



HM TREASURY

BIS

Department for Business
Innovation & Skills

A new approach to financial regulation:

summary of responses to consultation on
reforming the consumer credit regime

July 2011



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1

Introduction

1.1 HM Treasury and the Department for Business, Innovation and Skills (BIS) published *A new approach to financial regulation: consultation on reforming the consumer credit regime* on 21 December 2010.

1.2 This document considered the merits of transferring responsibility for consumer credit regulation from the Office of Fair Trading (OFT) to the proposed new conduct of business regulator for financial services, then known under the working title 'consumer protection and markets authority' (CPMA). The Government has since announced that this regulator will be named the Financial Conduct Authority (FCA) to directly reflect its role and focus on conduct of business issues¹.

1.3 The consultation set out two options for a future regulatory regime for consumer credit:

- option 1: a regulatory regime for consumer credit under the FCA within a legal framework based on the Financial Services and Markets Act 2000 (FSMA) and consistent with the regulation of other retail financial services; and
- option 2: a specific consumer credit regime based on the Consumer Credit Act 1974 (CCA).

1.4 These two options were assessed against the Government's stated objectives:

- clarity, coherence and improved market oversight;
- effective and appropriate consumer protection, including through a responsive and flexible framework;
- opportunities for simplification and deregulation; and
- a proportionate and cost effective regime.

1.5 The document also noted that these options, in particular the CCA option, should be considered in the context of the Government's wider proposals for reforming the competition and consumer protection regimes², and their implications for the future of the OFT.

1.6 The document stated that the Government's preferred option was to bring consumer credit into the same regulatory regime as other retail financial services. The Government views the creation of the FCA as a real opportunity to improve the way consumer credit is regulated, creating a simpler, more responsive regime with stronger consumer protections. However, the document also acknowledged that a reform of this magnitude would represent a significant change for many firms operating in the consumer credit market.

Consultation responses

1.7 The consumer credit consultation closed on 22 March 2011. Around 110 formal written responses were received. These came from a diverse range of stakeholders, including consumer

¹ *A new approach to financial regulation: building a stronger system*, HM Treasury, February 2011

² <http://www.cabinetoffice.gov.uk/news/new-legislation-introduced-enable-quango-reforms>

credit licence holders, trade associations, consumer groups, local authorities and Trading Standards Services, legal practitioners and academics.

1.8 Written responses, except those where confidentiality has been requested, have been published on the Treasury's website and can be found at: http://www.hm-treasury.gov.uk/consult_consumer_credit.htm. A list of respondents can be found in Annex A of this document.

1.9 Consultation respondents did not collectively express a clear preference for either of the options proposed in the paper. A significant number of responses, as a result of a campaign by members of a trade association representing smaller lenders and brokers, expressed support for retaining the CCA regime under the OFT. Another significant block of responses, including many from consumer groups, several local authorities and credit licence holders, were in favour of transferring consumer credit to a FSMA-style regime under the new FCA.

1.10 Significantly, a number of respondents, including some trade associations, licensees, consumer groups and local authorities, favoured alternative models for the consumer credit regime, although there was no clear consensus on what such a model might look like. The proposals put forward included:

- a "lift and shift" approach with the FCA operating the CCA regime;
- merging the FSMA and CCA regimes to create a hybrid model;
- an interim "lift and shift" with a subsequent full transfer; and
- a partial transfer of certain categories of consumer credit activities to the FCA

1.11 A number of consultation respondents did not answer the first order question of whether or not responsibility for consumer credit regulation should be transferred from the CCA to a FSMA-style regime. These respondents commented instead on various specific aspects of the consumer credit market or the CCA.

1.12 Despite the lack of consensus among respondents on the options proposed in the consultation document, several key themes did emerge which are set out in chapter 2. Taken together, these themes suggest there would be support for a model based on:

- a single regulator for consumer credit and other retail financial services;
- a rule book that provides an appropriate degree of certainty and continuity, incorporating key features and protections afforded by the CCA, that can be updated without having to go through legislation;
- an approach tailored to the diversity of the credit market; and
- an appropriate and proportionate cost base.

Next steps and wider context

1.13 Given the lack of a clear consensus emerging from the consultation and the wide variety of alternative models that have been proposed, further policy development work is needed to enable the Government to make a determination on the future of consumer credit regulation.

1.14 The Government will carry out this policy work and provide a definitive policy response later this year in time for introduction of the Financial Services Bill³, which implements the Government's reforms to the institutional framework for financial services regulation. This

³ <http://www.hm-treasury.gov.uk/d/ukpga-2000-8-proposed-financial-services-bill-2011-revision.pdf>

timetable will allow legislative provisions implementing a transfer to be included in the Bill, should the decision be made to go ahead with some variant of a transfer of consumer credit regulation to the FCA.

1.15 Budget 2011 announced a moratorium on new domestic regulation for micro and start up businesses. As a result, the Government has delayed the transfer of second charge regulation from the OFT to the FSA until a final decision is taken on the wider transfer of consumer credit regulation.

1.16 The timetable will also allow the Government to consider emerging findings from wider reviews of the competition and consumer protection regimes. The Government has now issued consultations on these wider matters.

1.17 On 16 March 2011, BIS published its review of the competition regime, *A competition regime for growth: a consultation on options for reform*⁴. This consultation sets out the Government's proposal to merge the competition functions of the OFT and the Competition Commission to create a single Competition and Markets Authority. It closed on 13 June 2011.

1.18 On 21 June 2011, BIS published a further consultation, *Empowering and protecting consumers: consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement*⁵, setting out options for the consumer regulatory landscape. This consultation considers how the OFT's consumer functions alongside the work of other bodies and organisations should be reformed and/or reallocated. It closes on 27 September 2011.

1.19 The Government has also been conducting a review of consumer credit and personal insolvency, for which a call for evidence was issued on 15 October 2010 and closed on 10 December 2010⁶. This review focused primarily on matters that may need urgent attention, in particular on forms of credit that may tempt people unnecessarily into debt or make it particularly difficult for individuals to manage their finances.

1.20 The Government is working to ensure that any possible future changes made to the institutional framework for consumer credit regulation are aligned with the policy outputs announced as part of the consumer credit and personal insolvency review. The Government is therefore publishing a summary of responses to the review and initial policy conclusions today, alongside this document⁷. Further policy announcements relating to the consumer credit and personal insolvency review will be made in the autumn.

1.21 Over the coming months, the Treasury and BIS will continue to consider options for a possible transfer of consumer credit regulation from the OFT to the FCA, taking into account the issues raised by stakeholders. This policy work will include more in depth analysis and further evidence gathering in relation to the two options already considered in the December consultation, but will also consider alternative hybrid models, including those suggested by consultation respondents.

⁴ <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/11-657-competition-regime-for-growth-consultation.pdf>

⁵ <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/11-970-empowering-protecting-consumers-consultation-on-institutional-changes.pdf>

⁶ <http://bis.gov.uk/Consultations/consumer-credit-call-for-evidence>

⁷ <http://www.bis.gov.uk/Consultations>

2

Key themes from consultation responses

2.1 This chapter sets out the Government's analysis of the key themes that have emerged from consultation responses. Responses to the specific consultation questions are summarised in more detail in Chapter 3 of this document.

