

Future regulatory treatment of CCA regulated first charge mortgages

November 2015



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We are asking for comments on this Consultation Paper by Friday 18th December. You can send them to us using the form on our website at: www.fca.org.uk/your-fca/documents/consultation-papers/cp15-36-response-form.

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Abbreviations used in this paper

CCA	Consumer Credit Act 1974
CONC	Consumer Credit sourcebook
CP	Consultation paper
CBA	Cost benefit analysis
DISP	Dispute Resolution: Complaints
FEES	Fees Manual
FOS	Financial Ombudsman Service
FSMA	Financial Services and Markets Act 2000
LRRA	Legislative and Regulatory Reform Act 2006
MCD	Mortgage Credit Directive
MCOB	Mortgages and Home Finance: Conduct of Business sourcebook
MIPRU	The Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries
MLAR	Mortgage Lenders and Administrators Return
PERG	Perimeter Guidance Manual
PS	Policy statement
PSD	Product Sales Data
SUP	Supervision
TC	Training and Competence

1. Overview

Introduction

- 1.1** Prior to 31 October 2004, first charge mortgages were regulated under the Consumer Credit Act 1974 (CCA) if they fell below the relevant financial threshold. In November 2015 the Government made legislation¹ which will make the administration of these mortgages a regulated mortgage activity from 21 March 2016 and the CCA will then no longer generally apply. This consultation paper sets out our proposed rules for firms administering or performing activities in relation to variations of these mortgages, which we refer to as 'pre-2004 first charge CCA mortgages'.

Who does this consultation affect?

- 1.2** This consultation will interest any firm currently administering or performing variations on a book of pre-2004 first charge CCA mortgages or anyone whose mortgage is a pre-2004 first charge CCA mortgage.

Is this of interest to consumers?

- 1.3** These proposals will affect the regulatory treatment of pre-2004 first charge CCA mortgages. If implemented, our proposals will mean, for example, that consumers with a pre-2004 first charge CCA mortgage will be entitled to an enhanced form of annual statement, and firms will be subject to different rules relating to arrears and payment shortfalls. Our proposals do not affect consumers with any other type of mortgage.

Summary of our proposals

- 1.4** Before the introduction of mortgage regulation under the Financial Services and Markets Act 2000 (FSMA) on 31 October 2004, first charge mortgages were regulated under the CCA if they did not exceed the relevant financial threshold. This threshold was:
- £25,000 between 1 May 1998 and 31 October 2004
 - £15,000 between 20 May 1985 and 1 May 1998
 - £5,000 before 20 May 1985

¹ <http://www.legislation.gov.uk/uksi/2015/1863/made>

- 1.5** The legislation will make administering a regulated mortgage contract in relation to pre-2004 first charge CCA mortgages a regulated mortgage activity from 21 March 2016 and the CCA will no longer generally apply.² Government also plans to expand the definition of ‘advising on a regulated mortgage contract’ and ‘arranging a regulated mortgage contract’ to include advising and arranging on variations of pre-2004 first charge CCA mortgages.³ This means that firms that conduct activities in relation to these loans will need to hold the appropriate mortgage permissions in place of consumer credit permissions.
- 1.6** We propose to apply our existing Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) to such firms in the same way that it applies to firms in relation to post-2004 first charge mortgages, with some limited modifications or exceptions. We believe this approach will provide an appropriate level of protection for consumers whose mortgage is a pre-2004 first charge CCA mortgage.
- 1.7** We also propose that firms performing activities in relation to pre-2004 first charge CCA mortgages will be subject to our other Handbook rules applicable to firms performing activities in relation to first charge back book mortgages, for example, our manuals for Supervision (SUP), Dispute Resolution: Complaints (DISP) and Training and Competence (TC), with some exceptions, which we set out in Section 3.
- 1.8** Many firms with a back book of pre-2004 first charge CCA mortgages will already have the relevant mortgage permissions and systems in place to treat these loans as regulated mortgage contracts. We set out our analysis of costs and benefits of our proposed rule changes in Annex 1.
- 1.9** The administration, and activities in relation to variations of pre-2004 first charge CCA mortgages will become regulated mortgage activities from 1 October 2016, although firms who wish to adopt the new rules early can do so at any date from 21 March 2016.
- 1.10** We consulted on the regulatory treatment of second charge back book loans in CP14/20,⁴ and published our final rules in PS15/9⁵ in March 2015. This included second charge loans entered into prior to 31 October 2004. This consultation and the associated cost benefit analysis therefore addresses the future regulatory treatment of first charge loans which are currently subject to the CCA and were entered into prior to 31 October 2004 only.

² As with the transfer of existing second charge loans into our mortgage regime from 21 March 2016 (see CP14/20 and PS15/9) certain existing protections from the CCA will be retained for pre-2004 first charge CCA mortgages, including the restrictions on early settlement fees. This is because HM Treasury has taken the view that it would be unfair to remove such protections where there is an existing expectation that they will apply. Firms should refer to the Mortgage Credit Directive Order 2015 for further information.

³ Certain proposals in this consultation paper, such as the changes to the Glossary and the transitional provisions are dependent on further legislative amendments such as changes to the advising and arranging activities and the transitional for firms to comply with our proposed rules early. The draft rules proposed in this consultation paper assume that those legislative amendments will be made in a particular way. We are discussing these matters with HM Treasury. However, in order to make rules in time for 21 March 2016, we have had to issue this consultation paper in advance of the legislative amendments being published; consequently, we may need to review the rules proposed once the legislative amendments have been made.

⁴ CP14/20 Implementing the Mortgage Credit Directive and the new regime for second charge mortgages (September 2014) <http://www.fca.org.uk/news/cp14-20-mcd>

⁵ PS15/9 Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages, feedback to CP14/20 and final rules (March 2015) <http://www.fca.org.uk/news/ps15-9-implementation-of-the-mortgage-credit-directive>

- 1.11** The Financial Ombudsman Service ('FOS') proposes to mirror certain changes in Annex A for the Voluntary Jurisdiction. Where relevant this consultation is issued jointly by the FCA and FOS. See Section 2.13 for further information.

Equality and diversity considerations

- 1.12** We are required by the Equality Act 2010 to consider whether our proposals could have a potentially discriminatory impact on groups with protected characteristics (age, sex, disability, race or ethnicity, marriage and civil partnership, pregnancy and maternity, religion, sexual orientation and gender reassignment). We are also required to have due regard to the need to eliminate discrimination and advance equality of opportunity when carrying out our activities.
- 1.13** Although the majority of our proposals will not have any differential impact on protected groups, we are aware that some of the loans impacted by the proposed changes are lifetime mortgage agreements which are primarily held by older borrowers. The majority of our bespoke lifetime mortgage rules relate to pre-sales activity; however, these rules will apply where a firm varies an existing loan. We consider that where introducing our bespoke rules has an impact on consumers it will be positive. For example, it will allow them to receive tailored disclosure documents specific to lifetime mortgage agreements.
- 1.14** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim we welcome any input to this consultation on such matters.

Next steps

What do you need to do next?

- 1.15** We want to know what you think of the proposals in this paper. The consultation will close six weeks after publication of this paper. Please respond to our questions by 18th December. You can find a consolidated list of questions in Annex 3.

How?

- 1.16** Use the online response form on our website or write to us at the address on page 2.

What will we do?

- 1.17** We will consider your feedback and seek to publish our rules in a Policy Statement in time for firms to adopt along with their adoption of the Mortgage Credit Directive (MCD) rules on 21 March 2016 should they wish to do so.

