

Policy Statement

PS16/7

# Future regulatory treatment of CCA regulated first charge mortgages



March 2016



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In this Policy Statement we report on the main issues arising from Consultation Paper CP15/36 (*Future regulatory treatment of CCA regulated first charge mortgages*) and publish the final rules.

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## Abbreviations used in this paper

<b>CBA</b>	Cost benefit analysis
<b>CCA</b>	Consumer Credit Act 1974
<b>CONC</b>	Consumer Credit sourcebook
<b>CP</b>	Consultation paper
<b>DISP</b>	Dispute Resolution: Complaints
<b>FEES</b>	Fees Manual
<b>FOS</b>	Financial Ombudsman Service
<b>HM Treasury</b>	Her Majesty's Treasury
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>MCD</b>	Mortgage Credit Directive
<b>MCOB</b>	Mortgages and Home Finance: Conduct of Business sourcebook
<b>MIRPU</b>	The Prudential sourcebook for Mortgage and Home Finance Firms and Insurance Intermediaries
<b>MLAR</b>	Mortgage Lenders and Administrators Return
<b>PERG</b>	Perimeter Guidance Manual
<b>PS</b>	Policy Statement
<b>PSD</b>	Product Sales Data
<b>SUP</b>	Supervision manual
<b>TC</b>	Training and Competence



# 1. Overview

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## Introduction

- 1.1** In November 2015 we consulted on the future regulatory treatment of first charge mortgages which were entered into before 31 October 2004 and are regulated under the Consumer Credit Act 1974 (CCA) and our Consumer Credit sourcebook (CONC). In this policy statement we summarise the feedback we received on the consultation and our response. In general, respondents agreed with our proposed amendments. We are now publishing final rules which come into effect on 21 March 2016; however, they will only apply when the affected loans become regulated mortgage contracts on 21 March 2017, unless the firm in question takes steps to apply the relevant rules before that date. In this paper the affected loans are called “pre-2004 first charge CCA mortgages”.

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## Who does this affect?

- 1.2** This policy statement will interest any firm currently administering, or advising on or arranging variations on a book of pre-2004 first charge CCA mortgages, or anyone who has this kind of mortgage.

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## Is this of interest to consumers?

- 1.3** Consumers who hold these mortgages will be entitled to different regulatory protections, for example an enhanced form of annual statement, and new protections for arrears and payment shortfalls.

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## Context

- 1.4** In November 2015 the Government made legislation which means the administration of and other activities relating to pre-2004 first charge CCA mortgages will become regulated mortgage activities from 21 March 2016. Mortgage regulation under the Financial Services and Markets Act 2000 (FSMA) began on 31 October 2004. Mortgages entered into before that date are regulated under the CCA and CONC, provided that they did not exceed the financial threshold in place when they were entered into. 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

- 1.5** The legislation will mean that the CCA will no longer generally apply to these loans. In CP15/36 we consulted on applying our existing mortgage regime to these loans in the same way as it applies to firms in relation to other regulated mortgage contracts, with some limited modifications or exceptions.
- 1.6** In CP14/20 we consulted on the regulatory treatment of second charge back book loans including those entered into before 31 October 2004. In PS 15/9 we confirmed our intention to apply our mortgage regime to all second charge back book loans. However, neither the legislation made by HM Treasury nor the rules in PS 15/9 achieved that aim; only second charge mortgage contracts entered into on or after 31 October 2004 were brought into the regulated mortgage regime. HM Treasury has now clarified the regulatory status of these loans, and the rules attached to this policy statement align with the amended legislation and confirm that our rules apply to second charge mortgages entered into before 31 October 2004.