2.2 The five key themes to emerge from responses are:

- the potential benefits of a single conduct of business regulator across all retail financial services;
- the need to set out in more detail why changes to the consumer credit regime are necessary;
- the importance of providing greater clarity and certainty on what a FSMA-style consumer credit regime would look like;
- the desire for more robust analysis of the costs of transfer and the wider impact on the consumer credit market; and
- the need for a reasonable timetable for reform, in the event of a transfer.

Potential benefits of a single regulator

2.3 A significant number of respondents agreed that bringing together the regulation of consumer credit with other retail financial services under one authority could deliver benefits for both firms and consumers. It was suggested that having a single authority responsible for regulating the conduct of business of all firms engaging in retail financial services would enable a more consistent and coherent approach to consumer protection, more effective market oversight, and clearer regulatory accountability.

2.4 In particular, it was noted that the new Financial Conduct Authority (FCA) will be a more proactive and intrusive regulator, with a clearer focus on identifying conduct risks in financial services and a greater willingness to intervene earlier, tackling problems before they result in significant consumer detriment.

2.5 Consumer groups in particular said that transferring responsibility for consumer credit regulation to the FCA would enable consumers of credit to benefit from the same regulatory approach as other retail financial services. A number of respondents set out their views on how the FCA should approach its new remit.

Why changes to the consumer credit regime are necessary

2.6 Despite the potential benefits of a single regulator, many respondents noted that transferring the responsibility for consumer credit regulation to the FCA would represent a significant change, particularly for those licence holders not already authorised by the Financial Services Authority (FSA). A significant number of respondents therefore asked the Government to set out in more detail its rationale for reforming the current regime.

2.7 Many respondents also discussed the recent changes to the consumer credit regime, in particular the Consumer Credit Act 2006 (CCA) and the coming into force of the Consumer

Credit Directive (CCD). Consumer and industry respondents agreed that these changes delivered stronger protections in the consumer credit market, for example the new unfair relationship test and the right to seek redress through the Financial Ombudsman Scheme (FOS). However, it was also noted that these changes have created disruption and costs for licence holders. Some respondents therefore queried whether further changes were necessary at this point in time, particularly as the new requirements introduced by the CCD, such as the requirement for creditors to check the creditworthiness of a borrower before granting credit and 14 day right of withdrawal, only came into force on 1 February 2011.

2.8 Several industry respondents also challenged the Government to provide greater evidence of consumer detriment under the current regime, and the benefits that would be obtained under a FSMA-style regime.

Greater clarity on a FSMA-style regime

2.9 1.1 A key concern among respondents was the need for greater clarity on what an appropriate and proportionate FSMA-style consumer credit regime would look like, and what this would mean in practical terms for consumers and individual firms.

2.10 Many respondents noted the distinct and diverse nature of the consumer credit market, and the need for the FCA to tailor its supervisory approach accordingly. Industry respondents highlighted the distinct risk profile in consumer credit with the lender taking the financial risk, rather than the consumer as in other retail financial services. A range of respondents noted the wide variety of firms operating in the consumer credit market, carrying on services as diverse as long-term and short-term lending, brokerage, credit hire, credit referencing, debt collection and debt advice. It was also noted that consumer credit affected many of the most vulnerable financial customers, and that the problems associated with over-indebtedness can grow rapidly, often with a devastating impact.

2.11 While consumer groups were generally supportive of transferring the regulation of consumer credit to a FSMA-style regime, a number expressed concern about which of the consumer protections currently found in the CCA would be retained in the event of a transfer. Similarly, a common issue raised by local authorities was what role there would be for Trading Standards Services, and in particular the specialist Illegal Money Lending teams, in a FSMA-style regime.

2.12 A significant number of industry respondents and consumer groups also commented on the need for a sufficient level of prescription in FCA rules on credit, in the event of a transfer. It was argued that, particularly in light of the existing detailed framework set out in the CCA, it would be inappropriate to rely on high level principles or outcome-focused rules in the credit market, as this could give rise to uncertainty for firms and represent a weakening of consumer protections, allowing bad practice to flourish.

Costs and wider impact of a transfer

2.13 Another common theme among consultation respondents was the need for more robust analysis on the costs of a transfer, and its wider impact on the consumer credit market, including the diversity of credit firms and access to credit. It was also noted that further analysis should be done of the likely impact of a transfer on economic growth.

2.14 Industry respondents were particularly concerned about the likely increase in costs, arising from both one-off transitional costs and higher ongoing costs (in the form of higher regulatory fees and higher compliance costs). Firms asked the Government to set out in more detail how significant this increase in costs would be, and what steps would be taken to ensure that small firms in particular were not forced to exit the market.

2.15 Indeed, a number of respondents asserted that transferring consumer credit to a FSMA-style regime could result in a significant number of firms exiting the market, particularly smaller credit firms who often provide specialist products and services such as (pawnbroking), or those for whom consumer credit is a peripheral activity (such as some retailers). It was noted that this would have a negative impact on the diversity of and competition in the consumer credit market, and could restrict access to credit, particularly for the most vulnerable consumers who are unable to access mainstream credit. Several respondents suggested that there would be wider implications for economic growth.

Reasonable timetable for reform

2.16 A critical issue for many respondents was timing. A significant number of respondents said that if the Government proceeds with a transfer, the timetable for reform must be realistic. It was noted that consumer credit licence holders would need time to adapt to the new regime, and also that the FCA will need an appropriate period of time to consult on and develop a credit rule book and an appropriate supervisory approach. In this context, there was a general agreement among respondents that it should draw on the experience and expertise of the Office of Fair Trading (OFT), and retain close links with local Trading Standards Services.

3

Summary of responses to consultation questions

The case for reform of the consumer credit regime

Box 3.A: Consultation question

1 Do you agree with this assessment of the consumer credit market?

3.1 The overwhelming majority of respondents broadly agreed with the description of the consumer credit market set out in the consultation document.

3.2 A number of respondents emphasised the size and diversity of the consumer credit market, and its importance to the functioning of the UK economy. While consumer groups and local authorities tended to note the important role of effective consumer credit regulation in preventing consumer detriment, industry respondents tended to note the implications of disproportionate regulation for access to credit and economic growth.

3.3 Several respondents noted that any description of the consumer credit market needs to cover the whole lifecycle of credit agreements, capturing ancillary activities such as debt collection, debt counselling and debt adjustment. Respondents also highlighted that trends can differ within the consumer credit market. For example, it was suggested that the recent growth in sub-prime lending should be contrasted with the decline in secured lending. Industry respondents put forward a number of reasons for the recent contraction in certain sectors of the market, including new regulatory requirements such as those introduced by the Consumer Credit Directive (CCD) and changes resulting from the financial crisis.

3.4 Respondents were split over whether or not the consumer credit market is working well for consumers. Several consumer groups said that the description of the credit market in the consultation document failed to highlight widespread bad practices (including irresponsible lending, high contingent charges, mis-selling of services such as debt management and Individual Voluntary Arrangements, harsh debt collection and enforcement practices) and significant consumer detriment within the sub-prime sector (in which high cost lending can add to the debt burden of those in difficulties). One group said that the current regulatory regime is too permissive and has encouraged the over-supply and over-consumption of consumer credit.