2. Mortgage Conduct Rules

Mortgages and Home Finance: Conduct of Business Sourcebook ('MCOB')

- 2.1** Pre-2004 first charge CCA mortgages are currently regulated under the CCA and our Consumer Credit sourcebook ('CONC'). After 1 October 2016 the administration and activities relating to the variation of these loans will become regulated mortgage activities and the CCA will no longer generally apply.
- 2.2** We propose to apply our existing MCOB provisions to such firms, in the same way that it applies to firms in relation to regulated mortgage contracts, with some limited modifications or exceptions.
- 2.3** Our proposed approach is in line with that taken in CP14/20 and PS15/9 in respect of second charge back book mortgages when they came into the mortgage regime.

Post-contractual disclosure

- 2.4** We propose that our MCOB 7 rules on post-contractual disclosure should apply in full. This includes the MCOB 7.5 requirement for annual statements to be provided. This requirement replaces current CCA protections that will fall away after 1 October 2016.⁶ We consider the type of disclosures required by MCOB 7 to be appropriate for keeping customers informed. We also propose to introduce a transitional rule to ensure that a customer will receive their first MCOB annual statement no more than 365 days after receiving their final s.77 CCA annual statement.

Q1: Do you agree with our proposal to apply MCOB 7 on post-contractual disclosure to pre-2004 first charge CCA mortgages?

Charges

- 2.5** We propose that MCOB 12 (Charges) should apply to pre-2004 first charge CCA mortgages on a forward looking basis with the exception of MCOB 12.3 on early repayment charges, as we expect that the early settlement charges provisions in the CCA will continue to apply to these loans as a result of the legislation. MCOB 12.4 prevents firms from charging payment shortfall fees which are a percentage of the loan balance, or monthly fees where the customer is maintaining an agreed payment plan, and MCOB 12.5 prohibits excessive charges. We believe it is appropriate to apply these rules to ensure borrowers are treated fairly. This is also consistent with the approach taken on second charge back book.

⁶ Annual statements under MCOB 7.5 will replace the annual statements provided under s.77 CCA, The s.77A sanctions for non-compliance will fall away subject to accrued rights and defences being preserved.

- 2.6** In PS15/9 we confirmed that MCOB 12.5.5R, which requires second charge lenders to charge interest on a simple basis on charges applied to a customer for breach of contract, would come into force on 21 March 2016. This rule mirrors a CCA protection restricting the charging of compound interest that will no longer apply to second charge lending from 21 March, or to pre-2004 first charge CCA mortgages from 1 October (or from earlier adoption of the new rules). However, as this rule addresses specific risks in the second charge market, we do not consider it appropriate to apply it to pre-2004 first charge CCA mortgages in the absence of evidence of specific risks to consumers.

Q2: Do you agree with our proposed approach on MCOB 12 (Charges) for pre-2004 first charge CCA mortgages?

Treatment of customers with a payment shortfall

- 2.7** We propose that MCOB 13 (arrears, payment shortfalls and repossessions) should apply in full. We consider that the CCA protections that will cease to apply to pre-2004 first charge CCA mortgages should be replaced with Handbook rules to ensure consumers are adequately protected. Our MCOB 13 rules will help ensure customers are treated fairly and that appropriate forbearance is provided based on a customer's circumstances, in addition to providing protections for vulnerable customers and those at risk of possession. Firms who hold a back book of regulated mortgage contracts should already be familiar with the requirements in this area.

Q3: Do you agree with our proposed approach on arrears, payment shortfalls and repossessions for pre-2004 first charge CCA mortgages?

Contract variations

- 2.8** We propose that our existing MCOB rules relating to contract variations should apply in the same way as they would for other regulated mortgage contracts, including the rules on product disclosure (MCOB 5), advised sales and execution-only sales (MCOB 4.7A and 4.8A) and responsible lending (MCOB 11). These rules are intended to help the customer understand the implications of a contract variation and ensure an affordability assessment is conducted where the variation involves further borrowing. Contract variations that do not involve further borrowing, or where the sale is non-interactive, can be carried out on an execution-only basis without an affordability assessment. Any variation of a pre-2004 first charge CCA mortgage that leads to a new regulated mortgage contract will be subject to our full MCOB pre-sales rules.

Q4: Do you agree with our proposal to apply our rules on contract variations to pre-2004 first charge CCA mortgages?

Conduct of business standards: general (MCOB 2)

- 2.9** We propose that our high level conduct of business standards in MCOB 2 should apply in full, in line with our approach to all other regulated mortgage contracts. Although many of the provisions in MCOB 2 relate to the pre-contractual or contractual stages and will have minimal impact on firms administering pre-2004 first charge CCA mortgages, some will have an impact, such as MCOB 2.8, which requires firms to maintain adequate records to evidence compliance, and MCOB 2.5A on acting in the customer's best interests.

Q5: Do you agree with our proposal to apply the general conduct of business standards set out in MCOB 2 to pre-2004 first charge CCA mortgages?

Lifetime mortgages

- 2.10** Where a pre-2004 first charge CCA mortgage is a lifetime mortgage contract, we propose that our tailored lifetime mortgage rules should apply, including MCOB 8 on advising and selling standards and MCOB 9 on product disclosure. Although many of our tailored rules relate to pre-sales issues, they apply to firms with a back book of pre-2004 CCA regulated lifetime mortgage contracts in the event of a contract variation.
- 2.11** We consider that our tailored rules for lifetime mortgage products are effective in helping customers understand the specific risks in relation to such contracts and ensure that appropriate advice is given before varying such an agreement. We also consider that our other MCOB rules (e.g. conduct of business standards, charges) should apply to pre-2004 CCA regulated lifetime mortgages, to ensure a consistent level of consumer protection.

Q6: Do you agree with our proposal to introduce MCOB rules for pre-2004 CCA regulated lifetime mortgage agreements?

Glossary Changes

- 2.12** The application of our rules in this chapter and the following chapter are predicated upon amendments to the Glossary definitions of “administering a regulated mortgage contract”, “advising on a regulated mortgage contract”, and “arranging a regulated mortgage contract”.
- Q7: Are there any other impacts of amending the definition of ‘administering a regulated mortgage contract’ or ‘advising on a regulated mortgage contract’ or ‘arranging a regulated mortgage contract’ to include pre-2004 first charge CCA mortgages which you wish to comment on?**
- 2.13** The FOS proposes adopting, for the purpose of the voluntary jurisdiction, the amendments to the Glossary set out in Annex A of the instrument attached to this consultation paper. For that purpose, this consultation is issued jointly with the FOS.

Q8: Do you agree with the FOS mirroring these proposed changes to the Glossary for the voluntary jurisdiction?

3. Other Handbook rules

- 3.1** In most areas we propose to apply our non-MCOB rules to firms performing regulated activities in relation to pre-2004 first charge CCA mortgages in the same way that they apply to all firms conducting regulated activity in relation to any other first charge mortgages. This chapter highlights those areas where we do not propose to take this approach. We also highlight those areas where the application of non-MCOB rules under the mortgage regime differs from the application of those rules under the consumer credit regime.

Prudential requirements

- 3.2** The Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU) imposes requirements on non-bank firms administering first charge mortgages including risk-based capital requirements, restrictions on the quality of eligible capital and a tailored liquidity requirement. We propose not applying these requirements to firms only administering pre-2004 first charge CCA mortgages. These firms are not currently subject to any prudential requirements under the consumer credit regime (if they do not perform activities in relation to first charge mortgages) and we believe that introducing them would be a disproportionate burden relative to the likely consumer protection benefit. This is in line with the approach that we took in relation to the second charge back book in CP14/20 and PS15/9. We also propose to exclude income from the pre-2004 mortgage activities from the calculation of annual income which determines firms' prudential requirements, to the extent they are at present, so firms which currently administer or undertake mediation activity in respect of regulated mortgage contracts will not be impacted.

