

CONSUMER CREDIT (HIGH-COST CREDIT) 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 19 March 2019, except for:
- (1) Annex A, which comes into force on 19 December 2018; and
 - (2) Parts 1, 3, 5 and 7 of Annex B, which come into force on 19 December 2018.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Consumer Credit sourcebook (CONC) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Consumer Credit (High-Cost Credit) Instrument 2018.

By order of the Board
13 December 2018

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

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

retail revolving credit a *regulated credit agreement* which is a *borrower-lender-supplier agreement* for *running-account credit* to finance the acquisition of *goods or goods* and services from:

- (1) the *lender*; or
- (2) from a supplier that is in a limited network of suppliers under a direct commercial agreement with the *lender*,

and where the *credit* cannot be used for any other purpose, including an agreement for a store card but excluding an agreement for a credit card.

Annex B

Amendments to the Consumer Credit sourcebook (CONC)

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

Part 1: Comes into force on 19 December 2018

3 Financial promotions and communications with customers

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3.10 Financial promotions not in writing

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3.10.3 G Firms ~~are reminded~~ should note that:

...

- (3) The FCA takes the view that sections 48 and 49 of the CCA mean that any discussions about new borrowing or refinancing with a customer that take place in the borrower's home must be initiated by the borrower, either in the form of a specific written request or, only where the individual is in the borrower's home other than for the purpose of engaging in such discussion, in the form of an oral invitation.
- (4) The FCA has considered the potential for the use of "umbrella requests to visit". "Umbrella requests" or "permissions to call" tend to be signed by a borrower when entering into a borrower-lender agreement (or shortly after) and purport to allow the lender to visit the borrower's home to discuss other borrowing at any time, over the duration of the agreement or beyond. The FCA takes the view that such "umbrella requests" do not meet the requirements of the CCA. "Umbrella requests" create open-ended opportunities for firms to raise the prospect of additional borrowing, without the borrower having specifically requested or even considered it.
- (5) A valid request is one made on the instigation of the borrower when the borrower wants to discuss a borrower-lender agreement. The FCA would expect to see the following for a firm to comply with sections 48 and 49 of the CCA:
 - (a) the request should be a positive act by the borrower taken specifically for the purpose of discussing other borrowing;
 - (b) the visit should be made in response to that request. Where a request is reasonably specific on timing, the visit should be within that timing. Where the request is not reasonably specific on timing, any visit should take place within a

reasonable proximity to that request for it to be clear that the visit is being made in response to that request; and

(c) there should be a separate request made for each agreement or contractual variation.

(6) In the FCA's view this would not stop an agent or representative of a firm who has called on a borrower with the sole purpose of collecting on an existing loan from discussing new or additional borrowing if the borrower asks them to do so during the collection visit. However, if the agent or representative raised the topic of new or additional finance, we consider it would be very difficult for them to establish that they had not visited with that purpose.

(7) We expect that firms should be able to rely on their existing procedures for receiving written requests from new customers in relation to existing borrowers.

Failure to comply

3.10.4 G Failure to comply with section 49 of the CCA is a criminal offence. Only a court can determine the meaning of sections 48 and 49 of the CCA.

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Part 2: Comes into force on 19 March 2019

4 Pre-contractual requirements

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4.2 Pre-contract disclosure and adequate explanations

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4.2.5 R ...

(3) The adequate explanation and advice in (1) may be given orally or in writing except where (4) or (4A) applies.

[Note: section 55A(3) of CCA]

...

(4A) The explanation of the matters in CONC 4.2.15R(3A) must be given to the customer both orally and in a durable medium.

- (5) Paragraphs (1) to (4A) do not apply to a *lender* if a *credit broker* has complied with those sub-paragraphs in respect of the agreement.

[**Note:** section 55A(5) of CCA]

...

...