3.5 In contrast, several industry respondents said that the market is working well with a diverse range of products and services available to consumers, and that the current levels of consumer borrowing are sustainable.

Box 3.B: Consultation question

2 Is this a fair assessment of the problems caused by the way in which consumer credit is currently regulated and issues that may arise as a result of the split in responsibility for consumer credit and other retail financial services?

3.6 Respondents generally agreed with the issues arising from the split in responsibility for consumer credit and retail financial services between the Office of Fair Trading (OFT) and Financial Services Authority (FSA). Several respondents noted that the OFT and FSA have made progress in addressing these issues.

3.7 Many respondents agreed that the split can make it difficult for regulators to take a strategic view of priorities across retail financial services and to form a coherent policy response, leading to a lack of clear regulatory accountability for the functioning of retail financial services.

3.8 Consumer groups in particular agreed that the split in responsibility can be confusing for consumers. It was also noted that the split can give rise to difficulties in relation to debt counselling and complaints. Some industry respondents disagreed that consumers are confused and said that consumers have a single point of contact when things go wrong, in the form of the Financial Ombudsman Scheme (FOS).

3.9 A number of respondents acknowledged the additional burden resulting from regulatory duplication and complexity, the costs of which are passed on to consumers. However, it was also noted that these burdens only apply to those licence holders who are regulated by both the OFT and FSA. One respondent felt that the split is particularly burdensome where a firm is registered as a Principal with the FSA and has a network of Appointed Representatives who are required to obtain individual consumer credit licences from the OFT.

3.10 Several respondents identified benefits in retaining the current regime, as it would provide continuity and consistency for firms who have invested in systems, controls and training to comply with the regime based on the Consumer Credit Act 1974 (CCA). Some argued that the current regime reflects the differences between consumer credit and other retail financial services.

3.11 Several industry respondents asked for more evidence on the scale of the issues, including evidence that the split leads to sub-optimal outcomes for consumers and firms. A few respondents noted that it may be disproportionate to reform the consumer credit regime to address a few anomalies, such as the split in relation to personal current accounts with overdrafts, and suggested that a better approach would be to refine the use of existing concordat arrangements between the FSA and OFT.

Box 3.C: Consultation questions

3 The Government would welcome further evidence relating to the consumer credit regime, including in particular:

- the types of risks faced by consumers in consumer credit markets;
- key provisions for consumer protection under the current regime and their effectiveness in securing appropriate outcomes for consumers; and
- the incidence of regulatory duplications or burdens on firms and/or inconsistent regulation of similar business types.

3.12 Industry and consumer respondents and local authorities generally agreed that the main risk to consumers in the consumer credit market is over-indebtedness. Respondents tended to note that debt problems are generally caused by a change in financial circumstances. However, many (in particular, consumer groups and debt advice charities) also raised issues in relation to irresponsible lending and borrowing.

3.13 Other risks to consumers identified by respondents were the risks associated with high cost credit, unacceptable debt collection and enforcement practices, debt adjustment and debt management, illegal lending, product complexity and opaque charging structures, and mis-selling.

3.14 In relation to over-indebtedness, a few respondents said that restricting access to credit products is not an appropriate policy response, as it would simply move indebtedness to non-credit areas, such as utility bills or rent arrears, and may result in consumers turning to illegal lenders.

3.15 Several consumer groups also noted that over-indebtedness can make consumers more vulnerable to bad practices in the consumer credit market, and that the risks associated with over-indebtedness go beyond financial risks, as debt problems can affect an individual's physical and mental health, and may cause an individual to lose their home or other essential goods. Some industry respondents and local authorities said that CCA protections and OFT Guidance on Irresponsible Lending mitigate the risk of irresponsible lending.

3.16 With regard to regulatory inconsistencies, it was argued by a few industry respondents that in certain circumstances there is currently unnecessary dual regulation of general insurance products. It was noted that while the sale of general insurance is a FSMA regulated activity, if the premium is paid in instalments this may constitute a regulated credit agreement under the CCA.

3.17 It was also noted that the advertising of some secured loans may fall within both the CCA and FSMA regimes, and so are subject to both the statutory requirements in the Consumer Credit (Advertisements) Regulations 2004 and FSA rules.

3.18 A few industry respondents queried the level of burden created by the split in regulation, and noted that only a minority of licence holders are affected. The point was made that it is quite common for different regulators to supervise different aspects of a single firm's activities, and that the Government's proposals for reforming financial regulation mean that prudentially-significant firms will have two separate regulators (the FCA and the PRA).

3.19 The responses with regard to key provisions for consumer protection under the current regime have been included in the summary of responses to question 7.

Box 3.D: Consultation question

4 Do you consider these objectives for reform of the consumer credit regime to be appropriate and obtainable?

3.20 The vast majority of respondents agreed in principle with the Government's proposed objectives for the regulation of consumer credit regime.

3.21 A number of respondents commented that the objectives are framed at a high level, and that in practice a trade off between the objectives may be necessary. Consumer respondents and local authorities generally expressed a strong preference for prioritising the consumer protection objective, while industry respondents generally stressed the importance of a proportionate and cost-effective regime. Several respondents noted that it would be ambitious to achieve the Government's objectives in line with the Government's proposed timetable.

Options for the future regulation of consumer credit

Box 3.E: Consultation question

5 The Government welcomes views on the impact a unified regulatory regime for financial services may have in terms of clarity, coherence and improved market oversight.

3.22 The majority of respondents agreed that bringing together all retail financial services under one regulator (although not necessarily under one regulatory regime) would, on the whole, be beneficial.

3.23 In particular, respondents generally agreed that transferring the responsibility for consumer credit regulation to the FCA would deliver benefits in terms of accountability, with clearly defined responsibility for regulating key financial products like current accounts with overdrafts and dealing with issues such as the right of set-off, unfair bank charges and product bundling.

3.24 Many respondents agreed that having a single regulator would deliver greater clarity for consumers and firms. However, many industry respondents highlighted that these effects would be concentrated in specific areas of the consumer credit market where the current split is most confusing, and would not benefit the majority of consumer credit licence holders who are not currently regulated by both the OFT and the FSA.

3.25 Several respondents noted that the CCA regime is very complicated, often creating difficulties for smaller licence holders such as consumer organisations and debt advice charities. However, a number of industry and consumer respondents queried the extent to which greater clarity could be delivered in consumer credit regulation given the diversity of the market and the constraints of the CCD.

3.26 Consumer respondents generally agreed that transferring consumer credit regulation to the FCA could facilitate a more coherent and integrated approach to consumer protection, with the regulator being able to take a holistic view of consumer and firm behaviour across the full spectrum of retail financial services, and undertake more coherent and consistent interventions. For example, some said that consumers currently have greater protection against cold calling under FSMA than the CCA regime.

3.27 The majority of respondents also agreed that a single regulator would enable better oversight of retail financial services. In particular, it was noted that a better understanding of consumer behaviour and credit would be a valuable input to the work of the new Financial Policy Committee (FPC). However, some respondents argued that improvements could be made under the existing institutional framework.

