

**CONSUMER CREDIT AND MORTGAGES (HIGH NET WORTH) INSTRUMENT 2022****Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) 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 (General rule-making power);
  - (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 25 November 2022.

**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):

(1)	(2)
Glossary of definitions	Annex A
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex B
Consumer Credit sourcebook (CONC)	Annex C

- E. The FCA confirms and remakes the defined expression ‘*Regulated Activities Order*’ in the Glossary of definitions.

**Amendments to material outside the Handbook**

- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex D to this instrument.

**Citation**

- G. This instrument may be cited as the Consumer Credit and Mortgages (High Net Worth) Instrument 2022.

By order of the Board  
24 November 2022

## Annex A

### Amendments to the Glossary of definitions

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

Amend the following definition as shown:

- exempt article 3(1)(b) credit agreement* an *article 3(1)(b) credit agreement* that is:
- (a) an *MCD exempt bridging loan*;
  - (b) an *MCD exempt credit union loan*;
  - (c) an *MCD exempt overdraft loan*; ~~or~~
  - (d) an *MCD exempt lifetime mortgage*; ~~or~~ or
  - (e) an exempt agreement for the purposes of Chapter 14A of the *Regulated Activities Order* pursuant to *article 60H* of that Order.

## Annex B

### Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, striking through indicates deleted text.

#### 14 MCD article 3(1)(b) credit agreements

##### 14.1 Handbook provisions which apply in respect of MCD article 3(1)(b) credit agreements

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- 14.1.7 R The following provisions do not apply to an *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* where the conditions in *CONC 1.2.10R(1) and (2)* are fulfilled: *MCOB 7.5* (mortgages: statements) and *MCOB 13* (arrears, payment shortfalls and repossessions) (except for *MCOB 13.3.1AR* to *MCOB 13.3.1BG*, *MCOB 13.3.2AR* to *MCOB 13.3.8G*, and *MCOB 13.6.1R* to *MCOB 13.6.2G*, which apply even where those conditions are fulfilled).

~~[Note: article 60H(2) of the *Regulated Activities Order*]~~

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## Annex C

## Amendments to the Consumer Credit sourcebook (CONC)

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

## 1 Application and purpose and guidance on financial difficulties

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### 1.2 Who? What? Where?

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Application to MCD article 3(1)(b) creditors and MCD article 3(1)(b) credit intermediaries

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- 1.2.10 R (1) *CONC 1.2.8R and the rules applied by CONC 1.2.8R do not apply to an MCD article 3(1)(b) creditor or MCD article 3(1)(b) credit intermediary where: ~~the MCD article 3(1)(b) credit agreement would be an exempt agreement pursuant to article 60H(1) of the Regulated Activities Order but for the conditions in paragraph (2) are met.~~*
- (a) ~~paragraph (1)(b)(ii)(bb) of article 60H of the Regulated Activities Order (which relates to high net worth borrowers); or~~
- (b) ~~article 60HA of the Regulated Activities Order (exemptions not permitted under the MCD).~~
- (2) ~~Agreements of the kind referred to in paragraph (1)(a) are excluded from CONC 1.2.8R and the rules applied by CONC 1.2.8R only if the rules in CONC App 1.4.1R to CONC App 1.4.4R, and the rules to which those rules refer, are complied with. The conditions referred to in paragraph (1) are:~~
- (a) the agreement is either secured on land or for credit which exceeds £60,260;
- (b) the agreement includes a declaration, made by the borrower, which provides that the borrower agrees to waive the protections and remedies applicable to regulated credit agreements except for those that transposed or implemented the MCD as it applied to the

United Kingdom before IP completion day, and which complies with CONC App 1.4;

- (c) a statement has been made in relation to the income or assets of the borrower which complies with CONC App 1.4; and
- (d) a copy of the statement required by sub-paragraph (c) was provided to the lender before the agreement was entered into.