Q9: Do you agree with our proposal not to apply the prudential requirements in MIPRU to firms that only administer or undertake mediation activity in respect of pre-2004 first charge CCA mortgages? And to exclude income from pre-2004 first charge CCA mortgages from the income based capital calculations in MIPRU 4.3?

Data reporting

- 3.3** Under SUP 16, firms are required to submit the following data reports to the FCA:
- Product Sales Data (PSD): transaction level data on all regulated mortgage sales made by a firm within the reporting period, and associated performance data including characteristics of loans and insight of payment difficulties, etc. These reports are submitted by lenders as well as, in the case of the performance report, authorised firms acting as lenders
 - Mortgage Lenders and Administrators Return ('MLAR'): aggregated data covering a firm's regulated mortgage activity. This is submitted by lenders and administrators.
- 3.4** We do not propose to introduce PSD performance data reporting for pre-2004 first charge CCA mortgages as this is less useful for regulatory monitoring without the associated sales data, which we do not have for pre-2004 loans.

- 3.5** We do, however, propose to introduce MLAR requirements in order to monitor regulated mortgage activity. We believe that many firms administering pre-2004 first charge CCA mortgages will already be submitting these reports for their other mortgage business, but they will need to reconfigure reports to include pre-2004 first charge CCA mortgages in their reporting of regulated mortgage activity.

Q10: Do you agree with our proposal to introduce MLAR data reporting for pre-2004 first charge CCA mortgages, and not to introduce PSD reporting?

Training and Competency

- 3.6** We propose that firms that undertake contract variations of pre-2004 first charge CCA mortgages will need to follow our Training and Competency (TC) requirements and that mortgage qualifications will need to be held by relevant staff. We believe that most firms that perform variations of these loans will be likely to already have the appropriate qualifications in place for staff where they currently also carry on regulated mortgage activities. Staff performing variations of pre-2004 CCA lifetime mortgages will be required to hold the bespoke qualification for lifetime mortgage products.

Q11: Do you agree with our proposal that staff undertaking contract variations of pre-2004 first charge CCA mortgages should be subject to training and competency requirements?

Complaints reporting

- 3.7** Most of the rules in our Dispute Resolution: Complaints manual (DISP) will apply to firms performing activities in relation to pre-2004 first charge CCA mortgages in the same way as they do now. However, we also propose to apply the complaints reporting requirements under which mortgage firms are required to provide the FCA with a report twice a year concerning complaints they've received. Credit firms (with a revenue of less than or equal to £5m a year) are only required to submit the report once a year, so firms which administer only pre-2004 first charge CCA mortgages, and no other mortgages will be subject to the more onerous DISP rules for the first time. However, we think that many firms will already be subject to these rules as they currently perform other regulated mortgage activities.

Q12: Do you agree with our proposal to extend DISP rules for firms currently carrying on regulated mortgage activities to firms administering pre-2004 first charge CCA mortgages?

Fees

- 3.8** We propose to amend our Fees Manual (FEES) so that firms will be expected to include their administration of pre-2004 first charge CCA mortgages in their volume of business with regards to the calculation of annual tariffs.

Q13: Do you agree with our proposed approach to FEES for firms administering pre-2004 first charge CCA mortgages?

Perimeter Guidance Manual

- 3.9** We propose to amend certain guidance in our Perimeter Guidance Manual ('PERG') to make clear that pre-2004 first charge CCA mortgages are now to be treated as regulated mortgage contracts for the purposes of the Handbook.

Q14: Do you agree with our proposed changes to PERG?

Annex 1

Cost benefit analysis

1. Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) alongside our proposed rules. A CBA is 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made' and 'an estimate of those costs and of those benefits.' If, in our opinion, the costs or benefits cannot reasonably be estimated or it is not reasonably practicable to produce an estimate, the CBA need not estimate them. Where this is the case, we must state our opinion and give an explanation of it.
 2. Section 138L(3) of FSMA provides that we are not required to publish a CBA if we consider that there will be no increase in costs or, if there is an increase, the increase will be of minimal significance.
 3. In line with the legislative changes being made by HM Treasury, we propose to amend the Glossary definitions of 'administering a regulated mortgage contract', 'advising on regulated mortgage contracts' and 'arranging (bringing about) regulated mortgage contracts' to include pre-2004 first charge CCA mortgages. This will make these loans subject to our mortgage rules for the first time. As detailed in this paper, we consider that the application to these mortgages of some of our rules would not be appropriate or proportionate, and so we propose not to apply them. This annex considers the costs and benefits of applying the rules on which we are consulting.
 4. In CP14/20 we consulted on proposals to bring second charge back book loans into our mortgage regime. The CBA attached to our consultation covered the regulatory treatment of all second charge back book mortgage contracts, irrespective of the date on which they were entered into. We published our rules designed to give effect to this proposal in PS15/9 in March 2015. Unfortunately, neither those rules nor the legislation made by HM Treasury at the same time delivered the policy intention in full: only second charge mortgage contracts entered into on or after 31 October 2004 were brought into the regulated mortgages regime. The rules attached to this CP will now transfer second charge mortgage contracts entered into before that date into the mortgage regime, in conjunction with the Treasury legislation.
 5. The rules attached to this CP will bring first charge mortgage contracts entered into before 31 October 2004 within the scope of our mortgage-related rules. Given that we have already consulted on the treatment of second charge mortgage contracts and produced a CBA in relation to them, the focus of this CP and of this CBA is on first charge mortgage contracts entered before 31 October 2004.
- Costs**
6. We gathered data from 12 firms on their portfolios of pre-2004 first charge CCA mortgages and the one-off and ongoing costs of administering and performing contract variations on these loans in compliance with our proposals. These firms' pre-2004 first charge CCA mortgage books ranged from 20 loans to 35,000 loans, totalling 71,000 loans and with a

total outstanding balance of £3.4bn.⁷ Industry estimates suggest that, in total, approximately 100,000 pre-2004 first charge CCA mortgage loans remain outstanding. This suggests that the total outstanding book amounts to approximately £4.7bn.

7. Six firms indicated that there would be non-negligible one-off costs associated with adoption of MCOB rules, with five firms estimating these costs to be between £16,000 and £100,000 and one firm estimating costs of £2,500,000. This was broken down into each area of our mortgage rules, with MCOB 12 and MCOB 13 resulting in the highest one-off costs.
8. Most firms stated that there would be no one-off cost associated with our non-MCOB proposals (for example, on data reporting or training and competency) as they were already subject to rules for mortgage firms as a result of performing activities in relation to other regulated mortgage contracts. Two firms expect an increase in costs, with one firm stating that they would incur a one-off cost of £40,000, split between the introduction of mortgage rules from several sections of the Handbook. The other firm stated that they would incur a cost of £1.5m, but did not specify which of the conduct standards would result in costs. Industry responses indicate that total costs incurred by a firm are partially dependent on the size of a firm's outstanding loan book. Assuming there are 100,000 loans outstanding, we estimate the total one-off costs to industry associated with our proposals to be approximately £6.1m.
9. However, many of the respondent firms stated that they would welcome the introduction of mortgage rules for pre-2004 first charge CCA mortgages, identifying benefits such as long-term cost savings and the opportunity to harmonise systems and processes for all secured lending. All of the firms that contacted us stated that the ongoing annual cost of compliance with all aspects of our mortgage rules would either be cost neutral or result in cost savings. Some firms stated that they currently maintain systems for CCA/CONC compliance for these loans only, so the introduction of mortgage rules would result in significant savings.
10. The total estimated savings for industry amounted to approximately £3m per year. This suggests that the £6.1m total one-off cost to firms would be negated by cost savings after just over two years of compliance.
11. All the firms that responded currently administer regulated mortgage contracts in addition to pre-2004 first charge CCA mortgages. There may be firms that currently administer pre-2004 first charge CCA mortgages who do not also administer any regulated mortgage contracts, for whom our proposals might have a more significant cost impact (e.g. the establishment of systems for MCOB compliance and additional requirements, and applying for mortgage permissions). However, we have not been able to identify any firms in this position. While the responses received may underestimate the materiality of impacts for such firms, it is not reasonably practicable to attempt to quantify the costs to such firms as none have been identified to date.
12. It is possible that there will be some costs to consumers as a result of the removal of these loans from the current regulatory framework, for instance, if our MCOB rules provide for a lower standard of protection than the CCA/CONC. However, we do not consider that this is generally the case, as our MCOB rules afford adequate protection to consumers (see further assessment below) and accrued CCA rights and defences will be preserved by the legislative framework. We therefore consider that any costs to consumers caused by the transfer of pre-2004 first charge CCA mortgages would be of minimal significance.

