special categories of personal data in specified and limited circumstances to certain third parties without the *customer's* consent where a condition of ~~the Data Protection Act 1998 is satisfied~~ data protection legislation applies, a *firm* (other than where it is under a statutory obligation to pass personal data to a third party) should generally seek the *customer's* consent before passing such personal data to a third party.

[Note: paragraph 3.9t (box) of *CBG*]

...

...

## 7 Arrears, default and recovery (including repossessions)

...

### 7.13 Data accuracy and outsourced activities

Data accuracy

- 7.13.1 G The obtaining, recording, holding and passing on of information about individuals for the purposes of tracing a *customer* and/or recovering a debt due under a *credit agreement* or a *consumer hire agreement* or a *P2P agreement* will involve the processing of personal data. Accordingly, *firms* processing such data are data controllers or data processors and are obliged to comply with ~~the Data Protection Act 1998~~ data protection legislation and, in particular, to adhere to the ~~eight~~ data protection principles.

[Note: paragraph 3.16 of *DCG*]

...

**8 Debt advice**

...

**8.9 Lead Generators: including firm responsibility in dealing with lead generators**

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8.9.2 R A *firm* must take reasonable steps before entering into an agreement to accept sales leads from a *lead generator* for *debt counselling* or *debt adjusting* or *providing credit information services* to ensure:

...

- (2) that the *lead generator* is registered with the Information ~~Commissioner's~~ Commissioner's Office under the Data Protection Act 1998 *data protection legislation*; and

...

...

8.9.4 R A *firm* must take reasonable steps, where it has agreed to accept sales leads from a *lead generator* for *debt counselling* or *debt adjusting* or *providing credit information services*, to ensure that the *lead generator*:

...

- (11) complies with the Privacy and Electronic Communications (EC Directive) Regulations 2003 and ~~the Data Protection Act 1998~~ *data protection legislation*;

[**Note:** paragraph 3.11 of *DMG*]

...

## Guidance for firms

...

8.9.7 G In complying with *CONC* 8.9.4R a *firm* that agrees with a *lead generator* to accept sale leads should:

- (1) check with the Information Commissioner's Office that the *lead generator* is appropriately registered under ~~the Data Protection Act 1998~~ *data protection legislation*; and

...

...

## 13 Guidance on the duty to give information under sections 77, 78 and 79 of the Consumer Credit Act 1974

### 13.1 Application

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The request and the duty to give

- 13.1.3 G (1) A request must be from or on behalf of the *borrower* under sections 77 and 78 or from or on behalf of a *hirer* under section 79. This would include a friend or relative, a solicitor, a claims management company or other third party. Under ~~the Data Protection Act 1998 and the Data Protection Principles~~ *data protection legislation*, the *lender* or *owner* is not allowed to reveal such information to a third party without the authority of the *borrower* or *hirer*. It should therefore satisfy itself that the *person* making the request has proper authority to obtain the information. If a copy of such authority is not enclosed with the request, the *lender* or *owner* is entitled to reply by asking to see the authority.

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## Annex E

## Amendments to the Prospectus Rules (PR)

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

## 1 Preliminary

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### 1.2 Requirements for a prospectus

1.2.1 Sections 85 and 86 of the *Act* provide for when a *prospectus* approved by the *FCA* will be required:

...		
86	Exempt offers to the public	
	...	
	(9)	Investment firms and credit institutions <u>which are authorised persons</u> must communicate their classification of their clients as being or not being qualified investors on request to an issuer, subject to complying with <u>data protection legislation</u> <del>the Data Protection Act 1998 or any directly applicable EU legislation relating to data protection.</del>
	...	