- 4.2.11 R Before a *lender* concludes that CONC 4.2.5R (1) to CONC 4.2.5R (4A) do not apply to it in relation to a *regulated credit agreement* by virtue of CONC 4.2.5R (5), the *lender* must take reasonable steps to satisfy itself that an explanation of that agreement complying with CONC 4.2.5 R has been provided to the *customer* by the *credit broker*.

...

...

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*:

...

- (e) except in relation to retail revolving credit, the limitations on any zero percentage or low interest or other introductory offer; and

...

...

- (3A) for a home credit loan agreement that would refinance an existing home credit loan agreement and also involve an increase in the amount of principal outstanding, and where an alternative option could be entering into a separate home credit loan agreement with the lender for the amount of the additional principal, the information must include an explanation of the difference, if any, between the weekly amount payable and the total amount repayable for a refinanced loan as compared to the situation where the borrower enters into a separate, concurrent loan. If the regular period after which the next payment is due is not weekly but a different period, then the lender must refer to that other period.

...

- (7) for a *credit agreement* which includes a condition requiring a guarantor, the requirement for the *customer* to provide *security* in the form of a guarantee;
- (8) for *retail revolving credit*, the limitations that apply to any zero percentage or low interest, introductory or other promotional offer, including the circumstances in which interest or charges could become payable and how these would be calculated if those circumstances arose, including the date from which interest or charges would accrue, the rate of that interest or those charges and the amount of principal on which the interest would be charged. If, for example, failing to meet the conditions for the application of the offer would result in interest being charged at a higher rate, or from the date of the purchase of the *goods* or services or on the total purchase price of the *goods* or services without account being taken of *repayments* made during the offer period, this must be included in the adequate explanation.

[Note: paragraph 4.26c of *CBG*]

[Note: paragraph 3.13 of *ILG*]

- 4.2.16 G (1) Where a *customer* does not have a good understanding of the English language, the *lender* or *credit broker* may need to consider alternative methods of providing relevant information concerning the explanation required by *CONC 4.2.5 R* in order for the *customer* to make an informed decision, such as, providing the information to a person with such understanding who can assist the *customer*, for example, a friend or relative.

[Note: paragraph 3.4 (box) of *ILG*]

- (2) The explanation in *CONC 4.2.15R(3A)* should enable a *customer* to easily understand the different costs of refinancing as opposed to keeping the existing loan and taking out an additional concurrent loan, for example by indicating whether the periodic instalments and/or the total amounts payable are higher or lower.

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Part 3: Comes into force on 19 December 2018

6 Post contractual requirements

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6.7 Post contract: business practices

Application

6.7.1 R ...

(4) CONC 6.7.2R to 6.7.3G do not apply to retail revolving credit.

...

Business practices: credit cards and retail revolving credit

6.7.3A R A firm must monitor a retail revolving credit customer's or a credit card customer's repayment record and any other relevant information held by the firm and take appropriate action where there are signs of actual or possible financial difficulties.

6.7.3B G (1) Circumstances in which there are signs of actual or possible financial difficulties include where there is a significant risk of one or more of the matters set out in CONC 1.3.1G(1) to (7) (Guidance on financial difficulties) occurring in relation to the retail revolving credit customer or credit card customer.

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Credit card and ~~store card~~ retail revolving credit requirements

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6.7.7 R A firm must not increase, nor offer to increase, ~~the~~ a customer's credit limit on a credit card ~~or store card~~ or retail revolving credit agreement where:

...

Part 4: Comes into force on 19 March 2019

6.7.8 R A firm under a retail revolving credit agreement, or a regulated credit agreement for a credit card, ~~or a store card~~ must:

...

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 increase comes into effect, except where:~~ This rule applies to a regulated credit

agreement for a credit card and to a retail revolving credit agreement.

(2) A firm must notify the customer of a proposed increase in the credit limit under the agreement:

(a) in the case of a regulated credit agreement for a credit card or a store card, at least 30 days before the increase comes into effect; and

(b) in the case of a retail revolving credit agreement (other than an agreement for a store card), at least 28 days before the increase comes into effect,

except in the circumstances described in (3).