3.28 It was also noted that while a transfer would resolve the issues arising from a split in the regulation of consumer credit and other retail financial services, it would create a new separation between credit and non-financial goods and services, which could lead to less coherence in tackling consumer detriment where the sale of goods and services and the provision of credit are closely connected.

3.29 There was a clear view among respondents that for the potential benefits of a single regulator to be realised, it would be essential for the FCA to have adequate resources, in particular staff with appropriate expertise and experience in consumer credit, including in ancillary credit activities.

Box 3.F: Consultation question

6 The Government welcomes views on the role of institutions other than the OFT in the current consumer credit regime, and the benefits they may confer.

3.30 Many respondents focused on local authorities, in particular Trading Standards Services (TSS), and the significant role they play in the current regime.

3.31 Respondents noted that TSS generally have a good understanding of local markets and can therefore provide valuable intelligence on what is happening at the grass roots level. It was also noted that TSS can provide compliance advice to local businesses.

3.32 Some respondents suggested that TSS may be better placed than a national regulator to supervise smaller, local businesses carrying on credit activities. In this context, respondents also referred to the large proportion of small firms in the consumer credit market and TSS' responsibility for enforcing general consumer protection in relation to the provision of goods and services. Overall, there was a clear message that the experience of TSS should be retained in any new regime. The role of the specialist Illegal Money Lending teams was particularly emphasised.

3.33 Respondents also said the regulator should work closely with Scambuster teams, the National Fraud Authority, and the Department of Enterprise, Trade and Investment in Northern Ireland. It was also noted that a closer relationship with the debt advice sector and networks such as Citizens Advice Bureaux would be important to facilitate the early identification of problems.

3.34 Many industry and consumer respondents also commented on the important role of the Courts in the current regime, in particular the Courts' experience in determining consumer credit disputes based on a body of case law.

Box 3.G: Consultation question

7 The Government welcomes views on factors the Government or the FCA may wish to consider in the event of a transfer of consumer credit regulation relating to how the overall level of consumer protection might be best retained or enhanced.

3.35 The summary below also includes comments made in relation to key consumer protections under the current regime in response to question 3.

3.36 The majority of respondents who commented on key consumer protections under the current regime were consumer groups or local authorities, who generally argued that in the event of a transfer the level of protection must be maintained or enhanced. In this context, it was noted that there are several protections in the CCA, in particular court-based individual rights, for which there is no equivalent under FSMA.

3.37 One of the main factors raised by industry respondents, consumer groups, local authorities and other commentators was unenforceability¹. Consumer groups and several local authority respondents were generally in favour of retaining the unenforceability provisions for breaches of

¹ The issue of unenforceability has been considered as part of the Consumer Credit and Personal Insolvency Review.

certain requirements, such as those around information disclosure. It was argued that these are important provisions in the consumer credit market, as detriment can accrue rapidly and individuals in financial difficulties are unlikely to take private action. While some of these respondents acknowledged that the provisions have in some instances been exploited to avoid payment of legitimate debts, it was stated that the onus should nevertheless remain on creditors to provide consumers with the appropriate information about their credit agreement.

3.38 In contrast, a number of industry respondents argued that the unenforceability provisions should be removed on the basis that they are a disproportionate sanction for rule breaches and are open to abuse by some claims management companies and debtors. Several respondents argued that the provisions are no longer necessary in light of other consumer remedies, in particular the unfair relationship test (sections 140A to 140D) and the right to seek redress through the Financial Ombudsman Scheme (FOS). It was also noted that unenforceability can create commercial uncertainty for firms.

3.39 Another key factor for respondents was the importance of retaining effective provisions for the prosecution of illegal money lending. In this context, it was noted that while it is a criminal offence under FSMA to carry on regulated activities without authorisation or an exemption, it is not a criminal offence for authorised persons to carry on a regulated activity without the correct permission.

3.40 In answer to questions 3 and 7, respondents also identified a number of specific CCA provisions that should be carried over in the event of a transfer. The main provisions are summarised below, in order of the frequency with which they were mentioned by respondents.

- Liability of creditors for consumer claims against suppliers (sections 75 and 75A) – this was identified as an important protection for consumers buying goods or services on credit, particularly where the trader subsequently goes into liquidation or is a rogue trader. It was also noted that this provision is particularly important in the development of the e-commerce marketplace. One consumer group said that this provision should be extended to debit cards.
- Unfair relationship test (sections 140A to 140D) – this was identified by a number of consumer groups as an important protection, although some respondents raised issues in relation to the current definition of an “unfair relationship” and the activities of some claims management companies. In particular, it was suggested that a clearer definition of this test could provide greater regulatory certainty to firms and deliver more effective consumer protection.
- Default/enforcement provisions – respondents in particular identified the controls regarding the enforcement of a debt or repossession of goods or land (sections 76, 90 and 98) and the right to apply for a time order from the courts (section 129) as providing important protection for borrowers facing financial difficulties. In relation to time orders, it was suggested that a clearer definition of “temporary” financial difficulties could provide firms with greater certainty and make the provisions a more reliable remedy for those with outstanding debts.
- Advertising/canvassing provisions – these were generally agreed to be important protections, although one respondent said that the provisions should be made more flexible to cope with innovations in financial promotions.
- Early payment/settlement, termination and withdrawal provisions – these were generally thought to be appropriate. Consumer groups and local authorities generally argued that the right to terminate hire-purchase or conditional sale agreement (sections 99-100) should in particular be retained to protect those consumers who can no longer afford payments and need to give up their goods to

avoid substantial indebtedness. However, one trade association argued that these sections have been superseded by new consumer protections in the CCA, and therefore represent an unnecessary significant cost to the industry.

3.41 A number of respondents asked whether, if specific CCA provisions were to be retained in the event of a transfer of consumer credit regulation to a FSMA-style regime, the relevant case law would also be preserved.

3.42 Several respondents also referred to specific OFT powers as being particularly important in protecting consumers of consumer credit. These included the powers for the OFT to seek information from firms; to impose requirements on firms; to issue binding guidance regarding fitness to hold a licence; to publish details of prosecutions; to conduct market studies and make market investigation references to the Competition Commission; and the ability to accept undertakings in lieu of an enforcement order. The important role of TSS in protecting consumers under the current regime was also reiterated, in particular the offence concerning trading and offering loans without the appropriate consumer credit licence.

3.43 Aside from specific CCA provisions, it was also argued that OFT Guidance, particularly on irresponsible lending, debt collection and debt management, provides important protections under the current regime, as does the Lending Standards Board's Lending Code.

3.44 In terms of enhancing the overall level of consumer protection in the event of a transfer, respondents made some suggestions in relation to refining specific consumer protections, as noted above. Other key factors in enhancing consumer protection were identified as a more flexible approach to rule-making (see also question 9); a more proactive supervisory approach; and enhanced firm-specific and enforcement powers. In particular, it was noted that the FSA, unlike the OFT, has the power to impose unlimited fines and to require consumer redress schemes.

Box 3.H: Consultation question

8 The Government would welcome further evidence relating to:

- the use of consumer credit by small and medium sized enterprises (SMEs);
- whether the protections currently afforded by the CCA are appropriate and cover the right groups of businesses; and
- the costs and benefits of considering extending FSMA-style conduct of business rules to a wider group of SMEs.

