HM TREASURY

Department for Business Innovation & Skills

A new approach to financial regulation:

transferring consumer credit regulation to the Financial Conduct Authority

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Foreword

Four out of five people in the UK (approximately 38.5 million adults) have an unsecured loan, credit card or other type of consumer credit product.[1] We all – consumers, firms, as well as the wider economy and society – stand to gain from a well-functioning consumer credit market.

The Government has a clear vision for the consumer credit market: we want to see firms meeting the standards expected of them, lending responsibly, and offering competitively designed and priced products that meet consumers' needs. We want to make sure that the market is able to grow and innovate and that regulation supports, and does not stifle, a thriving market. We want to see consumers borrowing sensibly, able to exercise choice and having confidence in the system, secure in the knowledge that they can expect to be treated fairly by firms and that, if things do go wrong, the regulator will step in swiftly and decisively to put it right.

The publication of this consultation document confirms our commitment to transfer consumer credit regulation to the Financial Conduct Authority (FCA) in April 2014 and sets out details of the new regulatory regime for consumer credit. Reform of the regulation of consumer credit is the final piece in the jigsaw of the Government's comprehensive regulatory reform programme for financial services. The transfer will, for the first time, bring conduct of business regulation under a single financial services regulator, ending confusion for consumers, duplication for many firms, and ensuring a single strategic regulatory view across retail financial services.

In designing the new regulatory regime, we have strived to get the balance right: between ensuring consumer protection and fairness and applying proportionate burdens on firms; between intervention in the market and ensuring that consumers continue to be able to access credit; between higher risk and lower risk activities; between change from the start, managed transition and continuity; and applying only elements of the FCA approach that suit the consumer credit sector. We are very grateful to the industry, to consumer groups and others who have contributed to the policy development process over the past two years and helped to shape this new model for regulating the consumer credit market. We look forward to continuing this process through the period of consultation and beyond. The transfer will take place in April 2014, when the current regulator, the Office of Fair Trading (OFT), ceases to exist. This consultation document, and the complementary consultation paper published by the FSA today, begins the transfer process and allows firms to begin to prepare for the new regulatory regime and to become familiar with the approach and obligations on them under FCA regulation.

But while we are confident that the regulatory regime proposed in this document will deliver better outcomes for consumers in the medium and long-term, it is vital that consumers are adequately protected through the period leading up to the transfer. Urgent intervention is required in the high cost credit market, in particular in the payday lending sector. The Government has worked with the current and future consumer credit regulators to ensure a strong and coordinated response to these problems. The publication today of the OFT's report into the payday lending sector and of the Government-commissioned research by the University of Bristol into high cost credit shines a spotlight on the poor practice among some high cost

[1] According to recent research by Which?, http://press.which.co.uk/whichpressreleases/which-calls-for-a-crackdown-on-irresponsible-lending/#.UTWcjolYCc0

credit firms, systemic problems in the payday lending market and the degree of consumer harm this causes. We welcome the action the OFT is taking against rogue firms and we welcome the FCA's commitment to prioritise action on payday lending from 'day one' when it takes over regulation of consumer credit, including turning existing OFT guidance into rules that are binding on firms.

We hope that you share our vision for the market and support our proposed approach to regulatory reform. We look forward to your views on our plans and your support in moving to the next step in the process of reform of consumer credit, when we lay secondary legislation before Parliament this summer.

Sajid Javid MP

Economic Secretary to the Treasury

Jo Swinson MP

Minister for Consumer Affairs

1 Introduction

1.1 A thriving, competitive and well-functioning consumer credit market is vital to the economy. Access to credit enables consumers to buy goods and services that they may not be able to afford outright and brings benefits to individuals and the economy as a whole. It can help households manage their finances, especially when things don't go to plan, to smooth peaks and troughs in their regular income and outgoings, and to help them pay for unexpected expenses.

1.2 Effective regulation should underpin a successful and innovative consumer credit market where consumers' needs are met and they can be confident of getting a fair deal.

1.3 But consumers are not sufficiently protected from harm in this market. The National Audit Office (NAO) recently highlighted that the current regulatory regime lacks the capacity and powers to tackle the bulk of detriment in the consumer credit market: the NAO estimated unaddressed detriment cost consumers £450 million in 2011-12.[1] Regulation of the consumer credit market is ripe for reform.

1.4 To be effective, regulation must also keep pace with a rapidly changing and growing credit marketplace. The consumer credit sector has changed dramatically since the Consumer Credit Act 1974 (CCA) was established to give a new statutory framework for consumer credit regulation. Consumers are borrowing far more than they did then – the stock of unsecured borrowing stood at £176billion last year –[2] and there has been exponential growth of the provision of credit services online. While the CCA has been considerably updated in the last decade, including as a result of implementation of the Consumer Credit Directive, the Government believes that a more fundamental overhaul of regulation is now due.

1.5 The Government wants to ensure that the consumer credit regulatory regime is equipped to deliver more robust consumer protection in the future. This is why **the Government has decided to transfer consumer credit regulation from the Office of Fair Trading (OFT) to the Financial Conduct Authority (FCA) in April 2014**, to ensure that regulation:

- is able to flex to keep pace with a fast-growing, innovative market;
- has the powers and resources to protect consumers from actual – and potential – detriment,
- puts a proportionate and manageable regulatory burden on business; and
- delivers a well-functioning consumer credit market, which ensures that consumers have access to the credit they need and supports the sustainable growth of the UK economy.

1.6 The Government is committed to taking action where necessary to ensure that consumers are protected in advance of the transfer. For example, the Government has given the OFT a new

[1] *Regulating Consumer Credit,* National Audit Office, , December 2012, http://www.nao.org.uk/publications/1213/oft_regulating_consumer_credit.aspx
2 *Regulating Consumer Credit,* National Audit Office, , December 2012, http://www.nao.org.uk/publications/1213/oft_regulating_consumer_credit.aspx

power to suspend credit licences with immediate effect. The Government is also announcing today a package of measures to address widespread concerns about high cost credit and in particular payday lending (further detail on this package can be found in Chapter 2).

About this document

1.7 The purpose of this consultation document is to set out the overarching model and approach for regulating consumer credit under the FCA, and describe the legislative provisions that will underpin the new regime. The Financial Services Authority (FSA) today is publishing a parallel consultation paper on the FCA's proposed high-level approach to the regulatory regime, including how the FCA intends to use its powers in the regulation of consumer credit. In it, the FSA begins the process of consulting on the rules it wishes to apply to consumer credit firms. Together, these documents are designed to give stakeholders early sight of the planned approach to regulating consumer credit and to help firms and other interested parties to begin to prepare for the transfer.

1.8 The Government will use its powers under the Financial Services and Markets Act 2000 (FSMA) and the Financial Services Act 2012 to transfer regulation of consumer credit to the FCA and to carry forward parts of the CCA – where they cannot be easily replicated through FCA rules – to the new regulatory regime. Subsequent chapters of this document explain in detail the draft secondary legislation that the Government proposes to make to support the transfer. This secondary legislation (in draft form) is annexed to this consultation document.

1.9 In broad terms, the draft Financial Services Act 2012 (Consumer Credit) Order 2013, described in this document as the draft CCA order, provides for how the retained provisions of the CCA will operate and be enforced – it is discussed in detail in Chapters 2 and 6; and the draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (described henceforth as the draft RAO order) is primarily concerned with transferring consumer credit activities into the FSMA framework and modifying how parts of FSMA are to apply to the sector. The draft RAO order amends relevant secondary legislation under FSMA, including the RAO order, the Exemptions Order, the Appointed Representatives Order, the Financial Promotion Order and others. The draft RAO order also provides for the interim permissions regime, discussed in more depth in Chapter 5 and repeals provisions of the CCA which are incompatible with credit being regulated under FSMA (e.g. provisions of the CCA which relate to the licensing regime or which relate to matters that the FCA can address via its rule making power).

The FCA

1.10 The FCA is being established as part of the wider reforms of the financial services regulatory regime and will be a dedicated and focused conduct of business regulator. Effective conduct regulation is vital to securing better outcomes for all consumers and restoring trust in the financial system.

1.11 By transferring consumer credit regulation to the FCA, the Government is delivering a regulatory regime under which the conduct of business of *all* retail financial services is regulated by a single body.

1.12 The FCA will have a single overarching strategic objective to ensure that markets function well, and three operational objectives: to promote effective competition in the interests of consumers, to secure an appropriate degree of protection for consumers and to protect and enhance the integrity of the UK financial system.

1.13 The FCA will be tougher and more proactive than the FSA in tackling consumer detriment, using its judgement to intervene earlier to prevent detriment.

1.14 To support this approach, the FCA will have a new product intervention power, allowing it to ban or impose requirements on financial products, better enabling the regulator to tackle problems before they result in significant consumer detriment.

1.15 The FCA will undertake comprehensive risk analysis to identify earlier the sources and nature of risks to retail customers. In doing so, it will draw on wider sources of intelligence, including consumer bodies and the Financial Ombudsman Service (FOS). Designated groups will be able to bring supercomplaints to the regulator, with the FCA required to respond within 90 days.

1.16 Where detriment does occur, the regulator will take strong and effective action, including enforcement action. And the FCA will ensure that consumers have access to appropriate forms of redress should things go wrong.

1.17 Transparency and disclosure will be at the heart of the FCA's approach, and the Government has given the FCA a new power to publish the fact that a warning notice has been issued in respect of disciplinary action. This will address key concerns raised by consumer groups that consumers should be made aware of enforcement action at an earlier stage. The FCA will also have a new power to require firms to withdraw misleading financial promotions, and publish the fact that it has done so, tackling a key source of consumer detriment and encouraging greater compliance through disclosure.

The FSMA model

1.18 The Government proposes to apply **an approach to regulating the consumer credit market based on the powers and requirements set out in FSMA, tailored to suit the consumer credit market.** Chart 1.A below sets out the building blocks of the FSMA model and subsequent sections of this chapter explain how these will be adapted to fit consumer credit regulation.

Chart 1.A: The building blocks of the FSMA model

Rule-making

- The FCA will be empowered under FSMA to make rules which are binding on firms.
- Rule-making allows the regulator to respond more quickly to changes in the market, to address practices causing consumer detriment more speedily and to enforce breaches of the rules.
- Detailed rules are complemented by high level conduct requirements and Principles for Businesses.

Authorisation

- A firm wanting to carry on regulated activities must be authorised or exempt (see below).
- Authorisation allows robust scrutiny of firms at the gateway to the market
- Authorisation forms the basis of a number of the FCA's firm-specific powers.
- Alternatives to authorisation: option for firms to become appointed representatives or to be exempt under the professions regime.

Approved Persons

- Approved persons regime allows FCA to scrutinise key individuals in firms.
- The FCA will approve individuals who perform certain specified functions.
- In order to be approved, an individual must satisfy the FCA that he/she can meet, and maintain, the criteria for approval (known as the 'fit and proper' test), and then perform their controlled function in accordance with a set of standards.

Supervision

- Firms are subject to ongoing supervision and monitoring.
- Firms are required to supply key information to the regulator on a regular basis.

Enforcement and redress

- The FCA has an extensive range of powers to take action against regulated (and non-regulated) firms and individuals failing to meet regulatory requirements.
- Powers include the ability to place requirements on individual firms and to vary or remove their permission including with immediate effect. The FCA can publicly censure firms and impose unlimited fines. It can require consumer redress and restitution.

Consumer protection and proportionality

1.19 The Government has set itself two guiding principles in transferring consumer credit regulation to the FCA: that consumers should be better protected, and that the regulatory regime should be proportionate to the types of firms and risks posed by them. These guiding

principles are embedded in legislation as factors which must be considered when the Government uses its powers under the Act in support of the transfer.[3]

1.20 The Government and FSA have designed a regime which enables resources to be targeted at those activities most likely to cause consumer harm in order to deliver better outcomes for consumers, while ensuring that lower risk activities are subject to an appropriate degree of intervention and regulatory burdens on firms across the sector remain proportionate.

Protecting consumers

1.21 Stronger regulation of consumer credit will protect consumers – the FCA will:

- police the gateway more thoroughly to ensure that firms entering the market meet appropriate standards;
- be proactive and forward-looking in identifying risks to consumers and act early to deal with them;
- take a risk-based approach and focus its supervisory resources on the areas which are most likely to cause consumer harm;
- approve individuals in influential roles in firms;
- operate a flexible and responsive regime and make rules to tackle actual and potential consumer detriment;
- use its wide enforcement powers to tackle bad practice, illegal lending and drive up standards through credible deterrence; and
- ensure that consumers have access to redress (and their money is protected) when things go wrong.

1.22 Table 1.A below sets out in further detail how the FCA's regulatory approach and powers will go further to protect consumers, when compared to the current regulatory regime under the OFT.

[3] See section 107(7), Financial Services Act 2012, http://www.legislation.gov.uk/ukpga/2012/21/contents/enacted

Table 1.A: Strengthening consumer protection: a comparison of OFT and FCA powers and approach

	OFT	FCA	How consumers will be better protected
Regulatory gateway	To become licensed, firms must pass basic 'fitness' test as set out in CCA Assessment of competence of higher risk firms at gateway	To become authorised, firms must: meet threshold conditions which are more demanding than the CCA fitness test report more information which will be subject to greater scrutiny by the FCA obtain pre-approval for those in key roles in firms	Greater scrutiny at the gateway to the market, especially for higher risk firms, will improve standards and root out rogue firms before they enter the market Firms already in the market will need to pass this new, more stringent gateway by 2016 Approved persons regime will lead to improved compliance by placing responsibility for specific functions on individuals
Supervision	No ongoing supervision Reliance on third party information, intelligence, information and data gathering Reviews of compliance	Close supervision of higher risk firms Less intensive regime for lower risk firms Firms will have regular reporting requirements Thematic work in response to systemic issues	More intensive monitoring (with greatest focus on highest risk areas) will help the FCA deal with problems earlier FCA can take a market-wide approach by requiring action from all firms in a sector

Rules	Statutory (CCA) regulations Guidance (breaches cannot be penalised but non-compliance can call into question fitness to hold a licence) OFT can issue and amend guidance but changes to substantive regulatory requirements requires Government to legislate	General standards Rules (breaches can be penalised) Guidance Retained consumer protections in CCA FSMA financial promotion regulations are more stringent than CCA advertising requirements Product intervention powers – can place restrictions on product features, selling practices or ban products Power to cap cost of credit and restrict duration of credit agreements	Quicker, more flexible rule-making process – more effective in addressing problems High-level standards should improve compliance Product intervention powers can protect consumers from unsuitable products
Enforcement	Can: revoke licences impose conduct requirements on firms, if breached can fine up to £50k per breach bring criminal and civil proceedings Complementary enforcement role of local authority trading standards services (LATSS) and Department of Enterprise, Trade and Investment (DETI) in Northern Ireland	Powers to bring criminal, civil and disciplinary proceedings, to withdraw authorisation, ban from financial services, suspend firm or individuals for 12 months, issue unlimited fines Continued LATSS role in relation to CCA provisions carried forward to FCA regime Enhanced policing of regulatory perimeter (i.e. enforcement against firms without appropriate authorisation/permissions) alongside LATSS/DETI	Broad enforcement toolkit and stronger sanctions should act as strong deterrent More frequent and stronger enforcement action should incentivise greater compliance Continued complementary role for LATSS/DETI

Complaints and redress	No powers to require redress or restitution Consumers have access to Financial Ombudsman Service (FOS)	Can require redress scheme and require restitution Can require firms to publish complaints data if significant number of complaints received Prudential requirements for debt management firms Continued access to FOS	Improved access to redress – the FCA will have the power to require firms to reimburse consumers when they have lost out due to a firm's actions Prudential requirements protect consumers' money if debt management firms fail

A proportionate approach

1.23 The Government recognises that the credit market is diverse and includes many small firms. It is also committed to ensuring that the design of the new regime takes into account the fact that the distribution of risk between firm and consumer is different to other retail financial services markets.