⁷ Based on figures provided on both the total volume of outstanding loans and the average outstanding balance.

Benefits

- 13.** We consider that the application of tailored mortgage rules and high-level standards will lead to some benefits and lower costs for mortgage consumers that hold pre-2004 first charge CCA mortgages. Benefits for consumers of our proposed approach include:
- More flexible forbearance options than those available under the CCA and strong consumer protections (e.g. options to help borrowers resolve the situation before any possession claim is issued, recording of telephone conversations with customers in arrears and requirements to obtain the best price of property upon repossession). These MCOB 13 protections may have benefits in terms of helping reduce arrears rates or helping borrowers deal with repayment problems. Under the CCA lenders may currently experience difficulties in modifying credit agreements under forbearance to allow for flexible payment solutions.
 - A reduced likelihood of charges being imposed on customers in arrears as MCOB 13 requires firms to make reasonable efforts to reach an agreement with a customer over the method of repaying any payment shortfall and allow a reasonable time to repay the payment shortfall. This would result in reduced costs for consumers.
 - Ensuring fees are fair and cost-reflective (including those for customers in arrears, as MCOB 12.4 is more prescriptive on how arrears charges can and cannot be calculated than the similar provision at CONC 7.7.5R). This will mean a lowering of costs for customers who fall into arrears on a consistent basis (as some, but not necessarily all, lenders may already charge fees which are cost-reflective), and given that firms anticipate medium term cost savings as a result of our proposals it seems unlikely that any costs associated with our proposals will be passed on to consumers.
 - Cost savings associated with reduced Direct Debit charges as a result of MCOB 13.3.1A which prohibits firms from processing more than two direct debit requests in any one month where a customer has a payment shortfall.
 - Adequate disclosures of post-contractual information as a result of our MCOB 7 rules (or MCOB 9 for lifetime mortgages). This will result in consumer benefits in terms of understanding their products and any event driven information (e.g. changes to the payments required resulting from interest rate changes) which will then allow them to better manage their borrowing. In contrast to the outgoing CCA protections, MCOB 7.5 requires annual statements to feature additional tailored content for customers in arrears, including details of any temporary payment plan.
 - Appropriate standards of advice as a result of introducing training and competence requirements for staff performing variations of pre-2004 CCA mortgages (including tailored requirements for lifetime mortgages). This will ensure that relevant individuals are appropriately qualified to give advice which may lead to benefits for consumers by helping them make more informed decisions. This may lead in turn to reduced arrears rates and further cost savings.
- 14.** However, because many of the incoming MCOB protections replace existing protections which will no longer apply due to the proposed legislative changes we expect the additional benefits to consumers to be relatively small compared with the existing regulatory regime. For example, s.77 of the CCA sets out the content and form requirements for annual statements at present, and our CONC rules include rules on treatment of customers in arrears. Although we are introducing arrears management rules in line with our approach to other regulated mortgage contracts, we are not aware of any issues faced by consumers in arrears under the current approach, so savings may not be significant. It may also be the case that firms already have

practices in place to meet the new MCOB requirements (e.g. cost-reflective charges, greater forbearance measures) voluntarily as a result of applying the same processes for all of their first charge mortgage back book.

- 15.** We consider the differences between the existing regulatory treatment and our proposed approach will, on balance, be cost-neutral for consumers. That being the case, we consider that it is not reasonably practicable to produce an estimate of the relevant costs and benefits because it would be a disproportionate use of our resources to do so.
- 16.** We do not consider that our proposed approach will result in any increase in costs for the FCA. The proposed changes will not result in any systems changes, and we can subsume regulation of the loans in question within our existing supervisory activity.

Annex 2

Compatibility statement

Compatibility with the FCA's General Duties

1. This annex explains how we satisfy the requirements set out in section 138I(2)(d) of the Financial Services and Markets Act (FSMA). When consulting on new rules, we are required by FSMA to include an explanation of why we believe making the proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in s.3B FSMA. We are also required by section 138K(2) of FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
2. This annex also sets out our view of how the proposed rules are compatible with the duty on us to carry out our general functions (which include rule making) in a way that promotes effective competition in the interests of consumers (s.1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.
3. This annex must be read in conjunction with the rest of the consultation paper and the cost benefit analysis (in Annex 1) in demonstrating that we meet our statutory duties and objectives.

Compatibility with our statutory objectives

4. The policy proposals and draft rules in this CP primarily advance our operational objective of 'securing an appropriate degree of protection for consumers.'
5. We consider these proposals to be compatible with our strategic objectives of ensuring that the relevant markets⁸ function well.

Consumer protection

6. We consider that in light of the government's decision to make activities in relation to pre-2004 first charge CCA mortgages regulated mortgage activities (removing the loans from the scope of the CCA) our existing MCOB rules for firms administering regulated mortgage contracts provide the most appropriate standard and form of consumer protection. These proposals will provide consumers who still have a pre-2004 first charge CCA mortgage with the same protection as other forms of secured lending. This also provides consistency in the regulated secured lending context.

Promoting effective competition in the interests of consumers

7. In preparing the proposals as set out in this consultation paper, we consider we have met our duty under s.1B(4) FSMA, which provides that we must, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, carry out our general functions in a way that promotes effective competition in the interests of consumers.

⁸ 'Relevant markets' are defined by s.1F FSMA.

8. We believe that our proposals will promote competition as our analysis indicates that many firms will enjoy cost savings in the long term due to being able to apply a consistent form of regulatory treatment across all secured lending.
9. This statement should be read together with the cost benefit analysis.

Compatibility with the principles of good regulation

10. In preparing the proposals set out in this consultation paper, we have had regard to the regulatory principles set out in s.3B FSMA. We set out below how our proposals demonstrate such regard for each of the regulatory principles.

The need to use our resources in the most efficient and economical way

11. By applying consumer protections to pre-2004 first charge CCA mortgages that are similar to consumer protections for first charge mortgages we anticipate that we may achieve efficiencies in the supervision of firms.

The principle that a burden or restriction which is imposed should be proportionate to the benefits

12. The proportionality of our approach is addressed in the CBA at Annex 1. Our conclusion is that the costs of our proposals are relatively low, and are proportionate to the associated benefits. The government's decision to take these mortgages out of the scope of the CCA means that we need to put rules in place to ensure a consistent and appropriate level of consumer protection. We could have put a bespoke regime in place, but we consider it preferable and more proportionate (e.g. in terms of convenience for firms) to apply existing rules for firms administering regulated mortgage contracts. This was also the approach for second charge back book mortgages.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

13. Our proposals have regard to the desirability of sustainable growth in the medium and long term. We do not expect the proposals to have a material impact on growth in the UK. The proposals set out in this consultation paper primarily affect pre-2004 first charge CCA mortgages, a very small market that is diminishing as the loans mature.