3.45 Less than a quarter of respondents answered this question, but those who did came from a variety of areas. These respondents were generally in agreement that the regulation of lending to small and medium-sized enterprises (SMEs) is complex and sporadic. However, views were split as to the appropriate regulatory regime for lending to SMEs.

3.46 Some respondents said that the way the scope of the CCA is framed is unhelpful, as it means that a large business operating as a sole trader or partnership may receive protection under the CCA whereas a small limited company may not. It was suggested that using the "micro business" definition may be more consistent with other legislation.

3.47 Some respondents suggested that the £25,000 limit on CCA regulated loans for businesses is unhelpful because it incentivises lenders to offer loans above this amount to avoid CCA regulation, which may restrict access to credit for SMEs not willing or able to borrow this amount. However, other respondents argued that greater regulation of SME lending, either in

terms of scope or level of intrusion, could raise the cost of and/or restrict access to finance for SMEs, with a negative impact on economic growth. It was also argued that this limit was the outcome of debates on the CCA 2006 and implementing the CCD, and should not be amended.

3.48 Several respondents said that there should be a separate regulatory regime for all business lending on the basis that it is out of scope of the CCD and that SMEs should be assumed to have a greater level of financial capability (and so require a lesser degree of protection) than retail customers. In contrast, consumer groups and local authorities generally noted that SMEs often suffer the same difficulties as retail customers in relation to credit, particularly in relation to information asymmetries and issues associated with debt recovery, and should therefore be afforded the same or a similar level of protection.

Box 3.I: Consultation question

9 The Government welcomes views on how consumer credit firms and consumers may be affected by the increased flexibility that could be provided by a rules-based regime.

3.49 Respondents generally agreed that greater flexibility would be desirable in principle. In particular, it was agreed that giving the consumer credit regulator the power to make rules would enable a more timely policy response to changes in the market. Specific examples provided by respondents of where greater flexibility in rule-making could have delivered stronger consumer protection included developments in the use of bills of sale and innovations in advertising.

3.50 However, some respondents, in particular several consumer groups, queried whether the FSMA regime provides sufficient flexibility, noting that the cost-benefit analysis and consultation requirements associated with rule-making can involve delays, and that the FSA has not always acted quickly in response to emerging problems. Several respondents said that flexibility under a FSMA-style regime would depend on the FCA's regulatory philosophy and culture.

3.51 A number of industry and consumer respondents expressed concern that greater flexibility could create uncertainty and costs for firms and consumers, and stressed that, in the event of a transfer, the FCA's rule book governing consumer credit should provide an appropriate degree of clarity, certainty and predictability to firms over their regulatory obligations.

3.52 Some respondents noted that the CCD limits the scope for flexibility.

Box 3.J: Consultation question

10 The Government welcomes views on the impact of a FSMA-style supervisory approach may have in terms of ensuring effective and appropriate consumer protection.

3.53 Many respondents agreed that a FSMA-style supervisory approach could deliver more effective protection, provided that it is appropriately tailored to target the real areas of detriment in the consumer credit market. Consumer groups, in particular, were in favour of a more proactive approach to the regulation of consumer credit that seeks to prevent problems caused by unfair products, services and practices, rather than a reactive, complaints-led approach.

3.54 A significant number of respondents reiterated that the risks in the consumer credit market are different to those in other retail financial services, and that the FCA would need to adapt its

supervisory approach accordingly. First, it was noted that consumers do not take on the same types of risks in relation to consumer credit as other retail financial services. Second, it was noted that some high risk credit activities are often undertaken by small firms or firms for whom credit is a marginal activity, which might not be subject to intensive supervision under the FSA's current supervisory model. Third, it was noted that if problems do occur in relation to credit they can escalate quickly, potentially with wider impacts for the individual concerned.

3.55 Several respondents said that, to ensure effective and appropriate consumer protection, the FCA would need to work closely with local authorities to ensure that problems which have the potential to cause significant consumer detriment are identified early.

3.56 A number of respondents, including many consumer credit licensees, raised concern about the additional costs and compliance burden associated with a FSMA-style supervisory approach, particularly SMEs. It was also noted that the number of firms carrying on consumer credit activities would affect the FCA's ability to proactively supervise the market.

Box 3.K: Consultation question

11 The Government welcomes views on the synergies afforded by the current regime in tackling problems associated with the sale of goods and services on credit, and how these might best be retained in the design of a new regime.

3.57 Respondents generally agreed that the current regime enables the OFT to have oversight of all aspects of a consumer credit business.

3.58 To retain these synergies in the event of a transfer, respondents said that the FCA would need to have effective liaison arrangements with the organisation responsible for consumer protection more generally to ensure that it receives appropriate information and local intelligence. Several respondents said that the FCA would need a broad discretion to take into account a firm's conduct outside of its credit activities. However, one consumer group suggested that detaching consumer credit from the regulation of the sale of goods and services would be desirable, as consumers should understand that they are entering into two separate transactions.

3.59 Several respondents said that the FCA should be given concurrent powers under the Consumer Protection from Unfair Trading Regulations (CPRs) and the Unfair Terms in Consumer Contracts Regulations (UTCCRs) in relation to its regulated community.

3.60 It was also argued that the existing Part 8 powers in the Enterprise Act 2002 should be replicated in any new consumer credit regime, for example by granting TSS powers to take Part 8 action for breaches of FCA rules against retailers. This would provide scope for TSS to deal with cases where the provision of credit is ancillary to the business' main activity. Respondents suggested that this could be a useful mechanism where such cases might be a low priority for the FCA and would be best tackled at the local level.

3.61 A number of respondents also noted that the CCA provisions in relation to the liability of creditors for claims against suppliers (sections 75 and 75A) should be retained.

Box 3.L: Consultation question

12 Do you agree that transferring consumer credit regulation to a FSMA-style regime to sit alongside other retail financial services regulation under the FCA would support the Government's objectives?

3.62 Responses to this question were split.

3.63 In relation to clarity, coherence and improved market oversight, some respondents expressed concern that transferring consumer credit regulation to a FSMA-style regime would be disruptive for licence holders and consumers, and could lead to a lack of clarity over the regulatory requirements, as compared with the CCA which has provided legal certainty for businesses. In particular, it was noted that the case law around the CCA provides guidance on various aspects of the legislation that could be lost in the event of a transfer, as even if certain CCA provisions were retained, the legislative context and approach would have changed.

3.64 Adding to the comments made in answer to question 9, several respondents expressed concerns about an FCA rule book, with both industry and consumer respondents noting that the FCA's requirements need to provide an appropriate degree of clarity and certainty to firms and consumers over their obligations and rights. It was also argued by some consumer groups and local authorities that specific requirements are particularly important in the consumer credit market to facilitate effective enforcement of non-compliance.

3.65 In relation to the consumer protection objective, several respondents suggested that retaining key protections in the CCA and the Enterprise Act 2002, and the expertise of local TSS would be critical. Several respondents also noted that the transfer could have a negative impact on consumer outcomes by reducing competition (if the transfer resulted in market exit) and introducing a less experienced regulator.