1.24 It is well-accepted that the current regime is under-resourced and that reform is necessary. But excessive new burdens on consumer credit firms could lead to some firms, especially those firms for whom offering credit is not the main driver of their business, leaving the market – this could reduce access to credit for consumers. The Government wants to strike the right balance here.

1.25 While the Government acknowledges that the transfer is likely to lead to increased costs for firms and entail one-off costs at the transition, the Government has worked with the FSA to design a regime where the regulatory burdens on firms are proportionate. Broadly, fees for consumer credit activities will be lower than for other FCA regulated firms. Regulatory burdens will be also comparatively lower.

1.26 The approach will be tailored to the consumer credit sector in the following ways:

- a two-tier approach to authorisation, including a bespoke 'limited permission' regime for those firms who are considered lower risk, including those for whom credit provision is secondary to their main (non-financial) business;
- requirements and compliance burdens differentiated according to firms' risk profiles, and lower risk firms will incur lower costs;
- setting fees which reflect the size and type of firm and reducing costs of the FCA regime where possible;
- not applying requirements where they are less relevant to the credit market – for example, prudential requirements will not apply to credit firms (except debt management firms). This reflects that, in general, lenders rather than consumers bear capital risk in the consumer credit market. For the same reason, the Government does not consider at this point that consumer credit activities need to be covered by the Financial Services Compensation Scheme;
- proportionate application of approved persons requirements; and
- reduced reporting requirements.

Transition and continuity

1.27 A well-managed transition is an essential component of a successful transfer of regulation and an important way of delivering a proportionate approach. The Government wants to strike the right balance between, on the one hand, putting in place key features of a FSMA regime from 'day one' that will better protect consumers and, on the other, ensuring burdens are manageable, proportionate and do not compromise the important role a well-functioning credit sector plays in supporting the wider economy.

1.28 The FCA will operate an interim regime for regulation of consumer credit between 1 April 2014 and 1 April 2016, in order to give firms time to adjust and to reduce initial burdens on firms. Existing OFT licence holders will be able to gain an interim permission for this transitional period. A number of aspects of the new regime – including capital requirements for debt management firms, approved persons, reporting and change in control – will not apply to firms

with interim permission and will only come in to force once firms are fully authorised. More detail is provided in Chapter 6.

1.29 The Government will also need to make additional legislative provision to facilitate a smooth transition in operational terms. The Government will continue to work with the FSA on developing clear proposals for handling operational matters such as the treatment of fees and FOS levies already paid, how licence applications that are in train at the point of transition should be handled, and what rules and principles should apply to ongoing enforcement action. The Government will provide further detail when it publishes its final proposals before the summer.

1.30 The Government and FSA have sought to ensure continuity in conduct requirements to help to make the transition manageable for firms:

- Many conduct requirements will remain broadly the same: some CCA requirements will be repealed but the FCA intends to replicate them in rules, while other CCA provisions will be carried forward at least for the medium term. The FCA intends to replicate OFT guidance in its rules where appropriate and is also considering which parts of industry codes could become rules;
- To supplement the core conduct requirements which will be carried forward from the current regime, the FCA will be introducing some new high-level requirements, such as the Principles for Businesses. However, the FCA will also make rules where market developments or risk of consumer detriment mean it is necessary to do so, for example it has already committed to consider new rules on payday lending; and
- The FCA has proposed a six month period to allow firms to get up to speed with FCA rules. During this time, firms will face no formal action in respect of an FCA rule that replicates an existing requirement if they can demonstrate that they have acted in compliance with the relevant CCA requirement or OFT guidance.

What this document covers

1.31 Chapter 2 covers conduct requirements and rules. It sets out how current conduct requirements will be carried forward to the new regime, what new rules and requirements the FCA intends to put in place and the consultation and cost-benefit analysis obligations on the FCA when making rules. It will also explain the Government's longer term intention to move to a largely rules-based set of conduct standards.

1.32 Chapter 3 describes the approach that the FCA will take to authorisation of firms conducting consumer credit activities, including the bespoke 'limited permission' regime created for lower risk firms. It also details alternatives to authorisation such as the appointed representatives and professions regimes, and describes what options are available under FSMA for those currently operating under cover of a group licence.

1.33 Chapter 4 describes the scope of the new consumer credit regime under the FCA. The scope of the regime will remain broadly the same, but the Government is proposing to make a number of small changes, in particular:

- The extent to which the activities of peer to peer platforms will be regulated will change: the activity of operating a peer to peer platform will be covered by a new bespoke regulated activity;
- The Government proposes to exempt from regulation the activities of third party tracing agents;

- The definition of operating a credit reference agency is being modified to ensure that only those actually operating a credit reference agency are captured; and
- The activity of credit intermediation is being incorporated into the activity of credit brokerage in order to simplify the regime for firms and consumers.

1.34 Chapter 5 describes enforcement powers under the new regulatory regime, including that FCA enforcement powers will apply to the CCA. LATSS and DETI will continue to have powers to take enforcement action in respect of the CCA, as well as new powers to police the consumer credit regulatory boundary to take action against firms doing consumer credit business illegally.

1.35 Chapter 6 describes the interim permissions regime.

Your views

1.36 The Government welcomes the valuable contributions that stakeholders have made in the policy development process to date. The Government trusts that stakeholders will see how their contributions have helped to shape the proposals in this consultation document.

1.37 The Government and FSA are keen to build on this dialogue during the consultation period – a forthcoming letter to stakeholders will set out plans for engagement with interested parties on the detail of these proposals.

1.38 **The Government invites responses to the questions in this consultation document by 1 May. Responses on the specific consultation question relating to the impact assessment are requested by 17 April.**

1.39 A summary of consultation questions and further detail on how to respond to this consultation is set out in Annex A.

Next steps

1.40 The Government intends to lay secondary legislation before Parliament before the summer. The FCA intends to issue a further consultation on its rules in the autumn and publish its final rules next spring. **The transfer will take place on 1 April 2014.**

Chart 1.B: Key milestones in transfer process

2 Conduct requirements and rules

2.1 The Government does not believe that the conduct standards enshrined in the current regulatory regime require fundamental reform as a whole, although there are some areas, such as payday lending, where additional requirements might be needed. Rather, it is the limitations on how compliance with those standards is enforced that need to be addressed in order to tackle consumer detriment more effectively. This assessment is reflected in the Government's approach to reform of consumer credit regulation, which centres around increasing the resources, powers and flexibility of approach for the regulator.

2.2 The new regime will be built on the conduct standards required of firms now, as these provide many strong protections for consumers. So, for the most part, firms already complying with CCA requirements and OFT guidance are likely to be compliant with FCA rules immediately following the transfer. It will also give the FCA a solid basis on which to build future conduct standards.

2.3 As set out in the FSA's parallel consultation paper, the FCA will complement these rules with a number of new, higher level requirements, including the Principles for Businesses and high-level conduct standards. The FCA also intends to apply the financial promotions regime to consumer credit activities.

2.4 The Government wants to ensure firms have time to get up to speed with regulatory change. Subject to the outcome of the FCA's further consultation exercises next year, there is no intention to alter the proposals for the FCA model in the medium-term (that is, the next 3-5 years). However, the FCA will need to respond and adapt as new issues emerge. As the FCA's understanding of the risks in the market increases during this period, it may determine that some aspects of the model are not proportionate to the risks faced by consumers and changes need to be made. If the FCA decides any significant changes to the model are necessary, it will work closely with the industry and consumer groups, and where further changes affect FCA rules and guidance, these will be subject to consultation in the usual way (see below for further detail on the FSA's obligation to consult on new rules). This commitment to limited change will help to provide clarity and certainty for firms and consumers, and to offer continuity and therefore more predictable and manageable compliance burdens for firms.

Box 2.A: High cost credit, including payday lending

In preparing to make the transition to the new regulatory regime, the Government has considered what action to take in light of the evidence of consumer detriment among those using high cost credit products, particularly payday loans. This includes evidence gathered by the University of Bristol's Personal Finance Research Centre as part of an in-depth study of this market, which raised concerns about a range of practices by high-cost lenders.

At the same time, the OFT has completed its review of payday lenders' compliance with the law and with its Irresponsible Lending Guidance, and has announced tough action in this area to improve compliance and drive up standards across the sector prior to the transfer of responsibility to the FCA.

The Government will also start immediate work to clamp down on the advertising of payday lending. The Government will work with the OFT, Advertising Standards Authority and industry to ensure consumers are not encouraged into taking out a payday loan when it is not right for them. This will look at action including specific new restrictions and tougher codes of practice. The Government will make sure that this work, combined with the strong new powers through which the FCA can restrict advertising, will provide the protection that consumers need. The FCA has committed to exercise these new powers promptly in relation to payday lending, once it takes on regulatory responsibility for consumer credit in April 2014.

2.5 This chapter covers:

- how CCA requirements will be carried forward into rules;
- the Government's view on industry codes in complementing the FCA's approach;
- new FCA rules, including how the financial promotions regime will apply to consumer credit;
- new rule-making powers the FCA will apply to consumer credit products; and
- requirements on FCA when making rules.

Carrying forward existing conduct requirements

2.6 The Government believes that the conduct standards set out in the CCA and supported by OFT guidance should, in broad terms, continue to form the core of consumer credit regulation. The Government believes that, wherever possible, conduct requirements should be set out in rules, rather than on the statute book, to allow greater flexibility and coherence. Both draft orders repeal some CCA provisions which require certain conduct standards of firms. Where the Government intends to repeal these provisions in draft secondary legislation, the FCA proposes to replicate them in rules. Annex B sets out which provisions of the CCA the Government intends to repeal and move to the FCA rulebook. The FCA also intends to replicate OFT guidance in its rules and guidance. The FCA will consult on its detailed rules in the autumn.

2.7 However, the Government is committed to carrying forward in 2014 important consumer rights and protections in the CCA where they cannot be replicated easily under FSMA because of the differences between the CCA and FSMA statutory frameworks (for example, where the CCA provides for specific rights for consumers or other non-authorised persons, or those provisions to which unenforceability conditions apply). These CCA provisions will continue to apply for the initial years of the FCA regime.

2.8 In the longer term, the Government is confident that many of these provisions can be replaced by rules-based consumer protections. It intends therefore to put a requirement on the FCA, by 2019, to review retained CCA conduct requirements and to develop rules-based alternatives where possible, considering the implications for consumer protection and on burdens for firms. As part of the review, the FCA will be required to consult with stakeholders to ensure that the rules-based alternatives it develops offer strong protection for consumers. The FCA will also need to ensure that European Directive requirements can be met through rules-based solutions. Part 4 article 14 of the draft RAO order provides for this review.

2.9 Annex B sets out which parts of the CCA are proposed to be carried forward in 2014 on an interim basis and will be subject to the FCA's review by 2019.

Industry codes

2.10 Industry codes can play a valuable role in the regulation of the consumer credit market. Under the current regime, industry codes have been an effective tool alongside OFT guidance to drive up standards and underpin good practice. The Government has supported the establishment and updating of a number of codes in credit sectors where there is significant consumer detriment.

2.11 The Government welcomes the FCA's commitment to consider including the most important consumer protections and standards that feature in industry codes in its rulebook and associated guidance, and that it will prioritise consideration of those codes governing sectors where there is greatest risk of consumer detriment, e.g. the payday lending sector.

2.12 The Government is also keen to explore further the ways in which voluntary codes can complement rules-based regulation under the FCA. Where codes continue to exist alongside FCA regulation, the Government will expect trade associations responsible for those codes and the FCA to work closely together ensure a coherent approach and promote clarity for consumers and firms.

New rules

2.13 The Government believes that many of the existing conduct requirements are both appropriate and sufficient, and that converting them in to rules, as described above, will increase compliance and lead to better outcomes for consumers.

2.14 However, the FSMA regime relies not only on detailed rules prescribing behaviour – the regulator also requires that firms comply with 'Principles for Businesses' and high level conduct standards, and these will also be introduced for the credit sector. Principles for Businesses include, for example, the principle that a firm must conduct its business with due skill, care and diligence; that it must treat its customers fairly; and that it must deal with regulators in an open and cooperative way. Principles are binding on firms and are intended to provide a 'belt and braces' approach, to ensure that firms comply not just with the letter of the rules but the spirit of the wider regime. Examples of high-level conduct standards include, for example, rules on having appropriate systems and controls in place to ensure that risk within a firm is properly identified and managed.

2.15 The FSA's consultation document provides more detail on these new high-level requirements.

Financial promotions

2.16 Misleading financial promotions can be a direct cause of consumer detriment: a consumer may buy a product that is unsuitable or inappropriate for them on the basis of false or

incomplete information in a financial promotion. An effective regime for policing the content and presentation of financial promotions – and taking swift action where misconduct is identified – is therefore a key aspect of the FCA model.

2.17 The CCA requirements relating to advertising (e.g. section 44 of the CCA which governs the form and content of consumer credit adverts, for further detail see Annex B) will be repealed. The FSA proposes to replicate these in rules as part of the FCA's financial promotions regime.

2.18 While it will be the FCA that sets out the detailed requirements in relation to financial promotions made by or approved by authorised persons, the scope of the regime is set out in secondary legislation under FSMA. The Government proposes that consumer credit firms should be subject to the full FSMA financial promotions regime and all credit activities made 'controlled activities' for the purposes of financial promotions, except for a number of changes which are described below. This is provided for by Part 5 Article 20 of the draft RAO order.

2.19 Advertising credit for businesses (i.e. not consumers) will be exempt from financial promotions requirements. This is consistent with CCA Advertisement Regulations.

2.20 Debt collection and debt administration will not be controlled activities and therefore not subject to the financial promotions regime. Promotions advertising these services are generally targeted at lenders rather than consumers themselves, and the Government therefore does not consider it necessary to make them subject to the financial promotions restrictions.

2.21 Provision of credit information services and of credit references will also not be controlled activities. The Government proposes that any potential detriment arising from promotions in this area will be tackled through enforcement of the Advertising Standards Authority (ASA) requirements and FCA high-level principles.

Product intervention

2.22 To complement its supervision of *firms*, including scrutiny of their business models and compliance with regulatory requirements, the FCA will also have the mandate and powers to scrutinise and regulate consumer credit *products.* The FCA will look not just at how products are sold, how customers are treated after a sale or when things go wrong, but will also shine the regulatory spotlight on products themselves, looking at product features, as well as product design and governance processes. To support this new approach, the Government has granted the FCA a new product intervention power, allowing it to mandate, restrict or ban certain features of a product, restrict a product's sale to certain groups of consumers, or ban a product outright. In certain cases it can do so with immediate effect. Sale of a product in breach of a ban can result in the agreement being rendered unenforceable.

