

FINANCIAL REGULATORY QUICK START GUIDE

OVERVIEW OF THE UK CONSUMER CREDIT REGIME

The UK's consumer credit regime affects firms involved in a range of consumer lending and debt-related activities, from those whose core business is financial services, such as banks, credit card issuers, and debt collectors, to those whose main business is to sell other goods and services but who offer these on credit, such as car dealerships, dentists and department stores.

BACKGROUND

Previously, consumer credit firms in the UK were regulated by the Office of Fair Trading. Responsibility for the regulation of these firms passed to the main UK financial services regulator, the FCA, on 1 April 2014.

Prior to this change, the consumer credit regime was fairly light-touch in places, for example in relation to the authorisation process. Most of the regime was set out in legislation, or in guidance materials. With the change to FCA regulation, various conduct of business requirements are now set out in FCA rules, which is intended to create a simpler and clearer regime.

The FCA published a final report on its planned review of the retained consumer credit legislative provisions in March 2019. The FCA determined that most of the consumer protection provisions contained in the legislation should remain, rather than converting them into FCA rules.

AUTHORISATION

Firms and businesses carrying on specified consumer credit-related activities must be authorised by the FCA. These activities include:

- Entering into a regulated credit agreement as lender
- Entering into a regulated consumer hire agreement as owner
- Exercising or having the right to exercise the lender's rights and duties under a regulated credit agreement
- Exercising or having the right to exercise the owner's rights and duties under a regulated hire agreement
- Credit broking
- Debt-related activities, including debt adjusting, debt administration, debt counselling and debt collecting
- Providing credit information services and credit references
- Operating an electronic system in relation to lending (i.e. a loan-based crowdfunding platform)

The scope of the regime can be complex and there are various technical exemptions. The process for authorisation is similar to that for other financial services firms authorised by the FCA. However, the consumer credit regime divides firms into two categories, depending on the nature of the activities carried on.

Firms carrying on activities deemed less high risk can benefit from a lighter-touch "limited permission" regime. This includes activities such as consumer hire, credit broking (where this is the firm's secondary activity), and lending where this is a secondary activity and there are no

interest or charges applied. Firms that cannot take advantage of the limited permission regime must apply for full permission.

Limited permission firms often face less scrutiny during the authorisation process, as well as being subject to fewer and less complex rules on an ongoing basis.

Key sources of rules and guidance

The Financial Services and Markets Act 2000, and related secondary legislation

Retained provisions of the Consumer Credit Act 1974, and related secondary legislation

The FCA Handbook

KEY LEGISLATIVE OBLIGATIONS

The retained legislative provisions are detailed and complex, and are set out in many different places, for example primary and secondary legislation and the FCA Handbook, which makes it difficult to navigate the rules. Many requirements are highly prescriptive, and failure to follow these precisely can have draconian consequences, such as resulting in an agreement being unenforceable as against the consumer.

The requirements cover matters such as the provision of pre-contractual information, the form and content of regulated credit agreements, requirements for periodic statements and notices, and provisions on unfair relationships between the borrower and the lender.

KEY RULE-BASED OBLIGATIONS

The table below sets out the key parts of the FCA Handbook that are applicable to consumer credit firms. Firms that also undertake other regulated activities will be subject to other parts of the Handbook too.

As well as being subject to many of the “main” parts of the Handbook that apply to all authorised firms, consumer credit firms are subject to the rules in their own specialist sourcebook. This sourcebook is known as “CONC”, and sets out the FCA’s conduct of business rules for consumer credit firms.

CONC covers, for example, rules around financial promotions and communications with customers (including consumer credit advertising), pre-contractual requirements for consumer credit agreements, responsible lending, post-contractual requirements, and the management of arrears, default and recovery.

CONC also covers some more specific requirements that apply only to particular types of consumer credit firm. For example, it includes a set of specific prudential rules for debt management firms, and a chapter covering the FCA cap on high-cost short-term credit (so-called “pay-day lending”).

KEY APPLICABLE PARTS OF THE FCA HANDBOOK

Section	Description
Principles for Businesses (PRIN)	Eleven high-level principles that set out the fundamental standards expected of firms
Threshold Conditions (COND)	Minimum conditions that all firms must meet to become, and remain, authorised
General Provisions (GEN)	General standards for regulated firms, such as statutory disclosure statements
Senior Management Arrangements, Systems and Controls (SYSC)	Requirements relating to the running and oversight of the firm, as well as the systems, controls and compliance arrangements that should be in place
Supervision (SUP)	Includes firms’ obligations to report key information, events and changes to the FCA
Decision Procedure and Penalties Manual (DEPP)	This sets out the FCA’s decision-making processes
The Enforcement Guide (EG)	This sets out how the FCA’s formal enforcement procedures operate
Consumer Credit sourcebook (CONC)	Specialist sourcebook containing rules and guidance for consumer credit firms
Perimeter Guidance Manual (PERG)	Explains the boundaries of the consumer credit-related regulated activities
The Unfair Contract Terms Regulatory Guide (UNFCOG)	This outlines the regulation of unfair contract terms

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