### Summary of feedback and our response

- 1.7** In general, respondents welcomed our proposed approach. Some had concerns or questions about the application of certain rules to pre-2004 first charge CCA mortgages. We have made several minor amendments to our rules in response, which we discuss in Section 2. We believe the rules published with this policy statement do not differ from the draft published in CP15/36 in a way which is significant.
- 1.8** Our draft rules and guidance were intended to apply to pre-2004 first charge CCA mortgages from 1 October 2016, with firms able to adopt the new rules from 21 March 2016 if they wished to adopt early. However, one respondent was concerned about firms ability to adopt the changes by 1 October 2016.
- 1.9** The legislation has since been amended to make activities relating to pre-2004 CCA mortgages regulated mortgage activities from 21 March 2017, although firms can adopt the new rules from 21 March 2016 if they wish. We have amended our rules and guidance to reflect this new date.

### Impact of changes on mutual societies

- 1.10** Section 138K of FSMA requires us to consider if our proposed rules have a significantly different impact on mutual societies compared with other authorised persons.
- 1.11** In our consultation paper, we asked for comments or information on any issues for mutual societies arising from our proposals. We did not receive any feedback on potential issues for mutual societies, so we consider that our proposals will not have a significantly different impact on mutual societies compared with other authorised persons.

### Equality and diversity considerations

- 1.12** We are required under the Equality Act 2010 to consider whether our proposals could have a potentially discriminatory impact on groups with protected characteristics (age, gender, disability, race or ethnicity, pregnancy and maternity, religion, sexual orientation and gender reassignment). We are also required to be aware of the need to eliminate discrimination and support equality of opportunity when carrying out our activities.



- 1.13** We published our initial equality impact assessment in CP15/36 and invited comments or information about our proposals' potential impact on equality and diversity issues. Our initial assessment was that our proposals will not create any equality and diversity issues and we did not receive any comments to contradict this view during the consultation process.

### **Next steps**

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#### **What do you need to do next?**

- 1.14** Firms conducting activities relating to pre-2004 first charge CCA mortgages should check they have the appropriate permissions in place for when the legislation takes effect (21 March 2017, unless they transition their mortgages sooner) and consider how our rules will affect their business.

## 2. Summary of feedback and our responses

**2.1** In this chapter we outline the feedback received to the CP15/36 and set out our responses.

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

**2.2** The majority of respondents welcomed this proposal, with one saying it would allow harmonisation of existing processes across all mortgages.

**2.3** One respondent was concerned about the need to issue an MCOB compliant annual statement within 12 months of issuing the final CCA compliant statement. They explained that because of current system constraints, it may be difficult to issue an MCOB statement within the required 12 months. However, they anticipate being able to do so very shortly afterwards.

**2.4** One respondent was worried about needing to give an annual statement in a new format. They believe that the new format may lead to confusion among consumers. They also expressed concern that the proposed rules would apply retrospectively.

### Our response

As the majority of respondents welcomed our proposal we will continue with our proposed approach. There will be a minor amendment to our rules to allow for a 13 month period between the final CCA statement and the first MCOB statement rather than 12 months.

We consider that our MCOB 7 annual statement requirements are the most appropriate for making sure customers receive the right information about their mortgage accounts. We can also confirm that our rules will only apply to disclosures from 21 March 2017 (or an earlier date when a firm chooses to adopt the rules early).

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

**2.5** The majority of respondents agreed with our proposed approach. One trade body flagged that there may be difficulties if a mortgage was created as a second charge, but became the first charge due to the redemption of the original first charge. They suggested this could result in a different approach to default charges.

**2.6** Two respondents requested that MCOB 12.3.5G on the CCA early settlement regulations be amended to include reference to pre-2004 first charge CCA mortgages.

**Our response**

We will continue with our proposed approach, and amend the guidance at MCOB 12.3.5G to show that pre-2004 first charge CCA mortgages will continue to be covered by early settlement regulations. Under our proposals, all pre-2004 CCA mortgages will be covered by our MCOB 12 requirements. This means the same arrears charges requirements will apply regardless of whether the loan is secured by way of a first or second charge. Lenders with a second charge that has become a first charge can apply a consistent approach from 21 March 2016 if they wish to.

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

**2.7** All respondents agreed with our proposed approach.

**Our response**

We do not intend to make any changes to our proposed approach.