The general principle that consumers should take responsibility for their decisions

14. Our proposals are founded in the principle that consumers should take responsibility for their decisions, although our proposals primarily relate to post-sales matters.

The responsibilities of the senior management of persons subject to requirements imposed by or under FSMA, including those affecting customers in relation to compliance with those requirements

15. The requirements around approved persons will remain the same for firms performing activities in relation to pre-2004 first charge CCA mortgages. As part of the authorisation process firms will have to identify the individuals who will be performing controlled functions and so must be approved by us.

The desirability, where appropriate, of the FCA exercising its functions in a way which recognises differences in the nature and objectives of the business it regulates

16. We have designed our proposals in a way that recognises the similar risks to consumers in relation to pre-2004 first charge CCA mortgages and loans which are currently regulated mortgage contracts, but also the differences between the two categories of mortgage.

The desirability of publishing information relating to persons

17. We have the power to publish information relating to investigations into firms and individuals. However, as set out in the Enforcement Guide⁹, we will not normally make investigations, our findings or our conclusions public except in exceptional circumstances.

The principle that we should exercise our functions as transparently as possible

18. We are an open and transparent regulator. As we have developed the proposals we have engaged with industry and consumer groups to explain our approach.

Any impact of changes in our proposals on mutual societies

19. Section 138K of FSMA requires us to prepare a statement about the impact of proposed rules on mutual societies. In particular, we are required to set out whether this will be significantly different from their impact on other authorised persons and, if so, details of the difference.
20. We have considered the potential impact of our proposals in relation to building societies, credit unions, industrial and provident societies, friendly societies and EEA mutual societies. We understand that some building societies may hold pre-2004 first charge CCA mortgages, but our engagement to date indicates that they would welcome the opportunity to harmonise their treatment of secured lending. To the extent that our proposals may have a differential impact on mutual societies, this will be positive in that such societies are less likely to require permissions and systems for other consumer credit business than other authorised persons that hold a book of pre-2004 first charge CCA mortgages.
21. We welcome any comments or information respondents may have on any issues relating to mutual societies that they believe would arise from our proposals.

Legislative and Regulatory Reform Act 2006 (LRR)

22. We are required under the LRR to have regard to the principles in the LRR and to the Regulators' Compliance Code when determining general policies and principles and giving general guidance (but this duty does not apply to regulatory functions exercisable through our rules).
23. We have had regard to the principles in the LRR and the Regulators' Compliance Code for the parts of the proposals that consist of general policies, principles or guidance. We have engaged with firms throughout this process, and consider that the proposals are proportionate and result in an appropriate level of consumer protection, when balanced with impacts on firms and on competition.

Equality impact assessment

24. We are required by the Equality Act 2010 to consider whether our proposals could have a potentially discriminatory impact on groups with protected characteristics (age, sex, disability, race or ethnicity, marriage and civil partnership, pregnancy and maternity, religion, sexual orientation and gender reassignment). We are also required to have due regard to the need to eliminate discrimination and advance equality of opportunity when carrying out our activities.

⁹ EG 6.

25. Although the majority of our proposals will not have any differential impact on protected groups, we are aware that some of the loans impacted by the proposed changes are lifetime mortgage agreements which are primarily held by older borrowers. Though the majority of our bespoke regime for lifetime mortgage relate to pre-sales matters, we consider that where introducing bespoke rules has an impact on consumers it will be positive e.g. allowing them to receive tailored disclosure documents specific to lifetime mortgage agreements.
26. We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim we welcome any input to this consultation on such matters.

Annex 3

List of questions

- Q1:** Do you agree with our proposal to apply MCOB 7 on post-contractual disclosure to pre-2004 first charge CCA mortgages?
- Q2:** Do you agree with our proposed approach on MCOB 12 (Charges) for pre-2004 first charge CCA mortgages?
- Q3:** Do you agree with our proposed approach on arrears, payment shortfalls and repossessions for pre-2004 first charge CCA mortgages?
- Q4:** Do you agree with our proposal to apply our rules on contract variations to pre-2004 first charge CCA mortgages?
- Q5:** Do you agree with our proposal to apply the general conduct of business standards set out in MCOB 2 to pre-2004 first charge CCA mortgages?
- Q6:** Do you agree with our proposal to introduce MCOB rules for pre-2004 CCA regulated lifetime mortgage agreements?
- Q7:** Are there any other impacts of amending the definition of 'administering a regulated mortgage contract' 'advising on a regulated mortgage contract' or 'arranging a regulated mortgage contract' to include pre-2004 first charge CCA mortgages which you wish to comment on?
- Q8:** Do you agree with the FOS mirroring these proposed changes to the Glossary for the voluntary jurisdiction?
- Q9:** Do you agree with our proposal not to apply the prudential requirements in MIPRU to firms that only administer or undertake mediation activity in respect of pre-2004 first charge CCA mortgages? And to exclude income from pre-2004 first charge CCA mortgages from the income based capital calculations in MIPRU 4.3?
- Q10:** Do you agree with our proposal to introduce MLAR data reporting for pre-2004 first charge CCA mortgages, and not to introduce PSD reporting?

- Q11:** Do you agree with our proposal that staff undertaking contract variations of pre-2004 first charge CCA mortgages should be subject to training and competency requirements?
- Q12:** Do you agree with our proposal to extend DISP rules for firms currently carrying on regulated mortgage activities to firms administering pre-2004 first charge CCA mortgages?
- Q13:** Do you agree with our proposed approach to FEES for firms administering pre-2004 first charge CCA mortgages?
- Q14:** Do you agree with our proposed changes to PERG?

Appendix 1

Draft Handbook text

**MORTGAGE CREDIT DIRECTIVE (AMENDMENT NO 3)
INSTRUMENT 2015**

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes and amends the voluntary jurisdiction rules and fixes and varies the standard terms for voluntary jurisdiction participants relating as set out in Annex A to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (3) paragraph 22 (Consultation) of Schedule 17.
- B. The making and amendment of the voluntary jurisdiction rules and the fixing and variation of the standard terms by the Financial Ombudsman Service Limited, as set out in Annex A, is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under the following sections of the Act:
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 226 (Compulsory jurisdiction); and
 - (5) paragraph 13 (FCA’s procedural rules) of Schedule 17 (The Ombudsman Scheme).
- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority approves the voluntary jurisdiction rules made and amended and the standard terms fixed and varied by the Financial Ombudsman Service Limited in this instrument.

Commencement

- F. This instrument comes into force on 21 March 2016 immediately after the Mortgage Credit Directive (Amendment No 2) Instrument 2015 comes into force.

Amendments to the Handbook

- G. 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) below:

(1)	(2)
Glossary of definitions	Annex A
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediates (MIPRU)	Annex B
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Supervision manual (SUP)	Annex D
Compensation sourcebook (COMP)	Annex E

Amendments to material outside the Handbook

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

Citation

- I. This instrument may be cited as the Mortgage Credit Directive (Amendment No 3) Instrument 2015.

By order of the Board of the Financial Conduct Authority
[date] 2015

By order of the Board of the Financial Ombudsman Service Ltd
[date] 2015

Annex A

Amendments to the Glossary of definitions

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

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

legacy CCA mortgage contract a regulated mortgage contract which:

- (a) was entered into before 31 October 2004; and
- (b) was a *regulated credit agreement* immediately before 21 March 2016.

Amend the following definitions as shown.

administering a regulated mortgage contract the *regulated activity*, specified in article 61(2) of the *Regulated Activities Order*, which is in summary: administering a *regulated mortgage contract* where:

- (a) the contract was entered into by way of business on or after 31 October 2004; or
- (b) the contract was entered into by way of business before that date and is a legacy CCA mortgage contract.

advising on regulated mortgage contracts the *regulated activity*, specified in article 53A of the *Regulated Activities Order*, which is in summary: advising a *person* if the advice:

...