(3) The notification in (2) is not required where:

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

(a)

(2) the increase is proposed by the firm, but the customer agrees

(b) to it at that time and wishes it to come into effect in less than 30 days or 28 days (as the case may be).

[Note: paragraph 6.17 of ILG]

Part 5: Comes into force on 19 December 2018

6.7.10 R Where a customer is at risk of financial difficulties, a firm under a retail revolving credit agreement or a regulated credit agreement for a credit card or store card must, other than where a promotional rate of interest ends, not increase the rate of interest under the agreement.

[Note: paragraph 6.10 of ILG]

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Part 6: Comes into force on 19 March 2019

6.7.16A R (1) This rule applies only to retail revolving credit agreements to which Part 6 of the Payment Services Regulations does not apply.

(2) Where a customer has the benefit of a zero-percentage or low interest, introductory or promotional offer that depends on the customer meeting certain conditions, a firm must provide notice to

the customer reminding them of any action they need to take to meet the conditions of the offer and the date by which this action must be taken, within a reasonable period before that date, taking account of the time at which the information may be most useful to the customer.

This notice must be provided in an appropriate medium (taking into account any preferences expressed by the customer about the medium of communication between the firm and the customer), in plain language and sufficiently prominent, so that it is likely to be seen and understood by the customer.

...

Credit cards and retail revolving credit: persistent debt

Part 7: Comes into force on 19 December 2018

6.7.27 R (1) This *rule* applies to a *firm* with respect to communicating with a *customer* about, and receiving payments or exercising rights under, a ~~credit card agreement~~ regulated credit agreement for a credit card or retail revolving credit, if the *firm* assesses that the amount the *customer* has paid to the *firm* towards the credit card balance or retail revolving credit balance over the immediately preceding 18-month period comprises a lower amount in principal than in interest, fees and charges.

...

- (3) The *rule* in paragraph (1) does not apply:
- (a) where the balance on the credit card or under the retail revolving credit agreement was below £200 at any point in the 18-month period; or
 - (b) where the *firm* has sent a communication to the *customer* in accordance with paragraph (4) in the preceding 18 months in relation to the credit card or retail revolving credit facility; or

...

- (4) Where the *rule* in paragraph (1) applies in relation to a credit card *customer* or a retail revolving credit customer, a *firm* must, in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the *firm* and the *customer*) and in plain language:

...

- 6.7.28 G (1) For the purposes of *CONC* 6.7.27R, *CONC* 6.7.30R, *CONC* 6.7.34G, *CONC* 6.7.39R and *CONC* TP 8, “principal” comprises only the amount of *credit* drawn down by the *customer* under the credit card agreement or retail revolving credit agreement, and does not include any interest, fees or charges added to the account.
- ...
- 6.7.29 R (1) This *rule* applies in respect of a credit card *customer* or a retail revolving credit customer to whom a *firm* is required to have sent a communication under *CONC* 6.7.27R(4).
- ...
- 6.7.30 R (1) This *rule* applies:
- (a) in respect of a credit card *customer* or retail revolving credit customer to whom a *firm* is required to have sent a communication under *CONC* 6.7.27R (1); and
- (b) where the amount that the *customer* has paid to the *firm* towards the credit card or retail revolving credit balance, over the 18-month period immediately following the date on which the requirement to send a communication under *CONC* 6.7.27R(1) arose, comprises a lower amount in principal than in interest, fees and charges.
- (2) This *rule* does not apply:
- (a) where the balance on the credit card or retail revolving credit was below £200 at any point in the 18-month period;
- (b) to any part of the balance on the credit card or retail revolving credit that has previously been subject to the requirements of paragraph (3).
- (3) A *firm* must take reasonable steps to assist a *customer* who falls under paragraph (1) to repay the balance on their credit card or retail revolving credit as it stands at the end of the period specified in that paragraph more quickly and in a way that does not adversely affect the *customer's* financial situation.
- ...
- 6.7.31 R Where a *firm* is required to assist a *customer* to repay more quickly under *CONC* 6.7.30R(3), a the firm must contact the *customer* to:
- ...
- (4) inform the *customer* that if the *firm* does not receive a response to the request under paragraph (3) in the time specified, the *firm* will