3.66 In relation to simplification and deregulation, some licence holders expressed concern about the complexity of the FSA's Handbook. It was suggested that, given the diversity in the consumer credit market, it would be difficult for the FCA to introduce a simpler regime. Respondents again mentioned the constraints of the CCD.

3.67 The overwhelming majority of respondents reiterated that proportionality and cost effectiveness would be critical, and raised the issue of the costs of a transfer both for the regulator and licence holders (many of whom are not financial services businesses).

Box 3.M: Consultation question

13 Are there other advantages or disadvantages that you consider could result from transferring consumer credit regulation to sit alongside that of other retail financial services?

3.68 A significant number of respondents said that, to appreciate the advantages and disadvantages of a transfer, there needs to be more detailed consideration of the implications of the transfer for the size and structure of the consumer credit market; access to credit and economic growth; and illegal money lending.

3.69 A number of respondents also noted that transferring to a FSMA-style regime would result in the loss of the established body of case law in relation to the CCA, which serves to provide certainty to businesses, consumers and regulators.

3.70 A number of respondents also raised the issue of compliance with the CCD (which is picked up again in the responses to question 22), and said that the transfer could provide an opportunity to review the application of CCD requirements to those activities which are out of scope of the Directive.

3.71 It was also noted that the Government should have regard to the proposals for the FCA more generally, and the extent to which the design and culture of the new regulator will provide for the appropriate expertise and focus in the regulation of consumer credit, particularly in light of the size and diversity of the market.

Box 3.N: Consultation question

14 Are there specific issues that you believe the Government should consider in assessing the merits of option 1? How could these be addressed in the design of a new regime as proposed in option 1?

15 If you do not agree with the Government's preferred option 1, do you have views on the factors set out in paragraph 2.4 that the Government should consider in determining the most appropriate regulatory authority for the CCA regime under option 2?

3.72 As there was an overlap in respondents' answers to questions 14 and 15, the responses to these two questions have been summarised together.

3.73 In relation to option 1, a key issue for many respondents was retaining the current level of consumer protection provided by the CCA regime. To achieve this, respondents suggested that key CCA provisions should be carried over to the new regime, for example the joint liability of creditors for certain breaches by suppliers of goods and services and the power for the regulator to impose requirements on individual firms. The importance of effective provisions to tackle illegal money lending was also noted.

3.74 In terms of how the FCA could secure effective consumer protection, it was suggested that the regulator should introduce detailed rules addressing the specific risks in different sectors of the consumer credit market and adopt a proactive approach to supervision, intervening early to prevent unsuitable and harmful products or product features coming to market. Respondents also reiterated the importance of retaining the OFT's knowledge and expertise in consumer credit regulation.

3.75 Another issue raised by respondents in relation to assessing the merits of option 1 was the level of change that would be required to firms' systems and controls, and to staff training, with a clear preference for minimising disruption and costs to firms.

3.76 In light of the above concerns, a number of respondents suggested that the Government should consider alternatives to a full transfer, including a partial transfer (with activities such as overdrafts and credit cards moving across to the FCA and others remaining under the CCA); a copy out of the CCD into FSMA; and a "best of both" approach, merging CCA protections with a FSMA-style supervision and enforcement. It was also suggested that local TSS could be made responsible for supervising certain credit firms.

3.77 Among those respondents who favoured option 2, there was broad agreement with the factors set out in paragraph 2.4. A number of respondents, including trade associations and those forming part of a campaign by members of a trade association representing smaller lenders and brokers, were in favour of retaining the CCA regime under the OFT. Some other respondents said that, in the absence of the OFT, the FCA would be the most appropriate

authority to operate the CCA, although many said that a transfer of regulatory responsibility would be a good opportunity to simplify and modernise the Act.

3.78 It was also suggested that a “lift and shift” of the CCA to the FCA could be an interim option, with the FCA acquiring the power to write rules once it has developed its understanding of the consumer credit market.

3.79 Other suggestions in response to question 15 included creating a separate, standalone consumer credit regulator; and devolving responsibility for regulation under the CCA to TSS.

Achieving a proportionate and effective regulatory approach

Box 3.0: Consultation question

16 The Government welcomes views on the suitability of the provisions of a FSMA-style regime, such as those referred to in paragraph 3.6, to different categories of consumer credit business.

3.80 Many respondents commented on the potential impact of such provisions on smaller consumer credit firms, particularly those who are not involved in lending, and noted that a disproportionate regulatory regime may trigger market exit. Industry respondents in particular reiterated the diversity of the consumer credit market and the need for a proportionate approach.

3.81 Several respondents believed that a FSMA-based authorisation process with Threshold Conditions would represent a more robust regime than the CCA licensing regime, and that this could deliver benefits in terms of consumer protection.

3.82 There were specific comments on the costs and benefits of regular reporting requirements, prudential rules and the Approved Persons regime. In particular, a number of industry respondents said that a minimum capital requirement would be inappropriate for consumer credit firms, given that the financial risk lies with the lender (rather than the consumer) and it would restrict lending capacity. Some other respondents said that a prudential requirement would be appropriate to ensure that firms have the appropriate resources to pay compensation if they cause detriment to consumers.

3.83 Respondents were generally in favour of applying FSMA-style enforcement provisions to the consumer credit market, particularly as the FSA (unlike the OFT) has the power to impose unlimited fines on regulated firms. However, it was noted that a specific enforcement regime may need to be retained for illegal money lending.

3.84 Some respondents argued that the FSMA provisions should not be applied to certain categories of consumer credit firm, such as charities and housing associations. Others said that applying the FSMA provisions consistently to all regulated firms would ensure that they meet the same standard. It was suggested that this is particularly important in the consumer credit market, given that smaller firms often pose the highest risk.

Box 3.P: Consultation question

17 Do you agree that statutory processes relating to FCA rule-making, a risk-based approach to regulation and differentiated fee-raising arrangements could provide useful mechanisms in ensuring that a proportionate approach is taken to consumer credit regulation under a FSMA-style regime?

3.85 An overwhelming majority of respondents agreed that a proportionate approach should be taken to the regulation of consumer credit. Many respondents agreed that the statutory processes set out in FSMA could be useful in ensuring a proportionate approach, but a significant number of industry respondents were nevertheless concerned about the potential costs and complexity associated with a FSMA-style regime, particularly for small firms.

3.86 In light of the scale and diversity of the consumer credit market, some respondents suggested that, to ensure proportionality, consumer complaints could play an important role in informing the regulator's approach to risk and determining where enforcement action should be carried out.

Box 3.Q: Consultation question

18 The Government welcomes views on key factors that would need to be assessed in considering the fee arrangements for consumer credit firms.

26 The Government welcomes views on key factors that would need considering in transitioning from the current to a new fee structure.

3.87 As most respondents who addressed the issue of fees cross-referenced their answers to question 18 and 26, the responses to both these questions have been summarised below.

3.88 The majority of respondents agreed that the general approach set out in the consultation document would be appropriate. In particular, there was strong support among industry and consumer respondents for a more differentiated approach to fee-raising based on supervisory costs rather than legal status, with a perception that larger firms may have been under-charged in the current CCA regime.