- (b) is advice on the merits of his:
 - (i) ...; or
 - (ii) varying the terms of a *regulated mortgage contract* entered into by him on or after 31 October 2004, or a legacy CCA mortgage contract entered into by him, in such a way as to vary his obligations under that contract.

arranging (bringing about) regulated mortgage contracts the *regulated activity*, specified in article 25A(1) and (2A) of the *Regulated Activities Order* which is, in summary, making arrangements:

...

- (b) for another person to vary the terms of:
- (i) a regulated mortgage contract entered into by him as borrower on or after 31 October 2004; or
 - (ii) a legacy CCA mortgage contract entered into by him as borrower; or

...

regulated mortgage contract

- (a) (in relation to a contract) a contract which:

...

- (ii) is not a *home purchase plan*, a limited payment second charge bridging loan, a second charge business loan, an investment property loan, an exempt consumer buy-to-let mortgage contract, an exempt equitable mortgage bridging loan or a limited interest second charge credit union loan within the meaning of article 61A(1) or (2) of the *Regulated Activities Order*; and
- (iii) if the contract was entered into before 21 March 2016 and entering into the contract was not, at the time it was entered into, a regulated activity of the kind specified by article 61(1) of the *Regulated Activities Order*, is a consumer credit back book mortgage contract within the meaning of article 2 of the Mortgage Credit Directive Order 2015.

Annex B

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediates (MIPRU)

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

3 Professional indemnity insurance

3.1 Application and purpose

Application

3.1.1 R This chapter applies to a *firm* with *Part 4A permission* to carry on any of the activities:

...

(4) in relation to *home finance mediation activity*, this chapter does not apply to:

...

(c) a firm which carries on home finance mediation activity exclusively for legacy CCA mortgage contracts;

...

...

4 Capital resources

4.1 Application and purpose

...

Application: MCD firms

4.1.13A R This chapter does not apply to a *firm* which only carries on one or more of the following:

(1) ...

(1A) home finance mediation activity exclusively for legacy CCA mortgage contracts; or

(2) ...

(3) home finance administration exclusively for second charge regulated mortgage contracts; or

- (4) home finance administration exclusively for legacy CCA mortgage contracts.

...

...

4.3 Calculation of annual income

Annual income

...

- 4.3.3 R For a *firm* which carries on *insurance mediation activity* or *home finance mediation activity*, *annual income* is the amount of all brokerage, fees, *commissions* and other related income (for example, administration charges, overrides, profit shares) due to the *firm* in respect of or in relation to those activities. But it does not include income generated from carrying on any *home finance mediation activity* for:

(1) second charge regulated mortgage contracts; or

(2) legacy CCA mortgage contracts.

...

Annual income for home finance administration

...

- 4.3.7A R In the calculation of the capital resources of a *firm* that carries on any *home finance administration activity*, the *annual income* does not include annual income from:

(1) second charge regulated mortgage contracts; or

(2) legacy CCA mortgage contracts.

Annex C

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

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

1 Application and purpose

1.2 General application: who? what?

...

Requirement for evidence before treating a loan as being solely for business purposes, or a customer as a high net worth mortgage customer or a professional customer

...

1.2.9CA G Where the *regulated mortgage contract* is a *legacy CCA mortgage contract*, the *firm* should not treat the *customer* as a *high net worth mortgage customer* for the purposes of *MCOB* unless it is aware from evidence in its possession that the *customer* satisfied the definition of *high net worth mortgage customer* at the time the contract was entered into.

...

Applicability of MCOB to ~~second charge~~ regulated mortgage contracts ~~entered into before 21 March 2016~~ which had previously been regulated credit agreements

1.2.20 G ~~From 21 March 2016, where a *second charge mortgage contract* was entered into before 21 March 2016 (subject to certain exceptions in article 28 of the Mortgage Credit Directive Order 2015) the provisions of *MCOB* that apply include:~~

- ~~(1) *MCOB* 7 (disclosure at start of contract and after sale);~~
- ~~(2) *MCOB* 12 (charges);~~
- ~~(3) *MCOB* 13 (arrears, payment shortfalls and repossessions: regulated mortgage contracts and home purchase plans).~~

[deleted]

1.2.21 G (1) By virtue of amendments to the *Regulated Activities Order* made by the Mortgage Credit Directive Order 2015 and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 3) Order 2015, certain *regulated credit agreements* became *regulated*

mortgage contracts. The provisions of *MCOB* that apply to these regulated mortgage contracts include:

- (a) *MCOB* 7 (Disclosure at start of contract and after sale);
 - (b) *MCOB* 12 (Charges);
 - (b) *MCOB* 13 (Arrears, payment shortfalls and repossessions: regulated mortgage contracts and home purchase plans).
- (2) Where a regulated mortgage contract is a second charge regulated mortgage contract which was entered into before 21 March 2016, *MCOB* applies to the contract from 21 March 2016.
- (3) Where a regulated mortgage contract is a legacy CCA mortgage contract secured by a first charge legal mortgage, *MCOB* applies to the contract from the earliest of:
- (a) the date on which the lender first acts in compliance or purported compliance with rules in the *FCA Handbook* which apply to regulated mortgage contracts in respect of the contract;
 - (b) the date from which the lender notifies the borrower in writing that it will act in compliance with such rules in respect of the contract; and
 - (c) 1 October 2016.

...

1.6 Distinguishing regulated mortgage contracts and regulated credit agreements

- 1.6.1 G *MCOB* applies to regulated mortgage contracts entered into on or after 31 October 2004. For certain categories of regulated mortgage contract, *MCOB* applies from the dates mentioned in *MCOB* 1.2.21G to regulated mortgage contracts in the relevant category. A contract credit agreement secured on land that was entered into before 31 October 2004, and that is subsequently varied on or after that date, will is not be a regulated mortgage contract but, for example because the borrower is not an individual or a trustee, may be a regulated credit agreement to which the CCA and CONC apply (see CONC 1.2.7G). If, however, a new contract is entered into on or after 31 October 2004, replacing the previous contract, this may be a regulated mortgage contract. PERG 4.4.13G contains guidance on the variation of contracts entered into before 31 October 2004.

...

12 Charges

...

Charges under ~~second charge~~ regulated mortgage contracts which had previously been regulated credit agreements

- 12.1.5A R The rules in *MCOB* 12.4 (Payment shortfall charges: regulated mortgage contracts) and *MCOB* 12.5 (Excessive charges: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements) apply to:
- (1) second charge regulated mortgage contracts entered into before 21 March 2016, in relation to charges imposed on a customer for events occurring from that date onwards on or after 21 March 2016; and
 - (2) regulated mortgage contracts which are legacy CCA mortgage contracts secured by a first charge legal mortgage, in relation to charges imposed on a customer for events occurring on or after the earliest of:
 - (a) the date on which the lender first acts in compliance or purported compliance with rules in the FCA Handbook which apply to regulated mortgage contracts in respect of the contract;
 - (b) the date from which the lender notifies the borrower in writing that it will act in compliance with such rules in respect of the contract; and
 - (c) 1 October 2016.

...

After TP 1 (Transitional Provisions) insert the following new transitional provisions. The text is not underlined.

TP 2 Transitional Provisions: Regulated mortgage contracts

TP Transitional provisions for regulated mortgage contracts entered into before 31
2.1 October 2004

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	<i>MCOB</i> 7.5.1R	R	In relation to a <i>legacy CCA mortgage contract</i> , the <i>firm</i> must	21 March 2016 to 30	31 October 2006

		provide the first statement in respect of the contract required by <i>MCOB 7.5.1R</i> no later than twelve months after the date on which the last statement in respect of the contract required under section 77A of the <i>CCA</i> was due.	September 2017	
--	--	---	----------------	--

Annex D

Amendments to the Supervision manual (SUP)

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

12 Appointed representatives

...