- suspend or cancel the use of the credit card or retail revolving credit facility.
- 6.7.32 G (1) The options a *firm* may set out under *CONC* 6.7.31R(3) in relation to a credit card or retail revolving credit include, for example, increasing the amount of *monthly* payments ~~on the credit card~~ under a repayment plan, or transferring the balance ~~on the credit card~~ to a fixed-sum unsecured personal loan.
- ...
- 6.7.33 G ...
- (2) The *FCA* expects a “reasonable period” under paragraph (1), *CONC* 6.7.37R and *CONC* 6.7.38G to usually be between three and four years. Only in exceptional circumstances should the repayment period extend beyond four years; and even in such cases, the extension should not be significant and there should be no additional cost to the *customer* as a result of the repayment period extending beyond four years. When setting the reasonable repayment period, firms may take into account the amount of the outstanding balance and minimum repayment amount. For example, where balances are relatively low this could point to a shorter reasonable repayment period.
- 6.7.34 G References in *CONC* 6.7.27R, *CONC* 6.7.31R(3) and *CONC* 6.7.32G(1) to a *customer* increasing payments to the *firm* include circumstances where the amount a *customer* pays remains fixed at the same amount the *customer* was previously paying but, assuming there is no further spending ~~on the card~~ on the account, represents an increase in the percentage of the outstanding principal that is repaid each *month* as the balance reduces.
- 6.7.35 R (1) Where a *customer* does not respond to a *firm’s* request under *CONC* 6.7.31R(3), a *firm* must, at the end of the period specified in the request, suspend or cancel the *customer’s* use of the credit card or retail revolving credit facility.
- (2) Where a *customer* confirms that one or more of the options proposed under *CONC* 6.7.31 R(3) is *sustainable*, but states that they will not make the increased payments, a *firm* must suspend or cancel the *customer’s* use of the credit card or retail revolving credit facility.
- (3) Where a *firm* suspends the *customer’s* use of the credit card or retail revolving credit facility under paragraph (1) and the *customer* subsequently responds to the *firm’s* request under *CONC* 6.7.31R(3), the *firm* may withdraw the suspension if this would be in line with the other provisions in this section.
- 6.7.36 G Where a *firm* suspends or cancels the *customer’s* use of the credit card or retail revolving credit facility under *CONC* 6.7.35R the *firm* is not, unless

the *customer* responds to the *firm's* request under *CONC* 6.7.31R(3), required to take further steps under *CONC* 6.7.37R to *CONC* 6.7.39R. *Firms* are however reminded of *CONC* 6.7.3AR, which requires *firms* to take appropriate action where there are signs of actual or possible financial difficulties, and *CONC* 7.3.4R, which requires *firms* to treat *customers* in default or arrears difficulties with forbearance and due consideration.

...