2.23 The Government has also given the FCA the specific power to make rules to cap the cost of credit and to limit the duration of a credit agreement (in order to restrict so-called 'rollovers'). Use of this power is subject the usual requirements (as discussed below), and the FCA must consider that exercise of this power advances one or more of its operational objectives.

Requirements on the FCA when making rules

2.24 When making rules, FSMA normally requires the regulator to consult on the proposed rules and conduct a cost-benefit analysis (CBA). Part 6 of the draft RAO order includes provisions that support the regulator's ability to translate existing requirements into rules.[1] Where the regulator

[1] This will mainly be done by the FCA as the conduct regulator, although some rules may also need to be made by the Prudential Regulation Authority (PRA) for those firms who are regulated by the PRA for prudential purposes and by the FCA for conduct of business purposes.

makes rules that are substantially the same (or have substantially the same effect) as provisions of the CCA, it is not required to conduct a CBA and, in the case of the FCA, its competition duty does not apply.

2.25 When the regulator comes makes *new* rules for consumer credit which do not substantially replicate the effect of the CCA provisions, the FSMA requirement that new rules must be preceded by a CBA will apply. However, Articles 28 and 29 of the draft RAO Order modifies the CBA requirement so that the regulators must analyse the costs and benefits using analysis of the CCA provisions as a baseline. This is intended to reflect that this is not a regulatory vacuum and that any changes should be compared with the existing regime. It also supports the Government's strategic commitment to use the current regime as the starting point for any change.

Box 2.B: Consultation questions on conduct requirements and rules

1 What are your views on the Government's proposal to carry forward CCA conduct requirements which cannot be easily replicated in FCA rules? Do you agree with the Government's intention to require the FCA to review these retained CCA provisions, with a view to moving to rules-based alternatives wherever possible?

2 How, if at all, do you think industry codes can complement FCA conduct regulation?

3 Authorisation

3.1 As part of the transfer to the FCA regime, firms carrying out consumer credit business will move from being regulated under the CCA to a framework underpinned primarily by FSMA. This chapter describes the key processes associated with becoming authorised to carry on regulated consumer credit business, and covers:

- the authorisation regime, including the 'limited permission' regime that forms a key part of the proportionate design;
- the appointed representatives regime, including changes enabled through the Financial Services Act to make the regime more applicable to the credit sector;
- the arrangements for those currently covered by group licences; and
- the requirements of the change in control provisions.

3.2 One of the central pillars of a FSMA regime is the concept of authorisation. For most firms, they will become authorised by obtaining permission under Part 4A of FSMA. The concept of becoming authorised will replace the current licensing system, which is repealed by Part 4 of the draft RAO order. All firms carrying on a credit-related regulated activity will in future need to be authorised by the FCA unless they are exempt or are covered by one of the specialist regimes in FSMA.[1]

3.3 The move from licensing to authorisation is central to delivering a more effective regulatory regime for consumer credit. For example:

- There will be tougher scrutiny at the gateway: in order to become authorised, firms have to meet (and demonstrate that they will continue to meet) threshold conditions. Operating a robust gateway in this way will also enable the FCA to manage the costs of ongoing supervision more effectively, by ensuring that regulated firms have appropriate systems, controls and individuals in place at the point of authorisation; and
- A number of the FCA's powers attach to the concept of a firm's Part 4A permission – for example, the FCA will be able to vary or remove a firm's permission, with immediate effect in appropriate cases. It will also be able to place requirements on a firm which the firm must meet. These powers all stem from the concept of a permission granted on the basis of threshold conditions being met.

[1] All firms who are dual-regulated– so for example deposit-takers such as banks, building societies and credit unions, will need to be authorised by the Prudential Regulation Authority or PRA, with input from the FCA. This is described in greater detail in the FSA's consultation paper.

Box 3.A: Key FSMA concepts and principles

Under s19 of FSMA, all firms carrying out a regulated activity in the UK must either be authorised or exempt. Carrying on a regulated activity without authorisation or exemption is a criminal offence.

Exemptions are granted through the FSMA exemption order. Part 5 Article 17 of the draft RAO order amends the exemptions order in relation to credit. More details are provided below.

In addition, there are a number of specialist regimes in FSMA which allow firms and individuals to carry on regulated activities without being subject to the general prohibition in section 19.

Firms can become exempt from the general prohibition by becoming an appointed representative of an authorised firm, which means that they can carry on a regulated activity without being authorised themselves, because an authorised firm, their 'principal', takes responsibility for their conduct. The Financial Services Act 2012 makes a number of changes to the appointed representatives regime to make it more broadly applicable to parts of the consumer credit sector. These are described in more detail in this chapter.

Firms can also carry on a regulated activity without authorisation if they are a member of a designated professional body recognised by the Treasury under Part 20 of FSMA.

It is important to note that a firm cannot be both authorised and exempt. So for example, if a firm were already authorised for one activity, it cannot be exempt for another. Similarly a firm cannot be both authorised and rely on one of the specialist regimes such as the Part 20 regime. There is only one exception to this in relation to the appointed representatives regime and certain consumer credit-related activity: this is also described in more detail in this chapter.

Firms should note that under FSMA, carrying on a regulated activity without being authorised is a criminal offence, but an authorised person with permission for one regulated activity who carries on another regulated activity for which he does not have permission (so for example having permission for insurance brokerage but also providing financial advice) is committing a regulatory breach and not a criminal offence. There is, however, one exception to this in relation to consumer credit: the Financial Services Act 2012 amended FSMA to provide that where an authorised person engages in the activity of lending or debt collecting without that category of permission, they will be committing a criminal offence. This change is intended to protect consumers from illegal lenders and/or debt collectors, who may otherwise try to exploit the system and avoid prosecution by gaining permission for an activity that is considered lower risk. Part 3 of the draft RAO sets out the scope of this change (article 11).

Authorisation

3.4 As described above, the concept of firms having to be authorised and demonstrate certain standards on an ongoing basis in order to retain that status is a central element of the FSMA regime, and one on which many of the benefits expected from the new regime rest.

3.5 However, while FSMA and the proposed new approach for the FCA will form the basis for consumer credit regulation from April 2014, this will not simply involve applying the existing FSA approach designed for the regulation of banking, insurance and investment products to

consumer credit, but rather a bespoke model designed to fit the particularities of the sector. The Government is therefore proposing a tiered and risk-based bespoke approach to authorisation in the consumer credit sector.

3.6 For all firms regulated to undertake an activity related to consumer credit, regardless of whether they have secured authorisation in the 'lower risk' category or not, the FCA's full suite of powers related to variation or withdrawal of permission and imposition of requirements will be available. This reflects the Government's consideration that while they may be *lower* risk, their activities are not entirely without risk to consumers.

Tier 1: the 'core' credit model

3.7 The majority of current consumer credit licence holders, and certainly all those whose activities are deemed 'high risk', will be subject to the FCA's 'core' credit authorisation regime. They will be required to demonstrate that they can meet *all* of the FCA's threshold conditions at the time of application and on an ongoing basis in order to become authorised. However, the approach taken by the FCA, including how it interprets the threshold conditions, will be tailored to the credit market. The FSA's consultation paper sets out the FCA's proposed approach in detail. However, there are some key aspects of this core credit regime:

- Under FSMA, firms are required to show that they have and can maintain 'appropriate resources', to comply with the relevant threshold condition. For most firms currently regulated by the FSA, this includes having to comply with minimum capital requirements. However, there will be no minimum capital requirements for consumer credit firms under the FCA regime, except for debt management firms (where capital requirements correspond to activities *unrelated* to credit, these will of course remain); and
- Fees will be tailored to the credit sector, and differentiated according to size and risk level of the activities undertaken. While firms should expect an increase in fees (when compared with current OFT fee levels) in order to enable the FCA to deliver more effective oversight, fee levels will be adapted to the credit sector and not simply mapped across from other FSA regulated activities. The FSA will provide further detail in a subsequent consultation paper and will consult on its proposed fee structure. However, both the one-off charge to become authorised and the ongoing yearly fees will be lower than for the vast majority of other FSMA regulated activities.

Tier 2: the 'limited permission' regime

3.8 The second tier, known as 'limited permission' authorisation, is a bespoke approach targeted at those classes of firms who are deemed to be lower risk, including those for whom credit provision is secondary to their core (non-financial) activities. The permission that firms in this regime will be able to obtain will be limited to certain credit-related activities. This is discussed further below. Firms subject to this regime will still need to seek authorisation, and their applications and ongoing conduct will be scrutinised. However, the threshold conditions (TCs) and other requirements which they have to meet will be less onerous, and tailored to the nature of their business and the risk level of the activity they carry out. Firms in this category will also be able to be both authorised for credit activities and act as appointed representatives at the same time – this is also described in more detail below. In addition, firms in this tier will be subject to lower one-off and ongoing fees than those subject to the 'core' credit model.

3.9 The different application of the threshold conditions to the firms in the limited permission category is provided for in Part 3 article 9 of the draft RAO order. The FSA's consultation paper

describes the application of the threshold conditions in greater detail, but firms may wish to note that:

- the Threshold Conditions (TCs) on location of offices and suitability will apply without modification;
- the TC on appropriate resources is modified so that in terms of financial resources, a firm will only need to be capable of meeting its debts as they fall due – i.e. a simple solvency test. Requirements on non-financial resources apply as normal;
- the TC on effective supervision is modified to take in to account the reduced complexity of the regulated activity these firms will be engaged in and the products they offer. Provisions relating to consolidated supervision are also not applied; and
- the TC on business models is not applied because scrutiny of business models is not considered appropriate or necessary in relation to these lower risk firms.

3.10 In order to protect consumers and maintain market integrity, limited permission authorisation will be available only to firms carrying out certain specified activities (set out in Part 3 article 9 of the draft RAO order). At present, the Government proposes that the model will only cover:

- debt counselling with debt adjusting and/or credit information services, when carried out by a not-for-profit-body;
- secondary credit brokerage by sellers of goods and non-financial services (except "domestic premises suppliers" , so firms where the sale routinely takes place in the home – this is intended to protect vulnerable consumers);[2]
- consumer hire;
- sellers of goods and services who only provide credit or other financial accommodation directly to purchasers (excluding hire purchase or conditional sale) with no interest or charges (this category is intended to capture, for example, gyms or dentists that meet these criteria); and
- debt counselling, debt-adjusting or credit information services, when carried on as ancillary activities by a person already in the lower risk category. This means that, say, a car dealership that has a limited permission authorisation for credit brokerage would also be able to help a potential customer with some basic advice on steps to take to amend their credit record.

3.11 If a firm carries out one of the above activities but also further credit activity or activities not covered in this list, it would be subject to the 'core' authorisation regime and have to comply with the full set of threshold conditions and could not benefit from the limited permission regime (unless it carried on this credit activity as an appointed representative, see below for further details).

Appointed representatives

3.12 An appointed representative is a firm which is not authorised itself, but is allowed to carry on certain regulated activities under a contract with an authorised firm (its 'principal'). Under

[2] "domestic premises suppliers" means a supplier who sells goods or supplies non-financial services to customers who are individuals whilst physically present in the dwelling of the customer or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer (though a suppler who does so on an occasional basis is not to be treated as a "domestic premises supplier")

such a contract, the principal accepts responsibility for the regulated activities carried on by its appointed representative. The appointed representative regime is therefore a way for smaller firms to operate without having to shoulder the burden of direct authorisation and regulation. The regime will be available for all credit related activities except for lending and credit referencing services.

3.13 The appointed representatives and limited permission regimes are essential components of the proportionate regime the Government intends to apply to the regulation of consumer credit. However, in order to make the limited permission regime fully feasible, the Government has made further changes to the appointed representatives regime.

3.14 As discussed above, until now it has not been possible under FSMA for a firm to be both authorised and operate as an appointed representative at the same time. Following discussion with industry, the Government considers that, left unaddressed, this would have serious implications for example for secondary credit brokers, many of whom will already be appointed representatives for a FSMA-related activity such as insurance brokerage. Under the existing FSMA regime, a motor dealer who wanted to access the limited permission regime in order to secure permission to carry on credit brokerage would have found himself unable to continue being an appointed representative for insurance brokerage at the same time. The firm would therefore either have had to become authorised for both activities (which in this instance would have required the firm to seek a more costly tier 1 authorisation), or found a principal to take it on as an appointed representative for its credit activity. This may have resulted in extra burdens or even in the firm going out of business if it failed to secure a principal.

3.15 In recognition of the business models prevalent in parts of the consumer credit sector, the Government therefore legislated through the Financial Services Act 2012 to provide that in certain cases, a firm may be authorised to carry on certain credit related activities and operate as an appointed representative. The Government believes that this option should be restricted to those firms which are authorised under the limited permission regime, and this is provided for in Part 5 article 18 of the draft RAO order via an amendment to the Appointed Representatives Regulations.[3] The firms subject to the limited permission regime will be able to become an appointed representative for any other activity for which the appointed representatives regime applies (lending and operating a credit reference agency cannot be carried out as an appointed representative and always require authorisation).

3.16 The Government believes that this model strikes the right balance between designing a proportionate regime and ensuring adequate protection for consumers.

Self-employed agents

3.17 Home collected credit or mail order businesses tend to rely to some degree on the use of agents: individuals who act for the firm in its dealings with consumers. The Government is carrying forward the existing exemption for agents of mail order firms through the draft RAO order, which means that such agents will not have to seek authorisation in their own right. The Government also intends that agents of home collected credit firms will not need to be authorised, subject to meeting certain criteria specified by the FCA. The FSA's consultation paper provides more detail on the proposed approach to dealing with both types of agents.

[3] *The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 SI 2001/1217.*

Group licensing

3.18 Under the CCA, the group licensing system has enabled groups of professional firms, altruistic organisations or individuals to operate without having an individual licence, provided that they are overseen by a membership organisation or professional body that takes responsibility for standards and compliance. This professional body or membership organisation holds the group licence and is responsible for ensuring the competence and integrity of any of their members that carry on licensable credit activities under the cover of the group licence. This system has reduced costs and regulatory burdens for those covered by a group licence.

3.19 Under FSMA, there is no comparable system of 'group authorisation'. Instead, firms, charitable organisations or individuals will have to be either individually authorised, exempt from regulation, to become an appointed representative of an authorised firm, to come within the Part 20 regime for members of designated professional bodies, or to cease to carry on credit-related activities.

3.20 The remainder of this section describes the Government's proposed approach for each category of group licence. There are sixteen current group licences. The approach taken in each case is informed by a number of factors, such as the type of activity undertaken by those operating under a group licence and the risk level of that activity, the options available under FSMA that might best suit the organisations operating under the group licence and the wider implications of the approach taken.

Not-for-profit debt advice providers

3.21 A significant proportion of the OFT's group licences are held by membership not-for-profit organisations that provide debt advice. Under the CCA, *all* organisations who provide debt counselling and/or adjusting are required to either hold an individual credit licence or operate under cover of a group licence, regardless of whether the activity is profit-seeking. In contrast, under FSMA, advice is generally only regulated where it is provided 'by way of business', for example where a bank recommends a specific investment product to a retail customer. This means that charitable providers are currently not regulated under FSMA for any advice they provide to clients, for example, on insurance or mortgages.

3.22 The Government considered whether this approach should be extended to debt advice, which would have meant that debt advice provided by a not-for-profit organisation would not have been subject to any regulation.