12.5 Contracts: required terms

Required contract terms for all appointed representatives

...

12.5.2 G ...

- (2) Under the *Appointed Representative Regulations*, an *appointed representative* is treated as representing other counterparties if, broadly, it:

...

- (e) *arranges:*

- (i) ...

- (ii) for a *person* to vary a *home finance transaction* entered into by a *person* as customer (or as plan provider in the case of a *home reversion plan*) before 31 October 2004 (in the case of a *legacy CCA mortgage contract*), or on or after 31 October 2004 (in the case of a any other regulated mortgage contract) or 6 April 2007 (in all other cases) with other counterparties;

- (f) gives advice (within articles 53A, 53B or 53C of the *Regulated Activities Order*) on the merits of:

- (i) ...

- (ii) *persons* varying *home finance transactions* entered into by them as customer (or as plan provider in the case of a *home reversion plan*) before 31 October 2004 (in the case of a *legacy CCA mortgage contract*), or on or after 31 October 2004 (in the case of a any other regulated mortgage contract) or 6 April 2007 (in all other cases) with

other counterparties;

...

...

16 Reporting requirements

...

16.11 Product Sales Data Reporting

...

Content of the report

...

16.11.5A R A performance data report must contain performance data in respect of *regulated mortgage contracts* other than legacy CCA mortgage contracts.

...

16.12 Integrated Regulatory Reporting

...

Regulated Activity Group 5

...

16.12.18B R ...

...			
Note 4	Not applicable if the <i>firm</i> exclusively carries on <i>home finance administration</i> or <i>home finance providing activities</i> in relation to <i>second charge regulated mortgage contracts</i> <u>or legacy CCA mortgage contracts (or both)</u> .		

...

Regulated Activity Group 9

...

16.12.28A R ...

...			
Note 3	This item does not apply to <i>firms</i> who only carry on <i>home finance mediation activities</i> exclusively in relation		

	to <i>second charge regulated mortgage contracts</i> <u>or</u> <i>legacy CCA mortgage contracts</i> (or both) and who are not otherwise expected to complete it by virtue of carrying out other regulated activities.
--	---

...

16 Annex 18B Notes for Completion of the Retail Mediation Activities Return ('RMAR')

...

G Section C: Client Money and assets

...

Note 4: this data item does not apply to firms who only carry on home finance mediation activities exclusively in relation to second charge regulated mortgage contracts or legacy CCA mortgage contracts (or both) and who are not otherwise expected to complete it by virtue of carrying out other regulated activities: see SUP 16.12.28AR, Note 3).

...

G Section D: Capital Resources

...

(i) Section **D1** covers the appropriate capital resources and connected requirements in *MIPRU* chapter 4 for firms carrying on home finance mediation activity (save for firms carrying on home finance mediation activities exclusively in relation to second charge regulated mortgage contracts or legacy CCA mortgage contracts, or both), ~~and~~ or insurance mediation activity relating to non-investment insurance contracts (the requirements have to be completed for all applicable categories), or both. ...

...

16 Annex 19B Notes for Completion of the Mortgage Lenders & Administrators Return ('MLAR')

Introduction: General Notes on the Return

G ...

8. Loans made before 31 October 2004

(i) Classifying the 'back book'

Many loans made before 31 October 2004 became regulated

as regulated mortgage contracts on 21 March 2016 or, depending on nature of the loan and the applicable transitional provisions, on a date no later than 1 October 2016; these loans should be treated as regulated mortgage contracts in the MLAR accordingly. Loans made before 31 October 2004 which continue not to be regulated as regulated mortgage contracts fall into the following categories:

...

(ii) **Specific treatment of residential loans to individuals**

Any loans made before 31 October 2004, that ~~otherwise satisfy the specific requirements of a regulated mortgage contract~~ have not become regulated as regulated mortgage contracts, should be reported as **non-regulated loans** in the various parts of the MLAR.

This reporting basis ~~for loans made before 31 October 2004~~ should continue until such time, if ever, that a subsequent transaction on the loan causes it to be formally treated as a regulated contract.

(iii) **Further advances on loans made before 31 October 2004 which have not already become regulated as regulated mortgage contracts**

We cannot be prescriptive about whether, after the onset of mortgage regulation, a further advance (or any other variation) to a pre-31 October 2004 mortgage which has not already become regulated as a regulated mortgage contract (see (i) above) will have the effect of creating a new regulated mortgage contract. Our perimeter guidance (at AUTH App PERG 4.4.13G) considers the effect of variations to contracts entered into before the onset of mortgage regulation. Whether a variation amounts to creating a new contract will depend on each lender's individual mortgage documentation. This documentation will differ, possibly significantly, between firms. Each lender will need to review its existing documentation and take a view on the scope that this provides for making changes.

In practice this means that:

- if the lender can make a further advance without creating a new contract (i.e. makes a variation to the existing mortgage contract), then the further advance should be added to the original loan and the combined loan treated as a single loan for MLAR reporting. This combined loan should be reported as 'non-regulated'

- if making a further advance creates a new contract, (and this further advance is a *regulated mortgage contract*) then the correct reporting approach will be determined as follows:
 - (a) ~~where the original loan was made before 31 October 2004, but would otherwise satisfy the specific requirements of a *regulated mortgage contract*, the original loan and further advance may be treated as one for MLAR reporting, being shown as "Regulated" under "Residential loans to individuals". [deleted]~~
 - (b) where the original loan did not satisfy the defined conditions of a *regulated mortgage contract* at the time it was entered into and has not in the meantime become a *regulated mortgage contract*, and the further advance is documented in a new loan agreement separate from the original loan (and is not a variation to the existing mortgage contract), the old loan and further advance will be treated as two separate loans for most aspects of MLAR reporting, the former being ‘unregulated’ while the latter will be reported as ‘regulated’. ...
 - (c) where the lender decides to combine the original loan and the further advance to create a single new contract that replaces the existing mortgage contract and is a *regulated mortgage contract*, this should be reported as ‘regulated’.

...

SECTION L: CREDIT RISK

INTRODUCTION

The purpose of this *data item* is so that a *firm* can provide an analysis of its credit risk capital requirement as calculated under *MIPRU* 4.2A, 4.2B and 4.2C. But this section does not apply to a *firm* which exclusively carries on *home finance administration* or *home finance providing activities* (or both) in relation to *second charge regulated mortgage contracts* or *legacy CCA mortgage contracts* (or both): see SUP 16.12.18BR, Note 4.

...

SECTION M: LIQUIDITY

INTRODUCTION

The purpose of this *data item* is for a *firm* to comply with the liquidity resources requirements in *MIPRU* 4.2D. But this section does not apply to a

firm which exclusively carries on home finance administration or home finance providing activities (or both) in relation to second charge regulated mortgage contracts or legacy CCA mortgage contracts (or both): see SUP 16.12.18BR, Note 4.

...

16 Annex 20 Products covered by the reporting requirement in SUP 16.11

G ...

SUP 16.11.3R, SUP 16.11.5R and SUP 16.11.5AR require certain firms to report product sales data and, in respect of *regulated mortgage contracts other than legacy CCA mortgage contracts*, performance data. For reporting purposes, a reportable sale applies (other than in the case of a mortgage transaction) where the contract has been made and the premium has been paid.

...

16 Annex 21 Reporting fields

R ...

2 SPECIFIC REPORTING FIELDS

...