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

**2.8** Respondents agreed with our proposed approach.

**Our response**

We do not plan to make any changes to our proposed approach.

**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?**

**2.9** Respondents agreed with the proposed change, though one respondent asked that the rules should not apply retrospectively.

**Our response**

We will proceed with our proposal. Our rules do not apply retrospectively.

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

**2.10** The majority of respondents agreed with our proposed changes.

#### Our response

We will proceed with our proposed approach.

**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?*

**2.11** One trade body noted that the definition of "legacy CCA mortgage contract" does not distinguish between first and second charge loans. They asked for further information on the transitional, including our expectations of firms who are switching from the CCA regime to our new rules.

**2.12** One trade body said that our proposed changes would streamline existing processes rather than increasing complexity.

#### Our response

The definition of "legacy CCA mortgage contract" does not distinguish between first and second charge mortgages, but where relevant we have expressly limited our rules and guidance's application to legacy CCA mortgage contracts secured by a first legal charge.

When firms adopt our new rules, we will not require them to notify their customers of their loans' change in regulatory status. However, firms may choose to notify customers, as a way to transition the pre-2004 first charge CCA mortgages into the regulated mortgage regime earlier than 21 March 2017.

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

**2.13** All respondents were in favour of the proposed changes.

#### Our response

The proposed changes will be mirrored 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?*

**2.14** The majority of respondents were in favour of our proposed changes. One trade body suggested that the legacy mortgage definition should include pre-2004 second charge CCA mortgages, as the proposed definition assumes they do not overlap.

#### Our response

We will proceed with our proposed approach. We recognise that there is an overlap between “second charge regulated mortgage contracts” and “legacy CCA mortgage contracts” but the rule does not assume these terms to be mutually exclusive. Both terms cover the mortgages referred to by the trade body (second charge mortgages entered into before 31 October 2004 that are currently regulated under the CCA), and we can confirm that income from these mortgages will be ignored for the purposes of MIPRU 4.3.3R and 4.3.7AR.

We have also taken this opportunity to make presentational amendments to MIPRU 3.1.1R to clarify its meaning and application.

**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?*

**2.15** The majority of respondents were in favour of our proposed changes. One respondent was concerned that one of our changes to the MLAR guidance would not explain how firms should report CCA-exempt loans entered into before 31 October 2004, and which would otherwise meet the definition of a regulated mortgage contract if entered into after that date.

#### Our response

We have amended the MLAR guidance (SUP 16 Ann 19BG8 (iii) (a)) to clarify that there should be no change to how this type of loan is reported.

**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?*

**2.16** The majority of respondents were in favour of our proposed changes. One trade body asked for confirmation that it would apply to firms undertaking variations of pre-2004 second charge CCA mortgages.

**Our response**

We do not plan to make any changes to our proposed approach. We can confirm that these requirements will apply to firms advising on or arranging variations of pre-2004 second charge mortgages in line with other second charge mortgages on 21 September 2018.

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**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?**

**2.17** All respondents agreed with our proposal.

**Our response**

No changes are needed. We will continue with our consultation approach.

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

**2.18** All respondents agreed with our proposal.

**Our response**

No changes are needed. We will proceed with our consultation approach.

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

**2.19** All respondents agreed with the proposal.

**Our response**

No changes are needed. We will go ahead with our consultation approach.

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# Annex 1

## List of non-confidential respondents

British Bankers Association

Building Societies Association

Council of Mortgage Lenders

Coventry Building Society

Lloyds Banking Group





# Appendix 1

## Made rules (legal instrument)

**MORTGAGE CONTRACTS (LEGACY CCA)  
INSTRUMENT 2016**

**Powers exercised by the Financial Ombudsman Service**

- 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 (The 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 Contracts (Legacy CCA) Instrument 2016.

