

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

Prior to the FCA becoming responsible for consumer credit regulation, most of the regime was set out in legislation. With the change to FCA regulation, various conduct of business requirements are set out in FCA rules, which is intended to create a simpler and clearer regime. However, much of the pre-existing legislation remains, which means that the rules are split across various sources. The FCA conducted a review of the retained legislative provisions to see what could be moved to its rulebook, but this has not yet been taken forward.

Since beginning to regulate consumer credit, the FCA has focused its efforts on areas of the industry that it considers could pose a risk to consumers, for example by introducing a price cap on high-cost short-term credit, and bringing in new rules on the treatment of customers in arrears. Most recently, HM Treasury has decided to bring buy-now pay-later products into scope of FCA regulation.

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 in different pieces of primary and secondary legislation, 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

CONTACTS



Nicola Higgs
Partner, London
 T +44.20.7710.1154
 E nicola.higgs@lw.com



Becky Critchley
Associate, London
 T +44.20.7710.4519
 E becky.critchley@lw.com



Ella McGinn
Associate, London
 T +44.20.7710.4649
 E ella.mcgin@lw.com