3.23 Following discussion with the sector, the Government has concluded that such an approach would not serve the interests of consumers or providers of such advice, could undermine market integrity and may lead to worse outcomes for consumers in the long-term. The Government accepts that it is important that high standards in the not-for-profit debt advice sector are upheld, and that there is proper scrutiny of new entrants to the field in order to protect consumers from those who may be well-intentioned but are not capable of delivering to an appropriately high standard.

3.24 The Government therefore proposes that debt advice, even where it is provided by a body that operates on a not-for-profit basis, should be regulated by the FCA. The necessary amendment to the 'by way of business' test is described in Part 5 article 16 of the draft order. The amendment effectively provides that where debt counselling is carried out by a not-for-

profit body, [4] it is to be regarded as being carried on by way of business and therefore within the scope of regulation.

3.25 The Government proposes that not-for-profit debt advice providers should be subject to a bespoke regulatory model. All members of the not-for-profit debt advice community will be:

- included in the lower cost limited permission regime;
- subject to a proportionate and tailored interpretation of the limited permission regime; and
- excluded from the compulsory jurisdiction of the FOS, but given the option of joining the voluntary jurisdiction (further detail on the FOS can be found in Chapter 5).

3.26 The above approach is described in greater detail in the FSA's consultation paper. The FSA will also be considering, and will set out in a fees consultation expected later this year, ways in which fees for the not for profit debt advice community could be kept to a minimum.

3.27 Providers operating under a group licence only (as at 31 March 2014) will be 'grandfathered' in to the FCA regime at no cost, which means that they will receive individual FSMA authorisation under the limited permission model automatically without being subject to further scrutiny at the gateway (as long as their details have been notified to the FCA in time – the process to be followed will be set out in more detail by the FSA). This is provided for in Part 6 article 27 of the draft RAO order. They will also be permitted to continue to access support and guidance from their member organisation to help them comply with regulatory requirements.

3.28 There will be a slightly different approach to authorisation for those providers not currently covered by a group licence. Those not-for-profit bodies who provide debt advice and hold an individual licence will not be grandfathered directly in to the limited permission regime. Instead, if they wish to continue operating, they will need to notify the FCA that they wish to receive an interim permission from April 2014. In line with the deadlines set by the FCA, they will then also need to seek authorisation under the limited permission regime. This approach is in line with the expectations on other firms carrying out a credit activity who are not covered by a group licence. However, as noted above, the FCA intends to take a proportionate approach to fees for providers of not-for-profit debt advice, including not charging not-for-profit bodies holding individual licences a fee for their interim permission. More detail will be provided by the FSA in due course.

3.29 Any new not-for-profit bodies providing debt advice (not currently licensed by the OFT or covered by a group licence) wishing to become authorised would need to apply in the normal way, but the FCA currently does not propose to charge them an authorisation fee (more detail on this will be provided by the FSA).

3.30 The Government believes that this proposal meets the objectives of ensuring appropriate levels of consumer protection and maintaining the availability and sustainability of free debt advice.

[4] A not-for profit body is defined as one that is required by its constitution or similar to apply all its income and capital expended (after outgoings) to charitable or public purposes, and is prohibited from distributing among its members its assets (unless where for charitable or public purposes).

Professional bodies

3.31 Many professional firms currently carry on licensable consumer credit activities under the cover of a group consumer credit licence issued by the OFT. These include, for example, law firms and accountants.

3.32 Under Part 20 of FSMA, the carrying on of certain FSMA-regulated activities by members of designated professional bodies (DPBs) is exempt from the general prohibition and therefore not subject to full oversight under the FSMA regime. Such activity is instead primarily regulated by the professional body to which member firms or organisations belong, under rules made by the professional body and approved by the FCA.

3.33 The Government proposes that professional firms currently within the scope of Part 20 should be able to carry on credit related regulated activities under Part 20, as long as the conditions in Part 20 are met in relation to those credit activities. Such firms would not need to be authorised by the FCA.

3.34 However, firms to whom this may apply should note two important qualifications to this approach.

3.35 First, as set out in section 327 of FSMA, in order to benefit from the Part 20 regime, a firm must be carrying out the regulated activity in a way that is incidental to its professional business. This is somewhat different to the group licensing regime, where there is no directly equivalent qualification. This means that if a firm were engaged in credit-related activity as its primary business, so for example a law firm primarily engaged in debt collection, or an accountancy firm primarily engaged in the provision of debt management services, it would need to be fully authorised and could *not* take advantage of the Part 20 regime.

3.36 Second, it is important to note that the Part 20 regime is not available to those who are authorised. This means that a professional firm that needs to be or is already authorised under FSMA for some activity under FSMA will need to be authorised for *all* its activity. So for example, a firm who is currently operating under Part 20 but will need to be authorised for its credit activities, because it does not meet the 'incidental' test, will in future have to become fully authorised also for its non-credit related activity.

3.37 In order for firms to be able to benefit from the Part 20 regime at the point of the transfer, designated professional bodies will need to have rules governing the consumer credit activity of their members in place and approved by the FCA by April 2014.

Liquidators and receivers/insolvency practitioners

3.38 Insolvency practitioners can act in relation to an insolvent individual, partnership or company, as well as carrying out a number of related activities. To the extent that insolvency practitioners act in relation to unregulated loans – including those made to businesses – they are not regulated under the CCA, and will therefore not be brought into scope of the FSMA regime.

3.39 Where activities carried out by insolvency practitioners do fall within the scope of the CCA, they are currently covered by the OFT licensing regime in a number of different ways. While some insolvency practitioners hold individual licences, a number are covered by group licences, either because they are part of a professional body's group licence (see above) or because they operate, when appropriate, under cover of the 'liquidators and receivers' group licence which applies to certain limited circumstances where they are trading as a business.

3.40 The treatment of insolvency practitioners under FSMA will depend on the kind of activity they are carrying on, and on whether they are members of a professional body recognised by the FSMA Part 20 regime.

3.41 Many insolvency practitioners engage in debt related activity. This is most likely to include the activities of debt counselling alone or together with debt adjusting and/or the provision of credit information services, but may also include debt collecting and debt administration. The Government is providing an exemption from authorisation for insolvency practitioners carrying on debt related activity where they have been 'formally appointed' as an insolvency practitioner. This is provided for in Part 5 article 17 of the draft RAO.

3.42 However, an insolvency practitioner who is carrying on debt related activity when not formally appointed as an insolvency practitioner (for example, when providing pre-appointment debt advice) will not be able to benefit from this exemption and will therefore need to seek authorisation from the FCA (unless the insolvency practitioner benefit from one of the other regimes, see below).

3.43 The Government is taking this approach because it considers that debt related activity can pose a particularly high risk of consumer detriment, often involving consumers that are vulnerable and experiencing difficult circumstances. The proposed model therefore reflects the Government's desire to see the provision of debt-related services thoroughly regulated and subject to high standards.

3.44 For those insolvency practitioners which are members of a 'designated professional body', they may be able to be exempted from authorisation under Part 20 of FSMA provided that all their debt-related activity (other than that provided when they have been formally appointed as an insolvency practitioner) is 'incidental' to their business as an insolvency practitioner and the conditions prescribed in Part 20 are met.

3.45 Insolvency practitioners who engage in lending or credit brokerage will need to seek authorisation on an individual basis from the FCA. This is likely to include those insolvency practitioners who act as Trustee in Bankruptcy in relation to a credit provider or broker who is an individual. This approach is intended to deliver compliance with requirements in the Consumer Credit Directive.

3.46 Any insolvency practitioner who acts in the corporate field and takes over and trades as a business under the business's own authorisation to carry on credit-related activity will not be carrying on a credit business in their own name and so will not need to be authorised in their own right.

Cycle to work

3.47 Cycle to Work schemes allow employers to loan bicycle and bicycle safety equipment to employees, and give staff the chance to access bicycle and bicycle safety equipment to travel to and from work – free of any income tax liability. Under the CCA, the agreements between employers and employees are considered to be consumer credit agreements, but employers who participate in the Cycle to Work scheme are currently covered by an 'own motion' group licence issued by the OFT.

3.48 The Government's view is that it would be disproportionate to require each organisation covered under this group licence to have to become authorised in its own right, and that the costs and burdens of this would result in a reduction in the number of employers taking part. The Government's proposal is therefore that these schemes should be exempt from regulation under FSMA, and the exemption is provided in Part 5 article 17 of the draft RAO order. We consider that risks to consumers are mitigated – because consumer hire is considered a lower

risk activity in any case, because Cycle to Work schemes should be run by employers for the benefit of their employees (rather than for commercial benefit), and because the statutory limit on the upper value of the bicycle being loaned will be retained. In addition, a number of existing protections for consumers in respect of consumer hire agreements, such as section 101 of the CCA, are being retained for the time being.

National Federation of Enterprise Agencies (NFEA)

3.49 Enterprise schemes already benefit from an exemption from the requirement to be authorised under FSMA in relation to certain regulated activities as long as the activity is not carried on for, or with the prospect of, direct or indirect pecuniary gain. The Government proposes to extend this exemption to apply to the activities for which the NFEA currently holds a group licence (credit brokerage, debt-adjusting and debt counselling). This is provided for in Part 5 article 17(2) of the draft RAO order.

Other changes being made through the draft RAO Order

Change in control

3.50 FSMA requires individuals or corporate bodies wishing to acquire or increase control in a UK authorised firm to seek prior approval from the regulator. Failure to comply is a criminal offence. The change in control requirements will be carried forward under the FCA and will apply to credit firms, but Part 5 article 22 of the draft RAO order makes a number of changes to the regime to make it more relevant to the consumer credit sector.

3.51 At present, the change in control requirements apply where a change in control results in a person holding 10 per cent or more of shares in a firm or its parent, 10 per cent of voting power in the same, or shares or voting power that result in the person being able to exercise significant influence over the firm. Requirements also apply where changes in control result in increases or reductions of control above or below these thresholds.

3.52 The draft RAO order changes the threshold at which change in control requirements apply to 33 per cent for firms subject to the limited permission regime. For firms carrying out only credit activities but on the full authorisation regime, the threshold at which these requirements will bite will be 20 per cent, with further notifications required at 30 per cent and 50 per cent increases in control, and on analogous reductions.

3.53 This is intended to deliver a regime for the credit sector which is proportionate and does not impose unnecessary burdens, while ensuring that the requirement to seek prior approval still applies in the case of the most significant changes in control, and regulatory oversight is guaranteed in such instances.

3.54 The amended threshold only applies to those firms who *only* have permission for credit-related activities. The existing thresholds will continue to apply to firms also holding other FCA permissions.

3.55 Firms holding only an interim permission will not be subject to any change in control requirements.

Box 3.B: Consultation questions on authorisation

3 What are your views on the Government's proposals for the two tier authorisation regime? Is the scope of the limited permission regime right?

4 What are your views on the proposed changes to the appointed representatives regime?

5 What are your views on the proposed approach for dealing with those currently covered by group licences?

4 Scope of regulation

4.1 As part of the policy development process on the transfer of consumer credit regulation from the OFT to the FCA, the Government has considered whether there is a strong case for bringing new areas into the scope of regulation, or conversely whether there is a strong argument for deregulation of areas currently covered by the CCA. In doing so, the Government sought the views of industry on specific policy issues. Any consideration of the scope of consumer credit regulation must of course take in to account requirements under the Consumer Credit Directive.

4.2 The Government's overall proposal is to keep the scope of consumer credit regulation broadly the same under the new FSMA regime, including by replicating existing exemptions under the CCA. However, there will be some changes to the scope of the regime:

- most significantly, the extent to which the activities of peer to peer platforms will be regulated will change, and the activity of operating a peer to peer platform will now be covered by a new, bespoke regulated activity;
- the Government proposes to exempt from regulation the activity of tracing debtors as carried on by third party tracing agents; and
- more minor scope changes are being made, include narrowing the definition of operating a credit reference agency to ensure that only those that are actually operating a credit reference agency are captured, and incorporating the activity of credit intermediation into the activity of credit brokerage in order to simplify the regime for firms and consumers.

4.3 The remainder of this chapter discusses each relevant section of the draft RAO order in turn, and in doing so clarifies whether any significant changes to the scope of an activity have been made, the rationale for doing so, and any implications of such change. The draft RAO order can be found at Annex C.

4.4 It is worth noting that the 'by way of business' test will apply in assessing whether something falls within the scope of regulation, rather than the CCA test of "carrying on a business in so far as it comprises or relates to the provision of credit under a regulated agreement".

Credit brokerage and intermediation

4.5 The CCA uses the concept of credit broking, and the concept of credit intermediaries. Only those who fall within the definition of credit broking require a licence in respect of this activity though both classes are subject to substantive requirements under the CCA. In fact, there is significant overlap in the two definitions. In order to increase simplicity for firms and consumers, there will be only a single definition covering both activities under the new regime. This activity will be credit broking and the drafting of the draft RAO (see the proposed new chapter 6A of Part 2 of the Regulated Activities Order) reflects the relevant wording of the CCA. However, the principal effect of the change will be that those who under the CCA regime fell only into the category of credit intermediation and did not carry on credit brokerage or any other licensable

activity (and therefore did not need to be licensed) will now require authorisation. However, the Government considers that this will impose only a negligible burden because we understand that only a very small number of firms are considered to be credit intermediaries under the CCA but are not captured by the definition of credit brokers. Such persons appear to be mainly peer to peer platforms, who will need to seek authorisation under FSMA in any case (see below).

Peer to peer lending

4.6 The draft RAO order (Part 2) provides for a new Chapter 6B of the Regulated Activities Order (Operating an electronic system in relation to lending) which describes a new regulated activity and concerns peer to peer platforms. Peer to peer (P2P) platforms are online marketplaces that match up potential lenders with potential borrowers and facilitate the contracts between the two parties.

4.7 P2P platforms carrying on regulated consumer credit activities are already licensed by the OFT for their debt administration activities. Following the transfer, these firms will continue to be regulated.

4.8 However, many of the current requirements under the CCA do not apply to credit agreements made via P2P platforms if they are not made by the lender in the course of a business – such loans are considered 'non commercial' for the purposes of the CCA. This means that consumers are not afforded certain protections in the CCA when they borrow via a P2P platform. In addition, if credit is provided to a business borrower which is a company, it falls outside the scope of the CCA.

4.9 The proposed change to the Regulated Activities Order creates a bespoke new activity that brings together what P2P platforms do when they are arranging credit agreements between lenders and borrowers, and also extends the scope of regulation to ensure that both the consumers who borrow and those who lend via a platform are protected.

4.10 The new activity described in the draft RAO order (operating an electronic system in relation to lending) sets out that P2P platforms are conducting a regulated activity if they are facilitating lending and borrowing between two consumers or between consumers and businesses. This means that in addition to those firms already regulated by the OFT, the Government expects that some currently unregulated P2P platforms will be brought in to the scope of regulation. P2P platforms that currently hold an OFT licence will be eligible for an interim permission under the FCA. The particular arrangements for interim permissions for P2P platforms are set out in more detail in Chapter 5.

4.11 The FSA will set out its plans for introducing rules for this new sector in the autumn.

4.12 The Government is keen to see this sector continue to grow and evolve, and therefore it will be important to develop a proportionate regime that recognises the needs of this innovative sector. The Government encourages all P2P platforms to engage fully with the FSA consultation on this issue.