(c) Mortgages

The following data reporting fields must be completed, where applicable for all relevant *regulated mortgage contracts*, except any *second charge regulated mortgage contract* that is entered into before 1 April 2017 and any regulated mortgage contract which is a legacy CCA mortgage contract:

...

Annex E

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text.

5 Protected claims

5.6 Protected home finance mediation

...

5.6.3 R This section does not apply in respect of a *regulated mortgage contract* which is a *legacy CCA mortgage contract*.

Annex F

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

...

2.7 Activities: a broad outline

...

Arranging deals in investments and arranging a home finance transaction

2.7.7A G There are ten arranging activities that are *regulated activities* under the *Regulated Activities Order*. These are:

...

- (3) *arranging (bringing about) regulated mortgage contracts*, which includes arranging for another *person* to vary the terms of a *regulated mortgage contract* entered into by him as borrower after 31 October 2004 or a *legacy CCA mortgage contract* entered into by him as borrower (article 25A(1) and (2A));

...

...

Advising on regulated mortgage contracts

2.7.16B G ...

Advice on varying terms as referred to in (2) comes within article 53A only where the borrower entered into the *regulated mortgage contract* on or after 31 October 2004, or the contract is a *legacy CCA mortgage contract*, and the variation varies the borrower's obligations under the contract. Further *guidance* on the scope of the regulated activity under article 53A is in *PERG* 4.6 (Advising on regulated mortgage contracts).

...

Exemptions relating to the nature of the agreement

2.7.19C G

...

2.8 Exclusions applicable to particular regulated activities

...

Arranging deals in investments and arranging a home finance transaction

...

2.8.6A G ...

- (5) Under article 29A, an *unauthorised person* is excluded from the *regulated activity* of arranging for another *person* to vary the terms of a *regulated mortgage contract* entered into on or after 31 October 2004 or a legacy CCA mortgage contract (article 25A(1)(b)) or a *home reversion plan* or *home purchase plan* entered into on or after 6 April 2007 (articles 25B(1)(b) and 25C(1)(b)) or a *regulated sale and rent back agreement* entered into on or after 1 July 2009 (article 25E(1)(b)). ...

...

...

4 Guidance on regulated activities connected with mortgages

...

4.3 Regulated activities related to mortgages

- 4.3.1 R There are six *regulated mortgage activities* requiring *authorisation* or exemption if they are carried on in the *United Kingdom*. These are set out in the *Regulated Activities Order*. They are:

...

- (5) *administering a regulated mortgage contract* where that contract is entered into by way of business on or after 31 October 2004 or the contract was entered into by way of business before that date and is a legacy CCA mortgage contract (article 61(2) (Regulated mortgage contracts)); and

...

...

4.5 Arranging regulated mortgage contracts

Definition of the regulated activities involving arranging

- 4.5.1 G Article 25A of the *Regulated Activities Order* describes two types of

regulated activities concerned with *arranging regulated mortgage contracts*. These are:

- (1) making arrangements:
 - ...
 - (c) for another person to vary the terms of a *regulated mortgage contract* entered into by ~~him~~ that person as borrower on or after 31 October 2004 or a *legacy CCA mortgage contract* entered into by that person as borrower in such a way as to vary ~~him~~ that person's obligations under the contract; and
 - ...
- ...

4.6 Advising on regulated mortgage contracts

Definition of ‘advising on regulated mortgage contracts’

- 4.6.1 G Article 53A of the *Regulated Activities Order* (Advising on regulated mortgage contracts) makes *advising on regulated mortgage contracts* a *regulated activity*. This covers advice which is both:

- (2) advice on the merits of the borrower:
 - ...
 - (b) varying the terms of a *regulated mortgage contract* entered into by the borrower on or after 31 October 2004, or a *legacy CCA mortgage contract* entered into by the borrower, in such a way as to vary the borrower's obligations under the contract.

- 4.6.2 G ...

Although advice on varying the terms of a *regulated mortgage contract* is not a *regulated activity* if the contract was entered into before 31 October 2004, unless the contract is a *legacy CCA mortgage contract*, there may be instances where the variation to the old contract is so fundamental that it amounts to *entering into a new regulated mortgage contract* (see *PERG* 4.4.4G). In that case, giving the advice would be a *regulated activity*.

...

4.8 Administering a regulated mortgage contract

Definition of ‘administering a regulated mortgage contract’

4.8.1 G Article 61(2) of the *Regulated Activities Order* makes *administering a regulated mortgage contract* a *regulated activity* ‘where the contract was entered into by way of business’ on or after 31 October 2004 or the contract was entered into ‘by way of business’ before that date and is a *legacy CCA mortgage contract*.

4.8.2 G The definition does not include administration of a *regulated mortgage contract* which was not entered into by way of business. See *PERG 4.3.3G* for a discussion of the ‘by way of business’ test. The definition also does not include administration of a mortgage which was entered into before 31 October 2004 unless the contract is a *legacy CCA mortgage contract*. See, however, *PERG 4.4.4G* for a discussion of how a variation of a mortgage contract entered into before 31 October 2004 could amount to the entry into a new regulated mortgage contract on or after 31 October 2004.

...

4.17 Interaction with the Consumer Credit Act and consumer credit regulated activities

Entering into and administering a regulated mortgage contract

...

4.17.3 G ~~*Regulated mortgage contracts* that were in place at 31 October 2004 and which are subject to the *CCA* will remain subject to the regime in the *CCA* and may be *regulated credit agreements* for the purposes of the *credit-related regulated activities* in Chapter 14A of Part 2 of the *Regulated Activities Order*. But there may be instances where a variation of an existing contract amounts to entering into a new *regulated mortgage contract* (see *PERG 4.4.4G* and *PERG 4.4.13G*): [deleted]~~

...

7 Periodical publications, news services and broadcasts: applications for certification

...

7.4 Does the article 54 exclusion apply?

...

The formats

...

7.4.2 G But the exclusion applies only if the principal purpose of the publication or service is not:

...

(2) to lead or enable *persons*:

...

(b) to enter as *borrower* into *regulated mortgage contracts*, or vary the terms of *regulated mortgage contracts* entered into by them as borrower on or after 31 October 2004 or the terms of *legacy CCA mortgage contracts* entered into by them as borrower; or

...

...

The principal purpose test

7.4.5 G The exclusion applies only if the principal purpose of the publication or service is not:

...

(2) to lead or enable *persons* to:

...

(b) ~~to~~ enter as *borrower* into *regulated mortgage contracts*, or vary the terms of *regulated mortgage contracts* entered into by them as borrower on or after 31 October 2004 or the terms of *legacy CCA mortgage contracts* entered into by them as borrower; or

...

...

8 Financial promotion and related activities

...

8.17 Financial promotions concerning agreements for qualifying credit

...

Controlled activities

...

8.17.6 G *Arranging qualifying credit* is a *controlled activity* under paragraph 10A of Schedule 1 to the *Financial Promotion Order*; that is, making arrangements:

...

- (2) for a borrower under a *regulated mortgage contract* entered into on or after 31 October 2004 or a borrower under a *legacy CCA mortgage contract* to vary the terms of that contract in such a way as to vary ~~his~~ that person's obligations under that contract.

...

8.17.7 G Advising on qualifying credit is a *controlled activity* under paragraph 10B of Schedule 1 to the *Financial Promotion Order*; that is, advising a *person* if the advice is:

...

- (2) advice on the merits of ~~his~~ that person doing any of the following:

...

- (b) varying the terms of a *regulated mortgage contract* entered into by ~~his~~ that person on or after 31 October 2004 or the terms of a *legacy CCA mortgage contract* entered into ~~his~~ that person in such a way as to vary ~~his~~ that person's obligations under that contract.

...

Financial Conduct Authority



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