3.89 Respondents were generally in favour of avoiding cross-subsidy between consumer credit and other regulated activities, but queried how this could be achieved without increasing fees for small credit firms to a level that would trigger market exit. Respondents generally commented that the challenge would be achieving an optimum level of supervision that is effective and proportionate but affordable for smaller firms.

3.90 Consumer credit licence holders in particular were concerned about higher fees in the event of a transfer, and indicated that this could increase the cost of consumer credit and restrict access both to lending and ancillary credit services such as debt management. More generally, a number of respondents said that, in setting its fees policy, the FCA should have regard to the diversity in the consumer credit market, and should make sure not to exclude charitable or social organisations from the sector.

3.91 A number of factors were identified that the FCA could take into account when considering fee arrangements for different consumer credit firms, including firm size; income generated from consumer credit business; amount of credit advanced; type of credit activity;

and risks to consumers and the economy. It was noted that the FCA should take account of the OFT's review of the licence fees in 2010.

3.92 Less than a fifth of respondents specifically commented on the transition to the new fee structure; those who did included consumer credit licensees, debt advice charities and local authorities. The key issues raised by these respondents were simplicity and clarity for firms (in particular, giving firms sufficient notice of any changes, so that small firms have time to plan for the increase in fees) and proportionality.

3.93 It was suggested by some respondents that firms could pay the difference between their existing licence fee and a new FCA fee, or that firms mid-way through their OFT licence should be refunded proportionately if new fees are due. The need to consider that appointed representatives of FSA firms may have consumer credit licences was also noted, as well as the fact that some licence holders may become appointed representatives in the event of a transfer.

Box 3.R: Consultation question

19 The Government welcomes:

- evidence relating to experiences of the current appointed representatives regime;
- views on how an appointed representatives model might be applied to different categories of consumer credit activities, including how current business models and networks might lend themselves to such an approach; and
- evidence relating to the implications an appointed representatives regime might have for firms and consumers.

3.94 A significant number of respondents, in particular consumer credit licensees, noted that relying on the appointed representatives (AR) regime to ensure a proportionate regulatory approach could potentially have a significant impact on the consumer credit market. In particular, it was suggested that such an approach could lead to a significant contraction in the provision of credit at the point of sale, which in turn could have implications for retail sales and the wider economy.

3.95 The main argument put forward by industry respondents was that firms directly authorised by the FSA may be reluctant to take responsibility for the consumer credit activities of existing licence holders, given that these firms may be very different to and distant from them, such as a motor dealer who introduces clients to credit or high street retailers who offer goods on credit.

3.96 It was also noted that applying an AR regime to certain credit activities could give rise to inconsistent regulatory treatment, for example a debt collector which collects consumer debt it has purchased from a creditor subject to direct regulation while a "third party" debt collector acting as the agent of a creditor was an AR.

3.97 A few respondents cautioned against applying an AR regime for high risk credit activities, as it may not provide sufficiently intrusive regulation to secure an appropriate degree of consumer protection.

3.98 It was also noted that credit brokers tend to work with a number of different creditors, so arrangements may need to be put in place so that, for certain credit activities, an AR can have more than one Principal.

3.99 A few industry respondents asked whether the regime would allow a firm to be directly authorised for its consumer credit activities, but to be an AR for other regulated activities.

Box 3.S: Consultation question

20 The Government welcomes:

- evidence relating to experiences of the current group licensing regime; and
- views on how the professional bodies regime might be adapted for different categories of consumer credit activities.

3.100 Less than a fifth of respondents answered this question, and respondents were principally local authorities and debt advice charities who have experience of the group licensing regime.

3.101 The overwhelming majority of respondents to the question said that the current group licensing regime works well, and were in favour of an equivalent arrangement under the FSMA professional bodies regime.

3.102 A number of respondents commented that group licences should not be extended to high risk categories of consumer credit.

Box 3.T: Consultation question

21 The Government welcomes views on the extent to which self-regulatory codes might continue to deal with aspects of lending to consumers and small and medium enterprises (SMEs).

3.103 Around a third of respondents answered this question, with responses coming from industry and consumers, local authorities and other commentators.

3.104 These respondents were generally in agreement that the existing codes are a useful way to fill the gaps in the current CCA framework and to respond to market developments. However, a number of respondents from across the spectrum said that the effectiveness of such codes is limited, particularly where subscription is not compulsory and universal, and where proper monitoring and enforcement is lacking.

3.105 Several respondents said that, in the event of a transfer of consumer credit regulation to the FCA, the role of self-regulatory codes would need to be reviewed. Some consumer credit licence holders noted that the codes could provide a useful starting point for an FCA credit rule book, particularly as they identify the different issues in relation to different consumer credit activities, and have “buy in” from industry. Some respondents said that such codes could be a useful complement to the FCA’s rules, providing statements of best practice.

Box 3.U: Consultation question

22 Do you consider that there would be a case for deregulation of certain categories of consumer credit activity in the event of a transfer? Please explain why.

3.106 Just over a third of respondents answered this question, and views were split.

3.107 Some industry and consumer respondents said that deregulation could be appropriate for low risk credit activities and for certain types of licence holders, such as charitable organisations (which are also subject to oversight by the Charities Commission). A few industry respondents said that the scope of the consumer credit regime should be reduced to that of the CCD. Some thought low amounts of credit should be subject to fewer requirements.

3.108 A significant number of respondents (from across industry and consumer groups, local authorities and other commentators) opposed the deregulation of any consumer credit activities. The arguments were that deregulating some activities would create an unlevel playing field for firms, potentially distorting competition; and would be detrimental to consumer protection, with consumers receiving different protections depending on the form of credit they access, and some firms possibly restructuring their business to evade regulation.

3.109 Specifically with regard to charitable organisations carrying on credit activities, it was noted that regulation delivers a reputational benefit, providing consumers with confidence that the services they receive are of appropriate quality. In particular, some respondents suggested that an organisation's charitable status is no indication of the professionalism and quality of its credit activities, and that the Charities Commission (like other professional bodies whose members may carry on credit activities) does not have the necessary expertise or enforcement powers to ensure effective oversight of these activities.

3.110 A few respondents agreed that the current definition of a credit reference agency could be made clearer, and that it may be appropriate to exempt from the consumer credit regime those agencies which perform non-credit related functions (and would still be regulated by the Information Commissioner's Office).

Implementation and transitional agreements

Box 3.V: Consultation question

23 Are there other ways in which the design of a new consumer credit regime based on a FSMA-style framework might ensure a proportionate and effective approach?

3.111 Few respondents directly answered this question. The overwhelming majority of respondents reiterated points made in reply to previous questions, in particular the importance of proportionality, an effective risk-based supervisory approach, and retaining the expertise of the OFT and TSS.

Box 3.W: Consultation question

24 The Government welcomes views on how the treatment of agreements already in existence could be approached.

3.112 A significant number of respondents said that the arrangements for existing agreements would depend on the option pursued, and the extent of change to the regime. Respondents generally agreed that the arrangements should seek to minimise the uncertainty and costs for consumers and firms, but were split on how this should be achieved.

3.113 Some respondents said that, in the event of a transfer, the new FCA regime should apply to agreements entered into prior to the transfer, as running two regimes would be difficult and costly for firms and the regulator, and confusing for consumers. Some other respondents said

that the existing regime should be retained for firms' "back books", as it would be costly and disruptive to make changes to existing agreements. It was also noted that any new requirements on firms must not be applied retrospectively to conduct prior to the transfer.