Activity relating to debt

4.13 The draft RAO order (Part 2) provides for a new Chapter 7B (activities in relation to debt) of the Regulated Activities Order. This provides that debt adjusting, debt counselling, debt-collecting and debt administration will be regulated activities under FSMA. These provisions, including exemptions and definitions, largely replicate the CCA and no substantive changes have been made to the scope of regulation.

4.14 Third party tracing agents are companies who specialise in finding, or tracing, individuals for a fee, and are often contracted by those chasing a debt. Under the CCA, debt collecting is defined as 'the taking of steps to procure payment of debts due under consumer credit or consumer hire agreements'. Therefore, at present third-party tracing agents are captured as carrying on the regulated of debt collection and require a consumer credit licence.

4.15 Third party tracing agents do not carry out financial business, because they are simply trying to trace an individual – once they have located them, they normally do not take steps themselves to recover debts. The Government is therefore proposing to exempt businesses which carry on tracing activities but which do not themselves lend or otherwise carry on debt collection activities from the scope of regulation. This is provided for in Part 5 article 17 of the draft RAO Order via an amendment to the Exemption Order maintained under section 38 of FSMA.

4.16 The Government considers that this is a proportionate approach, given that third party tracing agents do not carry out a financial activity. If the tracing activity is undertaken on behalf of an FCA-authorised firm, then that authorised firm will be held responsible for the carrying on of the activity, and the FCA will do this by applying rules to lenders and debt collectors regarding the outsourcing of this activity to a third party. The FSA's consultation document describes this approach in more detail. This change is consistent with current OFT guidance, to the extent that the OFT expects licensed businesses to take reasonable responsibility for the conduct of those businesses with which they engage and which act on their behalf. It also places the responsibility for proper data handling firmly with an authorised firm that outsources tracing activity.

4.17 It is important to stress that the above exemption from authorisation applies only to third party tracing agents. Third party debt collectors – companies who collect debt on behalf of creditors – will continue to be within scope of regulation and will need to be authorised by the FCA (unless they chose to become an appointed representative).

4.18 Providing debt advice – whether by a profit-seeking body or not – will be a regulated activity under FSMA. The specific approach being taken in respect of debt advice provided by not-for-profit bodies is described in Chapter 3, and more information is also provided in the FSA's consultation document.

Lending

4.19 The draft RAO order creates a new Chapter 14A (regulated credit agreements) of the Regulated Activities Order: this concerns lending. This includes a large variety of activities that involve the extension of credit. For example, this regulated activity covers unsecured lending ranging from overdrafts and credit cards, to pay day loans and home credit, and activities such as pawn-broking. The majority of the drafting in these provisions reflects the approach in the CCA. The length of this chapter reflects the complexity of the agreements covered here and the large number of exemptions (also carried over from the CCA).

4.20 Chapter 14B of Part 2 of the draft RAO order deals with consumer hire. The scope and description of the activity largely reflects that in the CCA.

4.21 The description of the activity of lending in Chapter 14A includes second charge lending, which is being transferred to the FCA as part of the wider transfer.

4.22 Second charge mortgages are loans that are secured against a property which already has a standard first charge mortgage secured against it. These loans are typically used for debt consolidation or property repairs.

4.23 The Government had previously announced its intention to take forward the transfer of the regulation of second charge residential mortgages from the OFT to the FCA. The transfer is now going ahead.

4.24 However, it is important to ensure that the transfer of second charge regulation takes into account the timing of the wider transfer of consumer credit and the transposition of the EU Mortgages Directive.

4.25 Given that second charge mortgages are currently included within the scope of the EU Mortgages Directive, which is subject to ongoing negotiation, the requirements for second charge firms will remain the same as those for other consumer credit firms for the time being.

4.26 Existing firms will therefore be able to apply for an FCA interim permission and, from April 2014, comply with the relevant requirements on firms with this permission. Where firms have an interim permission that covers both second charge lending and another form of consumer credit lending, and they gain full authorisation in respect of the latter, the proposed legislation allows the firm to retain the interim permission status for their second charge lending (this is provided for in Part 6 of the RAO).

4.27 As with other consumer credit firms, from April 2014, any new entrants to the second charge market will be required to apply for full authorisation.

4.28 Once agreement on the EU Mortgages Directive is reached, we expect that Member States will have two years to implement the Directive in national law. Both the Government and the FCA will bring forward consultation documents once the EU Mortgages Directive has been agreed, setting out the longer term regime for second charge lending. When designing the longer term regime, the Government and the FCA will also consider how the transition process can be smoothed for those new entrant firms who gained a full consumer credit permission for their second charge lending.

4.29 The Government considered whether the exemption currently provided for **instalment credit** under the CCA, whereby credit is not regulated if no interest or other charges are raised, and the credit is for a duration of 12 months or less and to be repaid in four payments or fewer, should be widened, either by extending the duration of an agreement beyond 12 months or increasing the number of instalments. However, the Government decided to maintain the current limited exemption because of concerns that changes could significantly reduce consumer protection or encourage gaming of the system. Section 60F of chapter 14a therefore carries forward the current definition.

4.30 However, the Government is providing for certain types of instalment credit to be subject to the limited permission regime, intended to impose a more proportionate burden on such firms.

4.31 Under the CCA, some credit agreements entered into by **Local Authorities,** primarily related to mortgage lending, are exempt from regulation. The Government intends to retain an exemption related to mortgages. Where Local Authorities engage in brokerage or lending *unrelated* to mortgages, they will need to be authorised. This is in line with requirements in the Consumer Credit Directive (CCD).

4.32 Local authorities carrying on other regulated credit activities such as consumer hire, or carrying on debt counselling or debt adjusting in the course of providing debt advice, will be exempt from the need to be authorised in respect of those activities.

4.33 This provided for in Part 5 article 17 of the draft RAO order.

Credit information services and referencing

4.34 The draft RAO Order creates a new Part 3A of the Regulated Activities Order (specified activities in relation to information). This is concerned with the activities of providing credit information services and providing credit references. No substantive changes have been made to the activity of providing credit information services. With regard to the provision of credit references, the Government is concerned that at present, a number of firms hold a licence for this activity whose primary business activity is not collecting and providing information on the financial standing of individuals. The Government has therefore narrowed the definition of what constitutes providing credit references by stating in section 89B that 'furnishing of persons with information relevant to the financial standing of individuals or relevant recipients of credit is not a regulated activity if done in the course of a business which does not primarily consist of that kind of activity'.

Other activities: lead generation in relation to credit and debt

4.35 Lead generators gather data from potential customers, usually online, and sell this data on to lenders and debt management businesses (amongst others). Some simply channel data; others undertake initial assessment and analysis of a consumer's needs and circumstances.

4.36 The practices of lead generators have become subject to increased scrutiny in recent months, and there are concerns over the potential consumer detriment these firms may be causing. For example, they may be gathering data under false pretences, may manage consumers' personal data in an unsafe manner which puts the consumers concerned at risk of fraud or identity theft, may channel consumers to products or services that are unsuitable to them (particularly in relation to debt management services) or may sell the same lead to multiple providers, impacting in turn on the ability of creditors to be able to make informed responsible lending decisions and leading to consumers taking out multiple and therefore unaffordable loans concurrently.

4.37 Under the CCA, effecting an introduction of an individual who wants to obtain credit to lenders or credit brokers is a licensable activity. The majority of lead generators therefore currently require an appropriate licence when they are selling leads to creditors, or to other credit brokers. Requirements can also be placed on lenders to assure themselves of the appropriate conduct from the firms with whom they do business. Credit brokerage will be a regulated activity under FSMA and lead generators will therefore continue to fall within the scope of regulation where they sell leads concerned with the provision of credit.

4.38 However, effecting an introduction to a provider of debt advice is not currently a licensable activity, and lead generators whose activity is limited to selling leads to debt management businesses are therefore not currently regulated in respect of that activity.

4.39 There is anecdotal evidence that the activities of these unregulated lead generators are causing consumer detriment.

4.40 The Government therefore considered what action might be taken to tackle this. The options considered included:

- creating a new regulated activity of 'effecting introductions to debt advice' in the RAO in order to bring lead generators selling leads to debt management businesses in to the scope of regulation; or
- focusing requirements on the authorised firms who deal with lead generators.

4.41 Either option could be complemented by increased enforcement in relation to data collection and handling through existing (non-financial) rules and legislation.

4.42 However, the Government lacks data on the number of businesses operating in this space and the scale of the detriment they cause. Such data is needed to assess whether regulatory action should be taken, what might be most effective in tackling misconduct, and whether there might be any unintended consequences.

4.43 The Government does not therefore propose to take action to make effecting an introduction to debt advice a regulated activity ahead of the wider transfer to the FCA in April 2014. In the interim, we will work with other interested parties, such as the Information Commissioner's Office and the Ministry of Justice to see what other action might be taken to reduce consumer detriment, for example through greater focus on the data collection and handling practices used by lead generators. In addition, the FSA will explore what measures the FCA will be able to take to tackle misconduct by the firms who do business with lead generators.

Box 4.A: Consultation questions on scope of regulation

6 What are your views on the Government's proposals for scope of regulation, including changes in respect of credit intermediation, tracing agents and credit reference agencies?

7 Are there any exemptions that are to be carried forward that should be reconsidered?

8 What are your views on the proposed new activity to capture the activities of peer to peer platforms?

9 Do consultation respondents have any data on the activity of lead generators in the debt management sector? What detriment is being cause by these firms? And what are your views on a suitable regulatory response?

5 Enforcement and redress

5.1 A key benefit of the transfer is the application of the FCA's broad and flexible enforcement toolkit to the consumer credit market. This will mark a considerable strengthening of regulatory enforcement powers to punish misconduct by consumer credit firms. As highlighted in chapter 1, the OFT's enforcement powers are limited. There are also 'automatic' penalties in the CCA for breach of certain requirements – unenforceability and criminal offences – which are arguably no longer necessary under the FCA as a newly empowered, proactive regulator of consumer credit.

5.2 The draft CCA order provides for a new set of enforcement powers in relation to consumer credit. This chapter discusses the FCA's enforcement powers and the continued role and powers of LATSS and DETI in enforcing the CCA and policing the regulatory boundary.

5.3 It also sets out the Government's proposed approach to repealing requirements to which criminal offences apply in the CCA: the Government intends that the FCA will replicate these requirements in rules and breaches of these rules will be subject to the FCA's enforcement toolkit. In addition, the Government proposes to carry forward a small number of CCA criminal offences to ensure protection for vulnerable consumers are retained – these will be included in the scope of the FCA's review of retained CCA provisions (the review is explained further in Chapter 2).

5.4 As highlighted in Chapter 1, the FCA has powers to require redress to be paid to consumers when things go wrong. This chapter also covers how the Government is providing for consumers to continue to have recourse to the FOS in the case of a dispute with a consumer credit firm.

Enforcement of the CCA

5.5 The FCA will be able to enforce the provisions of the CCA that will be carried forward to the new regime. Article 2 of the draft CCA Order applies the FSMA enforcement toolkit to the CCA, meaning that, in addition to sanctions provided for in the CCA, the FCA can apply the full range of its enforcement powers and sanctions in enforcing the CCA: for example, the draft order gives the FCA the ability to ensure restitution of property to consumers and to institute proceedings for offences. Article 3 requires the FCA to set out in a statement of policy how it intends to apply the main parts of its enforcement toolkit to the CCA, to provide clarity for firms and consumers on how it will use its powers.

5.6 LATSS in England, Scotland and Wales and DETI in Northern Ireland will continue to be able to investigate breaches of the CCA and, in England, Wales and Northern Ireland, to prosecute offences under the CCA.[1] They will also take on an important new role under the FCA in policing the consumer credit regulatory boundary, rooting out and taking action against illegal loan sharks and other firms acting without authorisation or the right permissions. Article 8 of the draft CCA SI provides for this.

[1] In Scotland, the Lord Advocate has responsibility for prosecution.

5.7 The FCA and LATSS will have complementary powers of enforcement. The Government has also given the FCA the specific power to contract with LATSS and DETI to provide additional services (e.g. finding and assessing evidence to support FCA enforcement action).

5.8 The FSA commits in its consultation paper to work with LATSS and DETI to coordinate their respective enforcement roles in relation to consumer credit. Article 4 of the draft CCA order ensures that a person is not subject to 'double jeopardy', that is a person cannot be convicted of an offence under the CCA in relation to conduct which has already been the subject of regulatory enforcement action under FSMA.

Criminal offences in the CCA

5.9 As noted above, the FCA will have a stronger, more flexible enforcement toolkit to police the consumer credit sector than the OFT currently has. The Government believes therefore believes that there is no longer such a strong rationale for carrying forward criminal offences in the CCA into the new FCA regime. The Government therefore proposes to repeal some criminal offences, where it is confident that the FCA's enforcement powers are sufficient to deal effectively with breaches and act as a strong alternative deterrent for non-compliance, and consumers remain protected.

5.10 The draft CCA order therefore repeals a number of criminal offences in the CCA. Annex B sets out which CCA provisions (to which offences are attached) will be repealed and replaced by rules.

5.11 The Government has decided to carry forward a small number of criminal offences into the new regime, where they protect particularly vulnerable consumers or whether there are similar protections in other legislation: for example, it will remain an offence to distribute credit circulars to minors (section 50 of the CCA). It has asked the FSA to consider (as part of its review of retained CCA provisions by 2019) whether these statutory deterrents are necessary in the new regulatory regime.

5.12 The FCA's enforcement powers apply to authorised persons. In the case of a person *without appropriate authorisation* (or equivalent) acting in a way that would constitute an offence under the CCA, that person would be subject to criminal (or regulatory) action under FSMA, as conducting credit business without appropriate authorisation would constitute a breach of the regulatory perimeter. Both the FCA and LATSS or DETI could investigate and prosecute him for this breach.

The credit jurisdiction of the FOS

5.13 An independent, impartial and free dispute resolution mechanism service is a key feature of a regulatory regime that delivers for consumers. At present, all firms individually licensed by the OFT are subject to the credit jurisdiction of the Financial Ombudsman Service (FOS). The majority of firms authorised by the FSA are subject to the FOS's compulsory jurisdiction, the scope of which is set out in FSMA and complemented by rules.

5.14 With the transfer of consumer credit regulation to the FCA, the Government proposes to remove the FOS's credit jurisdiction, and instead make credit-related activities subject to the FOS's compulsory jurisdiction. Part 3 of the draft RAO order therefore removes the credit jurisdiction.

5.15 In practice, this will deliver the same level of protection for consumers and thereby ensure continuity.

5.16 It is proposed that not-for-profit bodies providing debt advice will not be subject to the compulsory jurisdiction of the FOS, but will be able to opt in to the voluntary jurisdiction.

Box 5.A: Consultation question on enforcement and redress

10 What are your views on the Government's proposal to repeal many of the criminal offences in the CCA and make breaches of these requirements, once in rules, subject to the FCA's enforcement toolkit?

6 Interim permissions

6.1 As set out in earlier chapters, the Government is committed to reforming the regime for consumer credit regulation. The current system is not delivering the right outcomes for consumers, and many consumers using credit products and services are suffering detriment as result.