- 6.7.38 G ...
- (2) The *FCA* expects that it will generally be necessary for *firms* to suspend or cancel the use of the credit card or retail revolving credit facility of a *customer* that the *firm* is required to treat with forbearance under *CONC* 6.7.37R with a view to ensuring the *customer* repays the outstanding balance in a reasonable period. This expectation does not apply, however, where the suspension or cancellation of use of the credit ~~card~~ facility would cause a significant adverse impact on the *customer's* financial situation, for example where the *customer* depends on the credit ~~card~~ facility for meeting essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills) or the purchase of essential items (which may include but is not limited to items such as school uniform, baby essentials or a refrigerator). Equally, the *FCA* considers that it will generally not be appropriate to withdraw the suspension of the use of a *customer's* credit ~~card~~ facility under *CONC* 6.7.35R(3) if the *firm* is required to treat the *customer* with forbearance under *CONC* 6.7.37R.
- 6.7.39 R Where a *firm* does not suspend or cancel the use of the credit card or retail revolving credit facility of a *customer* falling under *CONC* 6.7.30R, the *firm* must take reasonable steps to ensure that the *customer* does not, in the 18-month period immediately following, repay an amount to the *firm* towards the credit card or retail revolving credit balance that comprises a lower amount in principal than in interest, fees and charges in relation to any spending on the ~~card~~ facility in this period.

After CONC TP 7A (Transitional provisions in relation to the Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018 (FCA 2018/7)) insert the following new transitional provisions. The text is not underlined.

CONC TP 7B (Transitional provisions in relation to the Consumer Credit (High-Cost Credit) Instrument 2018

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
7B.1	CONC 6.7.1(4)R, CONC 6.7.3AR to CONC 6.7.3DG, and CONC 6.7.27R to CONC 6.7.40G	R	A <i>firm</i> may comply with CONC as if the changes made by the Consumer Credit (High-Cost Credit) Instrument 2018 had not been made until (but not including) 19 June 2019. But where a <i>firm</i> elects, in relation to <i>retail revolving credit</i> , to comply, before that date, with CONC as amended by that Instrument, it must comply with the relevant provisions in full. Consequently, the time periods set out in the <i>rules</i> to which this transitional provision applies are to be determined by reference to the date on which the <i>firm</i> first acted in compliance (or purported compliance) with those <i>rules</i> .	19 December 2018 to 18 June 2019	19 December 2018
7B.2	CONC 6.27R to CONC 6.40G	G	The effect of TP 7B.1 is that no later than 19 June 2019 <i>firms</i> must start to look back at the repayment records for <i>retail revolving credit customers</i> over the preceding 18-month period and identify any <i>customers</i> that fall within the application of CONC 6.7.27R (and must thereafter continue to do so on at least a <i>monthly</i> basis). <i>Firms</i> must then send those <i>customers</i> a	19 December 2018 to 18 June 2019	19 December 2018

		<p>communication in accordance with <i>CONC 6.7.27R(3)</i>. Between 9 and 10 <i>months</i> after this communication is required to be sent, <i>CONC 7.7.29R</i> requires <i>firms</i> to take the additional steps set out in that <i>rule</i> with respect to that group of <i>customers</i>. 18 <i>months</i> after the <i>CONC 6.7.27R</i> communication is required to be sent, <i>CONC 6.7.30R</i> to <i>CONC 6.7.40G</i> potentially require the <i>firm</i> to take the further steps described in those <i>rules</i> in relation to that group of <i>customers</i> where <i>CONC 6.7.30R</i> applies. <i>CONC 6.7.30R</i> applies only where the amount that <i>customer</i> has paid to the <i>firm</i> towards the balance on the <i>retail revolving credit</i> account, over the 18-<i>month</i> period following the date on which the <i>CONC 6.7.27R</i> communicated was triggered, comprises a lower amount in principal than in interest, fees and charges. This means that the earliest date on which a firm may have obligations under <i>CONC 6.7.30R</i> is 19 December 2020 (except as mentioned below). However, <i>firms</i> are not required to delay implementation to the end of the 6-<i>month</i> period set out in <i>TP 7B.1</i>: where a <i>firm</i> takes a step in compliance with one of the <i>rules</i> in question before 19 June 2019 in relation to a particular <i>retail revolving credit agreement</i> (for example, carrying out the 18-<i>month</i> review), the time for taking subsequent steps required to be taken under those <i>rules</i> is to be</p>		
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			determined by reference to the date of that first step, and not by reference to 19 June 2019 (or some later date).		
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