[**Note:** article 60H(2) of the *Regulated Activities Order*]

1.2.11 G ~~The purpose of CONC 1.2.10R(1)(a) is to enable a high net worth borrower under an MCD article 3(1)(b) credit agreement to waive the protections and remedies applicable to regulated credit agreements, except for those that transpose or implement the MCD. The MCD does not contain an exemption or derogation in respect of borrowing above a certain amount, unlike the Consumer Credit Directive: the EUR75,000 threshold in that Directive has been implemented in the form of the exemption for high net worth borrowers in article 60H of the Regulated Activities Order. The regulatory status of article 3(1)(b) credit agreements entered into with high net worth individuals is dependent on several factors due to the different treatment of these agreements over time.~~

- (1) An article 3(1)(b) credit agreement is exempt under article 60H of the Regulated Activities Order:
  - (a) if at the time it was entered into, the conditions set out in article 60H(1) were met; and
  - (b) if entered into on or after 21 March 2016 (whether before or after 21 July 2022), it was outside the scope of the MCD as implemented in the United Kingdom (such agreements are currently set out in section 423A(3) of the Act and article 60HA(2) of the Regulated Activities Order).
- (2) Where an article 3(1)(b) credit agreement not falling within paragraph (1)(b) is entered into on or after 21 July 2022:
  - (a) if the borrower is UK resident or treated as present in the United Kingdom when the agreement is entered into (see PERG 2.7.19J), the agreement is an exempt agreement where the conditions in article 60H(1) of the Regulated Activities Order are met.

(b) if the borrower is not UK resident or treated as present in the United Kingdom when the agreement is entered into, the agreement will not be an exempt agreement under article 60H. The borrower can, however, elect to waive the protections and remedies applicable to regulated credit agreements except for those that transposed or implemented the MCD as it applied to the United Kingdom before IP completion day. This will mean the agreement will not be subject to CONC but some rules in MCOB will still apply (see CONC 1.2.9G).

(3) An article 3(1)(b) credit agreement not falling within paragraph (1) entered into on or after 21 March 2016 and before 21 July 2022 cannot be an exempt agreement under article 60H, but the borrower could elect to waive the protections and remedies applicable to regulated credit agreements except those that transposed or implemented the MCD. This will mean the agreement will not be subject to CONC but some rules in MCOB will still apply (see CONC 1.2.9G).

(4) The ability of a borrower to waive the protections and remedies applicable to regulated credit agreements – except those that transposed or implemented the MCD – is set out in CONC 1.2.10R (as it applied when the agreement was entered into).

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**App 1 Total charge for credit rules; and certain exemptions**

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**App 1.4 Exemption for high net worth borrowers and hirers and exemption relating to businesses**

Exemption for high net worth borrowers and hirers

1.4.1 R (1) For the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order* ~~and of CONC 1.2.10R(2)~~, a declaration made by the *borrower* or *hirer* which provides that the *borrower* or *hirer* agrees to forgo the protection and remedies that would be available to the *borrower* or *hirer* if the agreement were a *regulated credit agreement* or a *regulated consumer hire agreement* must comply with CONC App 1.4.2R and either CONC App 1.4.6R or, in the case of an *MCD article 3(1)(b) credit agreement*, ~~CONC App 1.4.6AR.~~

- (1A) For the purposes of CONC 1.2.10R, a declaration made by the borrower which provides that the borrower agrees to waive the protections and remedies applicable to regulated credit agreements, except for those that transposed or implemented the MCD as it applied to the United Kingdom before IP completion day, must comply with CONC App 1.4.2R and CONC App 1.4.6AR.
- (2) For the purposes of articles 60H(1)(d) and 60Q(c) of the *Regulated Activities Order* and of ~~CONC 1.2.10R(2)~~ 1.2.10R, a statement in relation to the income or assets of the *borrower* or *hirer* (referred to in this section as a statement of high net worth) must comply with *CONC App 1.4.3R*, *CONC App 1.4.4R* and *CONC App 1.4.7R*.
- (3) For the purposes of articles 60H(1)(e) and 60Q(d) of the *Regulated Activities Order* and of ~~CONC 1.2.10R(2)~~ 1.2.10R, the statement in (2) must be made during the period of one year ending with the day on which the agreement was made.

1.4.2 R A declaration for the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order* and of ~~CONC 1.2.10R(2)~~ 1.2.10R shall

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Declaration by high net worth borrower or hirer

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1.4.6A R **Declaration by high net worth borrower under an MCD article 3(1)(b) credit agreement**

The declaration for the purposes of ~~article 60H(1)(e) of the *Regulated Activities Order*~~ CONC 1.2.10R must have the following form and content-

**“Declaration by high net worth borrower under an MCD article 3(1)(b) credit agreement**

**~~(article 60H(1)(e) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)~~**

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of ~~article 60H(1)(d) of the~~

~~Financial Services and Markets Act 2000 (Regulated Activities) Order 2001~~ CONC 1.2.10R in the *FCA's* Consumer Credit sourcebook.

