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

... 

3.10 Financial promotions not in writing

... 

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.

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

…

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.

…

Part 3: Comes into force on 19 December 2018

6 Post contractual requirements

…
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.

…

Credit card and store card retail revolving credit requirements

…

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) 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 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]

…

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 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), 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)**

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<thead>
<tr>
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<tbody>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Handbook provision: coming into force</td>
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<td>7B.1</td>
<td>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</td>
<td>A firm 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 firm elects, in relation to retail revolving credit, 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 rules to which this transitional provision applies are to be determined by reference to the date on which the firm first acted in compliance (or purported compliance) with those rules.</td>
<td>19 December 2018 to 18 June 2019</td>
<td>19 December 2018</td>
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<td>7B.2</td>
<td>CONC 6.27R to CONC 6.40G</td>
<td>The effect of TP 7B.1 is that no later than 19 June 2019 firms must start to look back at the repayment records for retail revolving credit customers over the preceding 18-month period and identify any customers that fall within the application of CONC 6.7.27R (and must thereafter continue to do so on at least a monthly basis). Firms must then send those customers a</td>
<td>19 December 2018 to 18 June 2019</td>
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communication in accordance with CONC 6.7.27R(3). Between 9 and 10 months after this communication is required to be sent, CONC 7.7.29R requires firms to take the additional steps set out in that rule with respect to that group of customers. 18 months after the CONC 6.7.27R communication is required to be sent, CONC 6.7.30R to CONC 6.7.40G potentially require the firm to take the further steps described in those rules in relation to that group of customers where CONC 6.7.30R applies. CONC 6.7.30R applies only where the amount that customer has paid to the firm towards the balance on the retail revolving credit account, over the 18-month period following the date on which the CONC 6.7.27R 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 CONC 6.7.30R is 19 December 2020 (except as mentioned below). However, firms are not required to delay implementation to the end of the 6-month period set out in TP 7B.1: where a firm takes a step in compliance with one of the rules in question before 19 June 2019 in relation to a particular retail revolving credit agreement (for example, carrying out the 18-month review), the time for taking subsequent steps required to be taken under those rules is to be
determined by reference to the date of that first step, and not by reference to 19 June 2019 (or some later date).