6.2 However, the Government acknowledges the magnitude of the changes being made and the reality that many firms and sole traders will be entirely unfamiliar with FSMA and the associated regulatory approach and will have to adapt to the new regime relatively quickly. The Government has therefore worked closely with the FSA to make the transition as smooth as possible, as described in Chapter 1.

6.3 One of the most important ways in which a smooth transition will be delivered is the interim permission regime, which has been designed to enable firms to transfer into the FSMA regime first and adapt to a new regulatory regime before then seeking full authorisation at a future date. This chapter sets out how the interim permission regime will work and describes some of the special arrangements for some classes of firm.

Interim permission

6.4 Articles 23 to 27, in Part 6 of the draft RAO order, set out the arrangements for an interim permissions regime for certain current OFT licence-holders.

The concept of an interim permission

6.5 Article 23 describes the concept of an interim permission. Under this proposal, any person who holds a current individual OFT licence but is not authorised under FSMA for non-credit activity will be granted an interim Part 4A permission under FSMA by virtue of the Order if they:

- notify the FCA of their wish to obtain an interim permission by the specified period and supply the information the FCA asks for by the required deadline and in the prescribed form;
- pay the fee required by the FCA;
- hold a valid licence that is not suspended immediately before the transfer.

6.6 Any firm already authorised by the FSA for non-credit related activity will also need to notify the regulator and pay a fee, and will then receive an 'interim variation of permission'.

6.7 The fees firms will be expected to pay will be low and payable only once during the interim period (when firms apply for interim permission), and requests for data and information will be minimal and informed simply by the FCA's need to maintain an accurate record for those who hold an interim permission. More detail is provided in the FSA's consultation paper.

6.8 Any requirements applied to the licence by the OFT at the time of application will be applied to the interim permission or variation of permission.

6.9 Interim permission or interim variations of permission will only be granted for activities for which the person is licensed at 31 March 2014. Any firm wishing to carry out an activity for which they are not licensed will need to apply for full FSMA authorisation for the new activity and the activities for which they are already licensed. Similarly, a FSMA authorised firm wishing to carry out new credit related activity will need to apply for variation of permission for all credit related activities in the normal manner.

6.10 The Government believes that the concept of an interim permission delivers both enhanced consumer protection and market oversight, but does so in a proportionate manner that eases the burden on firms at transition. This is because firms will not need to meet the higher test of becoming fully authorised before April 2014, but the regulator will nevertheless be able to use all the powers in its toolkit that stem from firms having a Part 4A permission.

Duration of an interim permission and the transition to authorisation

6.11 Firms will need to have notified the FCA of their desire to obtain an interim permission and paid the necessary fee by 31 March 2014 in order to be able to continue to operate legally from 1 April 2014. Failure to do so would mean operating without permission, which is a criminal offence under FSMA if the firm holds no other FSMA permission.

6.12 The FSA will provide further detail in due course on the process firms must follow when notifying the regulator of their intention to seek an interim permission, and will work closely with the OFT to make contact with existing licence-holders.

6.13 The FSA will also provide further detail on when the FCA expects to begin accepting notifications.

6.14 An interim permission or interim variation of permission will remain in effect until the date specified by the FCA by which firms must apply for full authorisation (or variation of their permission) or, where no date has been specified, 1 April 2016. The FCA may specify different dates for different classes of activities. Where a firm, before the relevant date, submits an application for authorisation or variation, their interim permission will continue until the FCA has determined that application. The FSA will provide further detail on the process for this and the application deadlines that will apply in due course. The FSA will provide further detail on when the process for applying for full authorisation will open to firms.

6.15 An interim permission or variation of permission could cease to be effective earlier than set out above if a firm applies for full authorisation or variation of permission and that application is granted, or if the FCA takes regulatory action against a firm that involves removing or varying an interim permission or variation of permission.

Limitations on those holding an interim permission

6.16 As noted above, the concept of a permission is central to the operation of FSMA, and the Government therefore considers it important that the normal rights and powers associated with a permission apply also to the interim arrangements. The expectation is that firms will be able to operate as normal. However, because these firms will not have been subject to the thorough scrutiny that full authorisation or variation of permission involves, article 26 places some limitations on what firms with interim permissions can and cannot do.

6.17 Firms with only interim permissions or variations of permission:

- will only be able to approve financial promotions concerning the same activity for which they hold an interim permission, not other regulated activities;

- may not act as principal for appointed representatives in relation to the activity for which they hold an interim permission; and
- May continue to act as appointed representative for a relevant activity for which they do not have interim permission.

Credit intermediation – including P2P – and the interim permission

6.18 Firms engaged in the activity of credit intermediation do not currently require a licence to carry on that activity. The Government expects that some of these firms will be operating peer to peer platforms. Where a firm operating a peer to peer platform currently holds a licence for debt administration *and* meets the criteria for the new peer to peer activity (article 36G of the draft RAO order), they will be granted an interim permission if they notify the FCA and pay the required fee.

6.19 Where a firm, either operating a peer to peer platform or otherwise engaged in credit intermediation, does not hold an OFT licence for any activity at 1 April 2014 they will not be eligible for an interim permission. As part of the transfer, the activity of credit intermediation will be incorporated in to the activity of credit broking or, if carried on by a peer to peer platform, the new activity described in article 36G, for which firms will need to seek authorisation. This means that any firms who are not eligible for an interim permission because they do not have an OFT licence will need to seek full authorisation from the FCA in order to continue to trade after 1 April. The Government is working with the FSA to consider how to best deliver a smooth transition in to the FCA regime for such firm and will provide further detail in due course.

Group licences and the interim permission

6.19.1 Any firm covered by a group licence at April 2014 will not be eligible for an interim permission. A detailed description of how the Government proposes to deal with different group licences is set out in Chapter 3.

Box 6.A: Consultation questions on interim permissions

11 What are your views on the proposed interim permissions regime?

12 If you are operating a peer to peer platform and do not hold a OFT licence, what are your views on the transitional arrangements for peer to peer platforms?

A Consultation questions and how to respond

Consultation questions

Conduct requirements and rules

1 What are your views on the Government's proposal to carry forward CCA conduct requirements which cannot be easily replicated in FCA rules? Do you agree with the Government's intention to require the FCA to review these retained CCA provisions, with a view to moving to rules-based alternatives wherever possible?

2 How, if at all, do you think industry codes can complement FCA conduct regulation?

Authorisation

3 What are your views on the Government's proposals for the two tier authorisation regime? Is the scope of the limited permission regime right?

4 What are your views on the proposed changes to the appointed representatives regime?

5 What are your views on the proposed approach for dealing with those currently covered by group licences?

Scope of regulation

6 What are your views on the Government's proposals for scope of regulation, including changes in respect of credit intermediation, tracing agents and credit reference agencies?

7 Are there any exemptions that are to be carried forward that should be reconsidered?

8 What are your views on the proposed new activity to capture the activities of peer to peer platforms?

9 Do consultation respondents have any data on the activity of lead generators in the debt management sector? What detriment is being cause by these firms? And what are your views on a suitable regulatory response?

Enforcement and redress

10 What are your views on the Government's proposal to repeal many of the criminal offences in the CCA and make breaches of these requirements, once in rules, subject to the FCA's enforcement toolkit?

Interim permissions

11 What are your views on the proposed interim permissions regime?

12 If you are operating a peer to peer platform and do not hold an OFT licence, what are your views on the transitional arrangements for peer to peer platforms?

How to respond

A.1 This paper is available on the Treasury website at www.hm-treasury.gov.uk.

A.2 Responses to the consultation questions summarised above are requested by 1 May 2013. Responses to the consultation question on the impact assessment are requested by 17 April 2013 – please see Annex D for further detail on this.

A.3 Please ensure that responses are sent in before the closing dates. The Government cannot guarantee that responses received after this date will be considered. The Government will also engage directly with relevant stakeholders ahead of this date. For further details, please email financial.reform@hmtreasury.gsi.gov.uk.

A.4 Responses can be sent by email to: financial.reform@hmtreasury.gsi.gov.uk. Alternatively, they can be posted to:

Financial Regulation Strategy
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

A.5 When responding, please state whether you are doing so as an individual or on behalf of an organisation.

Confidentiality

A.6 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act (FOIA), the Data Protection Act 1998 and the Environmental Information Regulations 2004).

A.7 If you would like the information that you provide to be treated as confidential, please mark this clearly in your response. However, please be aware that under the FOIA, there is a Statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain why you regard the information you provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

A.8 In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of emails will be disregarded unless an explicit request for confidentiality is made.

Code of practice for written consultation

A.9 This consultation process is being conducted in line with the Consultation Principles set out by the Cabinet Office: http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf

A.10 If you feel that this consultation does not conform with these principles, please contact:

Thomas Eland
Transport, regulation and competition
HM Treasury
1 Horse Guards Road
London SW1A 2H

B Approach to Consumer Credit Act

B.1 This table shows how each provision of the Consumer Credit Act 1974 is proposed to be dealt with in the new regime: whether it will be retained in its current form, or repealed in full and the substance of that provision set out in FCA rules. Where provisions are only partially repealed, the table states that the provision will be retained.

B.2 The table also sets out the secondary legislation that affects each provision. The relevant legislation is the draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (the RAO SI) and the draft Financial Services Act 2012 (Consumer Credit) Order 2013 (the CCA SI).

Section	Title of section	Repeal or retain	Relevant instrument
Part I – Office of Fair Trading			
1	General functions of OFT	Repeal – April 2014	RAO SI
2	Powers of Secretary of State	Repeal – April 2014	RAO SI
3	REPEALED		
4	Dissemination of information and advice	Repeal – April 2014	RAO SI
5	REPEALED		
6	Form etc of application	Repeal – April 2014	RAO SI
6A	Charge on applicants for licences etc	Repeal – April 2014	RAO SI
7	Penalty for false information	Repeal – April 2014	RAO SI
Part II – Credit Agreements, Hire Agreements and Linked Transactions			
8	Consumer credit agreements	Retain	Not applicable
9	Meaning of credit	Retain	Not applicable
10	Running-account credit and fixed-sum credit	Retain	Not applicable
11	Restricted-use credit and unrestricted-use credit	Retain	Not applicable
12	Debtor-creditor-supplier agreements	Retain	Not applicable
13	Debtor-creditor agreements	Retain	Not applicable
14	Credit-token agreements	Retain	Not applicable
15	Consumer hire agreements	Retain	Not applicable
16	Exempt agreements	Retain	CCA SI
16A	Exemption relating to high net worth debtors and hirers	Retain	CCA SI

16B	Exemption relating to businesses	Retain	CCA SI
16C	Exemption relating to investment properties	Retain	Not applicable
17	Small agreements	Retain	Not applicable
18	Multiple agreements	Retain	Not applicable
19	Linked transactions	Retain	Not applicable
20	Total charge for credit	Retain	RAO SI
	Part III Licensing of Credit and Hire Businesses		
20 – 42	Sections 21 – 42 cover the CCA licensing regime. Sections 40A, 41A and 42 have already been repealed.	Repeal – in 2014	RAO SI
	Part IV – Seeking Business		
43	Advertisements to which Part IV applies	Repeal – in 2014	RAO SI
44	Form and content of advertisements	Repeal – in 2014	RAO SI
45	Prohibition of advertisement where goods etc not sold for cash	Repeal – in 2014	RAO SI
46	REPEALED		
47	Advertising infringements	Repeal – in 2014	RAO SI
48	Definition of canvassing off trade premises (regulated agreements)	Retain	Not applicable
49	Prohibition of canvassing debtor-creditor agreements off trade premises	Retain	Not applicable
50	Circulars to minors	Retain	Not applicable
51	Prohibition of unsolicited credit-tokens	Repeal – in 2014	RAO SI

51A	Restrictions on provision of credit card cheques	Repeal – in 2014	RAO SI
51B	Section 51A: exemption for business	Repeal – in 2014	RAO SI
52	Quotations	Repeal – in 2014	RAO SI
53	Duty to display information	Repeal – in 2014	RAO SI
54	Conduct of business regulations	Repeal – in 2014	RAO SI
Part V – Entry into Credit or Hire Agreements			
55	Disclosure of information	Retain	Not applicable
55A	Pre-contractual explanations etc	Repeal – in 2014	RAO SI
55B	Assessment of creditworthiness	Repeal – in 2014	RAO SI
55C	Copy of draft consumer credit agreement	Retain	Not applicable
56	Antecedent negotiations	Retain	Not applicable
57	Withdrawal from prospective agreement	Retain	Not applicable
58	Opportunity for withdrawal from prospective land mortgage	Retain	Not applicable
59	Agreement to enter future agreement void	Retain	Not applicable
60	Form and content of agreements	Retain	CCA SI
61	Signing of agreement	Retain	Not applicable
61A	Duty to supply copy of executed consumer credit agreement	Retain	Not applicable
61B	Duty to supply copy of overdraft agreement	Retain	Not applicable
62	Duty to supply copy of unexecuted agreement: excluded agreements	Retain	Not applicable

63	Duty to supply copy of executed agreement: excluded agreements	Retain	Not applicable
64	Duty to give notice of cancellation rights	Retain	CCA SI
65	Consequences of improper execution	Retain	Not applicable
66	Acceptance of credit-tokens	Retain	Not applicable
66A	Withdrawal from consumer credit agreement	Retain	Not applicable
67	Cancellable agreements	Retain	Not applicable
68	Cooling-off period	Retain	Not applicable
69	Notice of cancellation	Retain	Not applicable
70	Cancellation: recovery of money paid by debtor or hirer	Retain	Not applicable
71	Cancellation: repayment of credit	Retain	Not applicable
72	Cancellation: return of goods	Retain	Not applicable
73	Cancellation: goods given in part-exchange	Retain	Not applicable
74	Exclusion of certain agreements from Part V	Retain	CCA SI
Part VA – Current Account Overdrafts			
74A	Information to be provided on a current account agreement	Repeal – in 2014	RAO SI
74B	Information to be provided on significant overdrawing without prior arrangement	Repeal – in 2014	RAO SI
Part VI – Matters Arising During Currency of Credit or Hire Agreements			
75	Liability of creditor for breaches by supplier	Retain	Not applicable

75A	Further provision for liability of creditor for breaches by supplier	Retain	Not applicable
76	Duty to give notice before taking certain action	Retain	Not applicable
77	Duty to give information to debtor under fixed-sum credit agreement	Retain	Not applicable
77A	Statements to be provided in relation to fixed-sum credit agreements	Retain	Not applicable
77B	Fixed-sum credit agreement: statement of account to be provided on request	Retain	Not applicable
78	Duty to give information to debtor under running-account credit agreement	Retain	Not applicable
78A	Duty to give information to debtor on change of rate of interest	Retain	Not applicable
79	Duty to give hirer information	Retain	Not applicable
80	Debtor or hirer to give information about goods	Retain	Not applicable
81	Appropriation of payments	Repeal – in 2014	RAO SI
82	Variation of agreements	Retain	Not applicable
82A	Assignment of rights	Retain	Not applicable
83	Liability for misuse of credit facilities	Retain	Not applicable
84	Misuse of credit-tokens	Retain	Not applicable
85	Duty on issue of new credit-tokens	Retain	Not applicable
86	Death of debtor or hirer	Retain	Not applicable
Part VII – Default and Termination			
86A	OFT to prepare information sheets on arrears and default	Retain	CCA SI