By order of the Board of the Financial Ombudsman Service Ltd  
16 March 2016

By order of the Board of the Financial Conduct Authority  
17 March 2016

## 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) ...
  - (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:
  - (A) at the time the contract was entered into, entering into the contract constituted the regulated activity of entering into a regulated mortgage contract; or
  - (B) the contract is a consumer credit back book mortgage contract within the meaning of article 2 of the MCD Order.

## 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:

(1) ~~*insurance mediation activity*~~; [deleted]

(1A) Subject to the exceptions in (3) to (8), this chapter applies to a *firm* with *Part 4A permission* to carry on any of the following activities:

(a) *insurance mediation activity*;

(b) *home finance mediation activity*; and

(c) *MCD article 3(1)(b) credit intermediation activity*.

(2) ~~*home finance mediation activity* or *MCD article 3(1)(b) credit intermediation activity*, as indicated and unless any of the following exemptions apply: [deleted]~~

(3) ~~in~~ In relation to *insurance mediation activity*, this chapter does not apply to a *firm* if another *authorised person* which has net tangible assets of more than £10 million provides a comparable guarantee; for this purpose:

...

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

(b) ...

...

(ii) the comparable guarantee provisions of (3) apply (as if the *firm* was carrying on *insurance mediation activity*) but substituting £1 million for £10 million in (3)(a) and (b); or

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

(5) ...

(6) ~~In~~ In relation to *home finance mediation activity*, ...

(7) ~~In~~ In relation to *home finance mediation activity*, ...

(8) ~~In~~ In relation to *MCD article 3(1)(b) credit intermediation activity*,  
...

...

## 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 articles 60B, 60C and 61 of the Regulated Activities Order which came into force on 21 March 2016, certain regulated credit agreements became regulated mortgage contracts (but see the transitional provisions described in (3) below).

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); and
  - (c) 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) 21 March 2017.

...

## 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. 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) 21 March 2017.

...

### 12.3 Early repayment charges: regulated mortgage contracts

...

Early settlement charges on second charge regulated mortgage contracts

- 12.3.5 G The effect of article 29 of the *MCD Order* is that various provisions of, or made under, the *CCA* continue to apply to “consumer credit back book mortgage contracts” (as defined in article 2 of the *MCD Order*). ~~The~~ These include the Consumer Credit (Early Settlement) Regulations 2004, which continue to apply to a *second charge regulated mortgage contract* entered into before 21 March 2016 and to a *legacy CCA mortgage contract*.

...

After TP 1 (Transitional Provisions) insert the following new transitional provisions. The

text is not underlined.

**TP 5 Transitional Provisions: Regulated mortgage contracts**

TP Transitional provisions for regulated mortgage contracts entered into before 31  
5.1 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 provide the first statement in respect of the contract required by <i>MCOB</i> 7.5.1R no later than thirteen 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.	21 March 2016 to 30 September 2017	31 October 2006

## 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 ...

Description of <i>data item</i>	<i>Data item</i> (note 1)	Frequency	Submission deadline
...			
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 ...

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Description of data item	Data item (note 1)	Frequency	Submission deadline
...			
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 legacy CCA mortgage contracts</u> (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 3A: 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 21 March 2017; 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 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, has not in the meantime become a regulated mortgage contract (for example, because it is not a regulated credit agreement) but would otherwise satisfy the specific requirements of 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 original loan and further advance may be treated as one for MLAR reporting, being shown as "Regulated" under "Residential loans to individuals": ;
  - (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’. However, for the LTV and Income Multiple analysis, while the ~~firm~~ *firm* should only show the amount of the further advance in the relevant “cell”, the “cell” should be determined by using the total amount of the loan (old loan + further advance) when deciding which LTV band and which Income Multiple band are applicable: ; and
  - (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~~ *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).

...

## 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 ~~his~~ 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 ...

- (1) ...

- (2) ...

- (3) ...

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*:
- (a) to *buy, sell*, subscribe for or underwrite *securities* or *relevant investments*; or



- (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:

- (a) to buy, sell, subscribe for or underwrite *securities* or *relevant investments*; or

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

...



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