I understand that by making this declaration I will not have the benefit of the protection and remedies that would be available to me under the Financial Services and Markets Act 2000, except for those that transposed or implemented the Mortgage Credit Directive (Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property).

(a) ~~the Financial Services and Markets Act 2000, except for those that transpose or implement the Mortgage Credit Directive, Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property, or~~

(b) ~~the Consumer Credit Act 1974,~~

~~if this were a regulated agreement under those Acts.~~

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Statement of high net worth

- 1.4.7 R A statement of high net worth for the purposes of articles 60H(1)(d) and 60Q(c) of the *Regulated Activities Order*, and CONC 1.2.10R, must have the following form and content:

**“Statement of High Net Worth**

**(articles 60H(1) and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/ CONC 1.2.10R\*)**

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## Annex D

### Amendments to the Perimeter Guidance manual (PERG)

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

## 2 Authorisation and regulated activities

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### 2.7 Activities: a broad outline

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High net worth exemption

2.7.19J G A *credit agreement* is an exempt agreement if:

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- (5) the connection between that statement and the *credit agreement* complies with *CONC* App 1.4; ~~and~~
- (6) a copy of that statement was provided to the *lender* before the agreement was entered into; and
- (7) (where the purpose of the agreement is to acquire or retain property rights in land or in an existing or projected building):
  - (a) a declaration has been made by the *borrower* which provides that either the *borrower* is *UK* resident or is treated as present in the *United Kingdom*;
  - (b) a copy of that declaration was provided to the *lender* before the agreement was entered into; and
  - (c) the agreement is entered into on or after 21 July 2022.

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2.7.19J-A G For the purposes of *PERG* 2.7.19JG(7)(a), a *borrower*:

- (1) is *UK* resident if the *borrower* (or the *borrower's* spouse or civil partner, when living with them on the date the agreement is entered into) has been present in the *United Kingdom* for at least 183 days during the continuous period of 365 days ending with the date the agreement is entered into;

- (2) is treated as present in the *United Kingdom* if, on the date the agreement was entered into, the *borrower*:
- (a) is in Crown employment (being employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision); and
  - (b) is present in a country or territory outside the *United Kingdom* for the purpose of performing activities in the course of that employment; or
  - (c) is living with their spouse or civil partner who is an individual falling within (a) and (b).

2.7.19J-AB G In *PERG* 2.7.19J-A(1) and (2)(c) the reference to spouse or civil partner excludes individuals who are separated under an order of a court of competent jurisdiction, are separated by deed of separation, or are otherwise separated in circumstances in which the separation is likely to be permanent.

2.7.19JA G The exclusion referred to in *PERG* 2.7.19JG may not (unless paragraph (7) of that provision applies) be available to a *firm* that is an *MCD firm* (see *PERG* 4.10A (Activities regulated under the Mortgage Credit Directive)).

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## **4 Guidance on regulated activities connected with mortgages**

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### **4.10A Activities within scope of the Mortgage Credit Directive**

General treatment for activities within scope of the Mortgage Credit Directive

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4.10A.2 G Article 4(4B) of the *Regulated Activities Order* says that where:

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4.10A.2A G Some *credit agreements* fall outside of the mortgages perimeter but are nevertheless covered by *MCD*. Specifically, the scope of *MCD* includes *credit agreements* with *consumers* that are not secured on residential land where their purpose is to acquire or retain property rights in land or in an existing or projected building.

As a result of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2022, article 4(4B) of the *Regulated*

Activities Order does not apply in respect of these credit agreements when entered into with high net worth borrowers on or after 21 July 2022. Such agreements can therefore now be exempt from the consumer credit lending activity if certain conditions (set out in article 60H of the Regulated Activities Order) are met (see PERG 2.7.19J) (High net worth exception). It should be noted that this exemption does not apply to regulated mortgage contracts as there is no general 'high net worth' exemption to the mortgages perimeter.

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