3.114 It was noted that this issue is less relevant for short term lending, such as payday loans and pawnbroking.

Box 3.X: Consultation question

25 The Government welcomes views on:

- how existing licensees could be dealt with; and
- factors that should be considered in determining whether a modified approach could be adopted for particular categories of firm.

3.115 Again, many respondents said that the most appropriate approach to existing licence holders would depend on the extent of change to the regime, and were split on whether it would be appropriate to "grandfather" some existing licensees into a new FSMA-style regime.

3.116 A significant number of respondents said that at least some "grandfathering" of licence holders would be appropriate. Industry respondents suggested that requiring all existing licence holders who are not already authorised by the FSA to apply to the FCA for authorisation in the event of a transfer would result in significant costs and uncertainty for these firms. It was argued that this would lead to a number of firms, particularly smaller firms, exiting the consumer credit market, which could have a negative impact on the diversity of the market and the availability of credit.

3.117 A significant number of other respondents, in particular consumer groups but also some industry respondents and local authorities, opposed grandfathering on the basis that all credit firms should have to demonstrate that they meet the requirements of the new regime. It was suggested that grandfathering would create an unlevel playing field for firms, and endanger consumer protection. The reputational risk to the FCA, and the potential impact on confidence in financial services, associated with grandfathering existing licensees into the new regime was also noted.

3.118 Respondents suggested some modified approaches, including grandfathering firms carrying on low risk activities; firms already authorised by the FSA; and firms who have been subject to competence checks introduced by CCA 2006. It was also suggested that grandfathering could be for an interim period, during which time the FCA could require certain firms to apply for authorisation, such as those carrying on high risk activities, with a poor compliance history, or with a high number of consumer complaints. It was also suggested that licensees could be grandfathered until their existing 5 year fee period expires, after which time they would be required to apply for FCA authorisation.

3.119 Respondents generally noted that, regardless of the approach pursued, it would be important to give existing licence holders sufficient time to adapt to the new regime.

Box 3.Y: Consultation questions

27 Are there other factors the Government should take account of in considering transitional arrangements?

3.120 Around a third of respondents answered this question. The majority of these respondents raised the issue of the timing of any transfer.

3.121 A number of respondents commented that an appropriate implementation period would be vital to allow firms and the FCA to adapt to the new regime and to minimise disruption to the consumer credit market. Several referred to the experience of implementing the CCA 2006 and the CCD. Some other respondents said that reform of the credit regime should not be delayed beyond 2014.

3.122 A number of other factors were raised, such as arrangements for the “back books” of those firms who exited the market because they did not wish to be regulated under the FCA, and the treatment of historic licence information including any requirements imposed on a firm’s licence under the current regime.

3.123 Several respondents also noted that due regard must be given to the impact of the transition on the different sectors of the consumer credit market, and on consumers, particularly most financially vulnerable. It was also noted that the transition should not detract from effective regulation of the consumer credit market in the interim.

3.124 It was noted that the final report of the Independent Banking Commission may provide a useful post-consultation input into the Government’s decision.

Box 3.Z: Consultation question

28 The Government would welcome evidence on the experience of firms, consumers and their representatives in relation to similar transitions, for example the extension of FSA jurisdiction to new markets since 2000.

3.125 Around a fifth of respondents answered this question.

3.126 Many respondents noted that the transfers of mortgage, insurance and credit union regulation to the FSA led to a reduction in the number of firms in the relevant market, particularly of smaller firms.

3.127 In the case of insurance, it was noted that many brokers left the market as they were unable to find a principal to take responsibility for their activities as an appointed representative, restricting access to insurance products.

3.128 Some respondents also raised issues in relation to the MCOB and ICOB rule books introduced by the FSA, and said that the credit rule book would need to provide detailed consumer protections and respond to the specific risks in different sectors of the credit market.

3.129 It was noted that retaining the existing regime for firms’ back books (so firms were required to comply with different rules for existing and new agreements) when mortgage regulation was transferred to the FSA in 2004 created costs and confusion.

3.130 Respondents also noted the differences between the consumer credit market and other markets previously transferred to the FSA, in particular regarding the number and diversity of market participants and the existence of a detailed legislative regime.



List of respondents

1 Stop group
Addleshaw Goddard LLP
Advertising Association
Age UK
Anthony Sharp Associates
Association of Bridging Professionals
Association of British Credit Unions
Association of British Insurers
Association of Short Term Lenders
Bar Council of England and Wales
Billing Finance
Birmingham City Council
British Bankers' Association
British Cheque & Credit Association
British Retail Consortium
Building Societies Association
Cabot Financial (Europe) Limited
Calando Finance LTd
Callcredit finance
Car Finance Company
CashCall Finance Limited
Christians Against Poverty
Citizen's Advice.
Civil Court Users Association
Community Development Finance Association
Confederation of British Insurers
Consumer Council Northern Ireland
Consumer Credit Counselling Service

Consumer Credit Trade Association
Consumer Finance Association
Consumer Focus
Credit Action
Credit Services Association
Damartex
Debt Resolution Forum
DEMSEA
Devon County Council Trading Standards Service
Direct Marketing Association (UK) Ltd
Droitwich Financial
East of England Trading Standards Association
Eastern Credit Limited
Eccles Finance
Equifax
Eversheds LLP
Experian
Family Finance
Ferratum UK Ltd
Finance & Leasing Association
Financial Inclusion Centre
Financial Services Consumer Panel
First Response
First Senior Finance Ltd
George Wilkinson Associates
Glasgow City Council's Trading Standards Service
Guardian Finance Limited
Hertfordshire Savings & Loans Limited
Insolvency Practitioners Association
Institute of Credit Management
Investment and Life Assurance Group
Jackson Cohen Associates Limited
James Smith and Son

Kingsway Finance & Leasing plc
Leeds Building Society
Leisure Finance Plc
Lending Standards Board
Local Government Regulation
Lomnicka, E (King's College London)
MacLeod, J (University of Liverpool)
Macleod, M
Midfit Finance
Money Advice Scotland
Money Advice Trust
Mortgage Guarantee PLC
Mullineux, A (University of Birmingham)
National Housing Federation
National Pawnbrokers Association
PENRICAN Credit Ltd
Ratesetter
Retail Motor Industry Federation
Richmond Investments Ltd
Royal Bank of Scotland
RSA Insurance Group
S & U Plc
Scottish Illegal Money Lending Unit
Security Funding Ltd
Shergroup Limited
Shermin Finance Ltd.
Society of Chief Officers of Trading Standards in Scotland
Stour Vale Finance Co Ltd
Suffolk County Council Trading Standards Dept
Swift Group Ltd
Thames Valley Housing Association
The Money Shop
Tower Capital Ltd

Trading Standards East Midlands Fair Trading and Credit Group

Trading Standards Institute

Trading Standards North West

Trowers & Hamblins LLP

UK Cards Association

Virgin Money

Voss Finance

Webb Hire Purchase Co. Limited

Which?

Woolhouse, A

Yorkshire and the Humber Trading Standards Group

Zopa

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