86B	Notice of sums in arrears under fixed-sum credit agreements etc	Retain	Not applicable
86C	Notice of sums in arrears under running-account credit agreements	Retain	Not applicable
86D	Failure to give notice of sums in arrears	Retain	Not applicable
86E	Notice of default sums	Retain	Not applicable
86F	Interest on default sums	Retain	Not applicable
87	Need for default notice	Retain	Not applicable
88	Contents and effect of default notice	Retain	Not applicable
89	Compliance with default notice	Retain	Not applicable
90	Retaking of protected hire-purchase etc goods	Retain	Not applicable
91	Consequences of breach of s 90	Retain	Not applicable
92	Recovery of possession of goods or land	Retain	Not applicable
93	Interest not to be increased on default	Retain	CCA SI
93A	Summary diligence not competent in Scotland	Retain	Not applicable
94	Right to complete payments ahead of time	Retain	Not applicable
95	Rebate on early settlement	Retain	Not applicable
95A	Compensatory amount	Retain	Not applicable
95B	Compensatory amount: green deal finance	Retain	Not applicable
96	Effect on linked transactions	Retain	Not applicable
97	Duty to give information	Retain	Not applicable
97A	Duty to give information on partial repayment	Retain	Not applicable

98	Duty to give notice of termination (non-default cases)	Retain	Not applicable
98A	Termination etc of open-end consumer credit agreements	Retain	Not applicable
99	Right to terminate hire-purchase etc agreements	Retain	Not applicable
100	Liability of debtor on termination of hire-purchase etc agreement	Retain	Not applicable
101	Right to terminate hire agreement	Retain	CCA SI
102	Agency for receiving notice of rescission	Retain	Not applicable
103	Termination statements	Retain	Not applicable
104	Goods not to be treated as subject to landlord's hypothec in Scotland	Retain	Not applicable
Part VIII – Security			
105	Form and content of securities	Retain	Not applicable
106	Ineffective securities	Retain	Not applicable
107	Duty to give information to surety under fixed-sum credit agreement	Retain	Not applicable
108	Duty to give information to surety under running-account credit agreement	Retain	Not applicable
109	Duty to give information to surety under consumer hire agreement	Retain	Not applicable
110	Duty to give information to debtor or hirer	Retain	Not applicable
111	Duty to give surety copy of default etc notice	Retain	Not applicable
112	Realisation of securities	Repeal – in 2014	RAO SI
113	Act not to be evaded by use of security	Retain	CCA SI

114	Pawn-receipts	Repeal – in 2014	RAO SI
115	Penalty for failure to supply copies of pledge agreement, etc	Repeal – in 2014	RAO SI
116	Redemption period	Repeal – in 2014	RAO SI
117	Redemption procedure	Retain	Not applicable
118	Loss etc of pawn-receipt	Repeal – in 2014	RAO SI
119	Unreasonable refusal to deliver pawn	Retain	Not applicable
120	Consequence of failure to redeem	Retain	Not applicable I
121	Realisation of pawn	Retain	Not applicable
122	Order in Scotland to deliver pawn	Retain	Not applicable
123	Restrictions on taking and negotiating instruments	Retain	CCA SI
124	Consequences of breach of s 123	Retain	Not applicable
125	Holders in due course	Retain	Not applicable
126	Enforcement of land mortgages	Retain	Not applicable
Part IX – Judicial Control			
127	Enforcement orders in cases of infringement	Retain	Not applicable
128	Enforcement orders on death of debtor or hirer	Retain	Not applicable
129	Time orders	Retain	Not applicable
129A	Debtor or hirer to give notice of intent etc to creditor or owner	Retain	Not applicable
130	Supplemental provisions about time orders	Retain	Not applicable
130A	Interest payable on judgment debts etc	Retain	Not applicable
131	Protection orders	Retain	Not applicable

132	Financial relief for hirer	Retain	Not applicable
133	Hire-purchase etc agreements: special powers of court	Retain	Not applicable
134	Evidence of adverse detention in hire-purchase etc cases	Retain	Not applicable
135	Power to impose conditions, or suspend operation of order	Retain	Not applicable
136	Power to vary agreements and securities	Retain	Not applicable
137	REPEALED		
138	REPEALED		
139	REPEALED		
140	REPEALED		
140A	Unfair relationships between creditors and debtors	Retain	Not applicable
140B	Powers of court in relation to unfair relationships	Retain	Not applicable
140C	140C Interpretation of sections 140A and 140B	Retain	Not applicable
140D	Advice and information	Repeal – in 2014	RAO SI
141	Jurisdiction and parties	Retain	Not applicable
142	Power to declare rights of parties	Retain	Not applicable
143	Jurisdiction of county court in Northern Ireland	Retain	Not applicable
144	Appeal from county court in Northern Ireland	Retain	Not applicable
Part X – Ancillary Credit Business			
145	Types of ancillary credit business	Retain	Not applicable

146	Exceptions from section 145	Retain	Not applicable
147	Application of Part III	Repeal – in 2014	RAO SI
148	Agreement for services of unlicensed trader	Repeal – in 2014	RAO SI
149	Regulated agreements made on introductions by unlicensed credit-broker	Repeal – in 2014	RAO SI
150	REPEALED		
151	Advertisements	Repeal – in 2014	RAO SI
152	Application of sections 52 to 54 to credit brokerage etc	Repeal – in 2014	RAO SI
153	Definition of canvassing off trade premises (agreements for ancillary credit services)	Retain	Not applicable
154	Prohibition of canvassing certain ancillary credit services off trade premises	Retain	Not applicable
155	Right to recover brokerage fees	Retain	Not applicable
156	Entry into agreements	Repeal – in 2014	RAO SI
157	Duty to disclose name etc of agency	Retain	Not applicable
158	Duty of agency to disclose filed information	Retain	Not applicable
159	Correction of wrong information	Retain	CCA SI
160	Alternative procedure for business consumers	Retain	CCA SI
160A	Credit intermediaries	Retain	RAO
Part XI – Enforcement of Act			
161	Enforcement authorities	Retain	RAO SI and CCA SI
162	Powers of entry and inspection	Retain	RAO and CCA SI

163	Compensation for loss	Retain	CCA SI
164	Power to make test purchases	Retain	CCA SI
165	Obstruction of authorised officers	Retain	RAO SI and CCA SI
166	Notification of convictions and judgments to OFT	Retain	CCA SI
167	Penalties	Retain	RAO SI
168	Defences	Retain	Not applicable
169	Offences by bodies corporate	Retain	Not applicable
170	No further sanctions for breach of Act	Retain	CCA SI
171	Onus of proof in various proceedings	Retain	RAO and CCA SI
172	Statements by creditor or owner to be binding	Retain	Not applicable
173	Contracting-out forbidden	Retain	CCA SI
Part XII – Supplemental			
174	REPEALED		
174A	Powers to require provision of information or documents etc	Retain	RAO and CCA SI
175	Duty of persons deemed to be agents	Retain	Not applicable
176	Service of documents	Retain	Not applicable
176A	Electronic transmission of documents	Retain	Not applicable
177	Saving for registered charges	Retain	Not applicable
178	Local Acts	Retain	Not applicable
179	Power to prescribe form etc of secondary documents	Retain	Not applicable
180	Power to prescribe form etc of copies	Retain	Not applicable
181	Power to alter monetary limits etc	Retain	RAO SI

182	Regulations and orders	Retain	RAO SI
183	Determinations etc by OFT	Retain	RAO SI
184	Associates	Retain	Not applicable
185	Agreement with more than one debtor or hirer	Retain	Not applicable
186	Agreement with more than one creditor or owner	Retain	Not applicable
187	Arrangements between creditor and supplier	Retain	Not applicable
187A	Definition of "default sum"	Retain	Not applicable
188	Examples of use of new terminology	Retain	Not applicable
189	Definitions	Retain	RAO and CCA SI
189A	Meaning of "consumer credit EEA firm"	Repeal – in 2014	RAO SI
190	Financial provisions	Retain	RAO SI
191	Special provisions as to Northern Ireland	Retain	RAO Order
192	Transitional and commencement provisions, amendments and repeals	Retain	Not applicable
193	Short title and extent	Retain	Not applicable
Schedule A1 – REPEALED			
Schedule 1 – Prosecution and Punishment of Offences		Retain	RAO
Schedule 2 – Examples of Use of New Terminology		Retain	RAO
Schedule 3 – Transitional and Commencement Provisions		Retain	RAO
Schedule 4 – Minor and Consequential Amendments – REPEALED			

C Draft Statutory Instruments

C.1 The Government proposes to make secondary legislation, using its powers under the Financial Services Act 2012 and the Financial Services and Markets Act 2000, to effect the transfer of consumer credit regulation from the OFT to the FCA. Two draft statutory instruments (SIs) are therefore included for consideration as part of this consultation.

C.2 The first SI, known as the draft RAO order, is primarily concerned with making the necessary changes to the Financial Services and Markets Act and associated secondary legislation to bring credit related activity in to the scope of FCA regulation, and to ensure that certain features are modified or disapplied to fit the credit sector. Parts 1 and 2 of the draft RAO order are concerned with amending the Regulated Activities Order to include consumer credit in the list of activities in scope under a FSMA regime, and makes a number of consequential changes as result of the transfer. Part 3 of the draft RAO order makes changes to FSMA itself. This includes consequential changes such as the abolition of the credit jurisdiction of the FOS, but also provides for the scope of the limited permission regime and makes associated changes to the Threshold Conditions to accommodate the two-tier approach to authorisation. Part 4 is concerned with the repeal of a number of sections of the CCA, such as for example the licensing regime. It also provides for the review by the FCA of those CCA requirements that will be retained. Part 5 makes changes secondary legislation associated with FSMA. This provides for a number of important changes the Government is making to accommodate the particular characteristics of the credit sector – for example, changes to the appointed representatives regime, amending the 'by way of business' test to accommodate not-for-profit debt advice, and providing for new exemptions from regulation. Part 6 sets out the interim permission regime.

C.3 The second SI, known as the draft CCA order, gives effect to the Government's proposed approach in relation to the CCA, making necessary consequential changes to provisions of the CCA in connection with the transfer of responsibility for regulation. The draft CCA order applies the FCA's enforcement toolkit to retained parts of the CCA, requires the FCA to set out in a statement of policy how it will use its enforcement powers, gives LATSS and DETI powers to prosecute FSMA offences. It also makes a number of changes to reflect the transfer of regulatory responsibility e.g. changing references to OFT to FCA in the CCA.

Draft Order laid before Parliament under sections 23A(3) and 429(3) of, and paragraph 26 of Schedule 2 to, the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2013 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013

Made - - - -		***
Coming into force - -		*in accordance with article 1*

The Treasury are a government department designated for the purpose of section 2(2) of the European Communities Act 1972 in relation to financial services(**a**).

The Treasury, in exercise of the powers conferred by sections 21, 22(1), (1A), (5), 23(1B), 38, 39(1C)(b), 39(1E)(a), 55C, 327(6), 426, 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(**b**) and section 2(2) of the European Communities Act 1972(**c**), makes the following Order:

In accordance with sections 23A(3) and 429(3) of, and paragraph 26 of Schedule 2 to, the Financial Services and Markets Act 2000, a draft of this Order has been laid before Parliament and approved by a resolution of each House.

The Treasury are of the opinion that one of the effects of the proposed order would be that an activity which is not a regulated activity would become a regulated activity.

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013.

(**a**) SI 2012/1759.
(**b**) 2000 c.8. Section 22 was amended by section 7 of the Financial Services Act 2012. Section 23(1B) was inserted by Schedule 9 to that Act. Section 23A was inserted by Schedule 9 to the Financial Services Act 2012 Section 39 was amended by section 10 of that Act. Section 55C was inserted by section 11 of that Act. Paragraph 26 of Schedule 2 was substituted by section 8 of that Act.
(**c**) 1972 c. 68. Amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and the Schedule to the European Union (Amendment) Act 2008 (c.7).

(2) Articles 2 to 8 (amendments to Regulated Activities Order) come into force for the purpose of the FCA, PRA and the scheme operator making rules and for the purpose of the FCA giving guidance on the day after the day on which this Order is made.

(3) Articles 23 to 29 (transitional provisions) come into force—

(a) for the purpose of the FCA and PRA making rules, giving directions and imposing requirements and for the purpose of the FCA giving guidance, on the day after the day on which this Order is made;

(b) on [XXX] for all other purposes.

(4) This Order comes into force on 1st April 2014 to the extent it is not already in force.

(5) In this Order—

"the Act" means the Financial Services and Markets Act 2000;

"the 1974 Act" means the Consumer Credit Act 1974(**a**);

"the commencement date" means 1st April 2014;

"the OFT" means the Office of Fair Trading;

"the Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**b**).

PART 2

Amendments to the Regulated Activities Order

Amendment to the Regulated Activities Order

2. Articles 3 to 8 amend the Regulated Activities Order.

Definitions etc.

3.—(1) In article 3 (interpretation), insert in the appropriate places the following definitions—

""borrower" has the meaning given by article 60L;";

""borrower-lender-supplier agreement" has the meaning given by article 60L;";

""consumer hire agreement" has the meaning given by article 60N;";

""credit agreement" has the meaning given by article 60L;";

""hire-purchase agreement" has the meaning given by article 60L;";

""hirer" is to be read with the definition of "consumer hire agreement" in article 60N;";

""lender", in relation to a credit agreement, has the meaning given by article 60L;";

""owner" has the meaning given by article 60N;";

""regulated consumer hire agreement" has the meaning given by article 60N;";

""regulated credit agreement" has the meaning given by article 60L;";

""relevant recipient of credit" has the meaning given by article 60L;";

""restricted-use credit agreement" has the meaning given in article 60L;";

"supplier" is to be read with the definitions of "borrower-lender-agreement" and "borrower-lender-supplier agreement" in article 60L;".

(2) In article 3, at the end of the definition of "deposit", insert "except in Chapter 14A of Part 2 of this Order where the definition given article 60L applies".

(**a**) 1974 c.39.
(**b**) SI 2001/544.

(3) In article 4 (specified activities: general)(**a**)—

(a) in paragraph (1), for "section 22" substitute "section 22(1)";

(b) after paragraph (2), insert—

"(2A) The kinds of activity specified by Part 3A of this Order are specified for the purposes of section 22(1A)(a) of the Act(**b**).".

Credit broking

4.—(1) After article 36 (other exclusions in relation to arranging), insert—

"CHAPTER 6A

CREDIT BROKING

The activity

36A Credit broking

(1) Each of the following activities is a specified kind of activity—

(a) effecting an introduction of an individual or relevant recipient of credit to a person with a view to that person entering into by way of business as lender a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions);

(b) effecting an introduction of an individual or relevant recipient of credit to a person with a view to that person entering into by way of business as owner a regulated consumer hire agreement or an agreement which would be a regulated consumer hire agreement but for articles 60O (exempt agreements: exemptions relating to nature of the agreement) or 60Q (exempt agreements: exemptions relating to the nature of the hirer);

(c) effecting an introduction of an individual or relevant recipient of credit to a person who carries on an activity of the kind specified in sub-paragraph (a) or (b) by way of business;

(d) presenting or offering an agreement which would (if entered into) be a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions);

(e) assisting an individual or relevant recipient of credit by undertaking preparatory work with a view to that person entering into a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions);

(f) entering into a regulated credit agreement (or an agreement which would be a regulated credit agreement but for any of the relevant provisions) on behalf of a lender.

(2) Paragraph (1) does not apply to an activity of the kind specified by article 36G (operating an electronic system in relation to lending).

(3) For the purposes of paragraph (1) it is immaterial whether the regulated credit agreement or regulated consumer hire agreement is subject to the law of a country outside the United Kingdom.

(4) For the purposes of this article, the "relevant provisions" means the following provisions—

(**a**) Amended by SI 2003/1476, SI 2006/3384 and SI 2009/1389.
(**b**) Inserted by section 7 of the Financial Services Act 2012.

(a) article 60C (exempt agreements: exemptions relating to nature of agreement);

(b) article 60D (exempt agreements: exemptions relating to the purchase of land for non-residential purposes);

(c) article 60E (exempt agreements relating to the purchase of land: exemptions relating to the nature of the lender);

(d) article 60G (exempt agreements: exemptions relating to the total charge for credit);

(e) article 60H (exempt agreements: exemptions relating to the nature of the borrower).

The exclusions

36B Introducing by individuals in the course of canvassing off trade premises

(1) Subject to paragraph (1), there are excluded from article 36A activities carried on by an individual ("A") by canvassing off trade premises—

(a) a restricted-use credit agreement used to finance a transaction between the lender and the borrower whether forming part of that agreement or not, or

(b) a regulated consumer hire agreement.

(2) Paragraph (1) does not apply if A carries on any other activity of the kind specified by article 36A.

(2) A canvasses a restricted-use credit agreement or a regulated consumer hire agreement off trade premises for the purposes of this article if—

(a) A solicits the entry of an individual or relevant recipient of credit ("B") into such an agreement by making oral representations to B during an unsolicited visit by A to any place (not excluded by paragraph (3)) where B is, and

(b) that visit is made by A for the purpose of making such oral representations.

(3) A place is excluded from paragraph (2) if it is a place where a business is carried on by—

(a) A,

(b) a person who employs A or has appointed A as an agent, or

(c) B..

36C Activities for which no fee is paid

(1) There are excluded from sub-paragraphs (d), (e) and (f) of article 36A(1) activities carried on by a person for which that person does not receive a fee.

(2) For the purposes of this article, "fee" includes pecuniary consideration or any other form of financial consideration.

36D Transaction to which the broker is a party

There are excluded from article 36A activities in relation to a regulated credit agreement (or an agreement which would be a regulated credit agreement but for the exclusions in articles 60C to 60H) or a regulated consumer hire agreement (or an agreement which would be a regulated consumer hire agreement but for the exclusions in articles 60O to 60Q) into which the person carrying on the activity enters or is to enter as lender or owner.

36E Activities in relation to a relevant agreement relating to land

(1) There are excluded from article 36A activities carried on with a view to an individual or relevant recipient of credit entering into a regulated mortgage contract if the person carrying on the activity is an authorised person who has permission to—

(a) enter into such an agreement as lender, or

(b) make an introduction to a person who has permission to enter into such an agreement as lender.

(2) There are excluded from article 36A activities carried on with a view an individual or relevant recipient of credit entering into a regulated home purchase plan if the person carrying on the activity is an authorised person who has permission to—

(a) enter into such a plan as home purchase provider, or

(b) make an introduction to a person who has permission to enter into such a plan as home purchase provider.

36F Other exclusions

Article 36A is also subject to the exclusions in article 72A (information society services)(**a**).

CHAPTER 6B

OPERATING AN ELECTRONIC SYSTEM IN RELATION TO LENDING

The activity

36G Operating an electronic system in relation to lending

(1) Operating an electronic system which enables A to present or offer relevant agreements to persons ("B and C") with a view to B and C becoming parties to the relevant agreement where the condition in paragraph (2) is satisfied is a specified kind of activity for a person (A").

(2) The condition is that the person operating the system ("A") is responsible or primarily responsible for determining which agreements should be offered or presented to each of B and C (whether in accordance with general instructions provided to A by B or C or otherwise).

(3) The following kinds of activity are specified kinds of activities if carried on by a person who also carries on an activity of the kind specified by paragraph (1) to—

(a) furnishing information to one person ("X") with information relevant to the financial standing of another person ("Y") with a view to assisting X in determining whether to enter into as the lender a relevant agreement with Y or to assume the rights of the lender under a relevant agreement under which Y is the borrower;

(b) performing duties, or exercising or enforcing rights under relevant agreements on behalf of the lender.

(4) A "relevant agreement" is an agreement between one person ("the borrower") and another person ("the lender") by which the lender provides the borrower with credit of any amount and which falls into any of the following classes—

(a) both the lender and the borrower are individuals or relevant persons;

(b) the lender is an individual or relevant person;

(c) the borrower is an individual or relevant person.

(5) It is immaterial for the purposes of this article whether the lender is carrying on a regulated activity.

(6) In this article, references to the "lender" include references to any person who exercises or has the right to exercise the rights of the lender.

(**a**) Inserted by SI 2002/1776 and amended by SI 2004/3379.

(7) In this article, "relevant person" means—

(a) a partnership consisting of two or three persons not all of whom are bodies corporate or

(b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership

The exclusions

36H Exclusions

Article 36G is subject to the exclusion in article 72A (information society services).

Supplemental

36I Definition of "consumer"

(1) For the purposes of sections 1G, 404E and 425A of the Act (meaning of "consumer"), a person ("C") is only to be regarded as a person who uses, may use, has or may have used or has or may have contemplated using, services comprising of services provided by authorised persons in carrying on regulated activities of the kind specified by article 36G if—

(a) C is the lender under a relevant credit agreement and is an individual or relevant person,

(b) C is the borrower under a relevant credit agreement and is an individual or relevant person, or

(c) the following conditions are met—

(i) C is the lender under a relevant credit agreement,

(ii) C is not, as a result, carrying on a regulated activity, and

(iii) the borrower is an individual or relevant person.

(2) In paragraph (1),"relevant agreement" and "relevant persons" have the meanings given in article 36G.".

Activities relating to debt

5.—(1) After article 39C(**a**) (other exclusions relating to claims management on behalf of an insurer etc) insert—

"CHAPTER 7B

ACTIVITIES IN RELATION TO DEBT

The activities

39D Debt adjusting

(1) When carried on in relation to debts due under a credit agreement—

(a) negotiating with the lender, on behalf of the borrower, terms for the discharge of a debt,

(b) taking over, in return for payments by the borrower, that person's obligation to discharge a debt, or

(c) any similar activity concerned with the liquidation of a debt,

is a specified kind of activity.

(**a**) Inserted by SI 2003/1476.

(2) When carried on in relation to debts due under a consumer hire agreement—

(a) negotiating with the owner, on behalf of the hirer, terms for the discharge of a debt,

(b) taking over, in return for payments by the hirer, that person's obligation to discharge a debt, or

(c) any similar activity concerned with the liquidation of a debt. It is a specified kind of activity,

is a specified kind of activity.

39E Debt-counselling

(1) Giving advice to a borrower about the liquidation of a debt due under a credit agreement is a specified kind of activity.

(2) Giving advice to a hirer about the liquidation of debts due under a consumer hire agreement is a specified kind of activity.

39F Debt-collecting

(1) Taking steps to procure the payment of debts due under a credit agreement is a specified kind of activity.

(2) Taking steps to procure the payment of debts due under a consumer hire agreement is a specified kind of activity.

39G Debt administration

(1) Subject to paragraph (3), taking steps—

(a) to perform duties under a credit agreement on behalf of the lender, or

(b) to exercise or enforce rights under such an agreement on behalf of the lender,

is a specified kind of activity

(2) Subject to paragraph (3), taking steps—

(a) to perform duties under a consumer hire agreement on behalf of the owner, or

(b) to exercise or enforce rights under such an agreement on behalf of the owner,

is a specified kind of activity.

(3) Paragraphs (1) and (2) do not apply in so far as the activity is an activity of the kind specified by article 39F (debt-collecting).

The exclusions

39H Activities where person has a connection to the agreement

(1) There are excluded from the activities specified by articles 39D(1) (debt adjusting), 39E(1) (debt-counselling) and 39F(1) (debt-collecting) activities carried on by a person who is—

(a) the lender under the credit agreement,

(b) the supplier in relation to that agreement,

(c) a person carrying on the activity specified by article 36A (credit broking) by way of business and who has acquired the business of the person who was the supplier in relation to the agreement, or

(d) a person who would be carrying on the activity specified by article 36A (credit broking) by way of business but for the exclusion in article 36B (introducing by individuals in the course of canvassing off trade premises) where the agreement was made in consequence of an introduction (by that person or another person) to which article 36B applies.

(2) There are excluded from the activities specified by articles 39D(2) (debt adjusting), 39E(2) (debt-counselling) and 39F(2) (debt-collecting) activities carried on by a person who is—

(a) the owner under the consumer hire agreement, or

(b) a person who would be carrying on the activity specified by article 36A (credit broking) by way of business but for the exclusion in article 36B (introducing by individuals in the course of canvassing off trade premises) where the agreement was made in consequence of an introduction (by that person or another person) to which article 36B applies.

(3) There is excluded from the activity specified by article 39G(1) (debt administration) steps taken under or in relation to a credit agreement on behalf of a person who is, in relation to that agreement, a person falling within paragraph (1)(a) to (d).

(4) There is excluded from the activity specified by article 39G(2) (debt administration) steps taken under or in relation to a consumer hire agreement on behalf of an person who is, in relation to that agreement, a person falling within paragraph (2)(a) or (b).

(5) In paragraph (1), "supplier" in relation to a credit agreement, means—

(a) a person, other than the lender, whose transaction with the borrower is, or is to be, financed by the agreement, or

(b) a person to whom the rights and duties of a person falling within sub-paragraph (a) have been passed by assignment or operation of law.

39I Activities carried on in relation to a relevant agreement in relation to land

(2) There are excluded from article 39D (debt adjusting), 39E (debt-counselling), 39F (debt-collecting) and 39G (debt administration) activities that relate to a regulated home purchase plan or a regulated mortgage contract.

Supplemental

39J Meaning of "consumer" etc

(1) For the purposes of sections 1G, 404E and 425A of the Act (meaning of "consumer"), in so far as those provisions relate to a person carrying on the regulated activity of the kind specified by article 39F (debt-collecting) or 39G (debt administration), the borrower under the credit agreement or the hirer under the consumer hire agreement is to be treated as a "consumer".

(2) For the purposes of section 328(8) of the Act (meaning of "clients") in so far as that provision relates to a person carrying on the regulated activity of the kind specified by article 39F or 39G, the borrower under the credit agreement or the hirer under the consumer hire agreement is to be treated as a "client".

(3) In this article, "borrower" includes (in addition to those persons included in the definition in article 60L)—

(a) any person providing a guarantee or indemnity under the credit agreement, and

(b) a person to whom the rights and duties of a person falling within paragraph (a) have passed by assignment or operation of law.".

Entering into etc. a regulated credit agreement

6.—(1) After article 60A (information society services)(**a**), insert—

(**a**) Inserted by SI 2002/1776.

"CHAPTER 14A

REGULATED CREDIT AGREEMENTS

The activities

60B Regulated credit agreements

(1) Entering into a regulated credit agreement as lender is a specified kind of activity.

(2) It is a specified kind of activity for the lender or another person to exercise, or to have the right to exercise, the lender's rights and duties under a regulated credit agreement.

(3) Article 60L contains definitions relevant to this Chapter.

60C Exempt agreements: exemptions relating to nature of agreement

(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

(2) A credit agreement is an exempt agreement if it is a regulated mortgage contract or a regulated home purchase plan.

(3) A credit agreement is an exempt agreement if the lender provides the borrower with credit exceeding £25,000 if the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(4) A credit agreement is an exempt agreement—

(a) if the lender provides the borrower with credit of £25,000 or less,

(b) the agreement is entered into by the borrower wholly for the purposes of a business carried on, or intended to be carried on, by the borrower, and

(c) the agreement is a green deal plan (within the meaning of section 1 of the Energy Act 2011(**a**)).

(5) For the purposes of paragraph (3), if an agreement includes a declaration which—

(a) is made by the borrower,

(b) provides that the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower, and

(c) complies with rules made by the FCA made for the purpose of this article,

the agreement is to be presumed to have been entered into by the borrower wholly or predominantly for those purposes unless paragraph (6) applies.

(6) This paragraph applies if, when the agreement is entered into—

(a) the lender (or, if there is more than one lender, any of the lenders), or

(b) any person who has acted on behalf of the lender in connection with the entering into of the agreement,

knows or has reasonable cause to suspect that the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(7) Paragraphs (5) and (6) also apply for the purposes of paragraph (4) but with the omission of the words "or predominantly".

(8) A credit agreement is an exempt agreement if it is made—

(a) in connection with trade in goods or services between—

(**a**) 2011 c.16.

(i) the United Kingdom and a country outside the United Kingdom,

(ii) within a country, or

(iii) between countries outside the United Kingdom, and

(b) the credit is provided to the borrower in the course of a business carried on by the borrower.

(9) A credit agreement is an exempt agreement if the lender is a relevant American provider and the borrower is—

(a) a member of any of the armed forces of the United States of America;

(b) an employee of any of those forces who is not habitually resident in the United Kingdom;

(c) the spouse or civil partner of such a member or employee, or any other person (whether or not a child) whom the member or employee wholly or partly maintains and treats as a child of the family.

(10) For the purposes of this article, "a relevant American provider" is—

(a) a Federal Credit Union (as defined in the Federal Credit Union Act of the United States of America of 26th June 1934,

(b) American Book Distributors Inc, or

(c) Nations Bank of Texas, NA.

60D Exempt agreements: exemption relating to the purchase of land for non-residential purposes

(1) A credit agreement is an exempt agreement for the purposes of this Chapter if, at the time it is entered into, any sums due under it are secured by a legal mortgage on land and the condition in paragraph (2) is satisfied.

(2) The condition is that less than 40% of the land is used, or is intended to be used, as or in connection with a dwelling—

(a) by the borrower or a related person, or

(b) in the case of credit provided to trustees, by an individual who is a beneficiary of the trust or a related person.

(3) For the purposes of paragraph (2)—

(a) the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those stories;

(b) "related person" in relation to a person ("B") who is the borrower or (in the case of credit provided to trustees) a beneficiary of the trust, means—

(i) B's spouse or civil partner,

(ii) a person (whether or not of the opposite sex) whose relationship with B has the characteristics of the relationship between husband and wife, or

(iii) B's parent, brother, sister, child, grandparent or grandchild.

60E Exempt agreements: exemptions relating to the nature of the lender

(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

(2) A relevant credit agreement relating to the purchase of land is an exempt agreement if the lender is—

(a) specified, or of a description specified, in rules made by the FCA under paragraph (3), or

(b) a local authority.

(3) The FCA may make rules specifying any of the following for the purpose of paragraph (2)—

(a) an authorised person with permission to effect or carry out contracts of insurance;

(b) a friendly society;

(c) an organisation of employers or organisation of workers;

(d) a charity;

(e) a land improvement company;

(f) a body corporate named or specifically referred to in any enactment;

(g) a body corporate named or specifically referred to in an order made under a relevant housing provision;

(h) a building society;

(i) an authorised person with permission to accept deposits.

(4) Rules under paragraph (3) may—

(a) specify a particular person or class of persons;

(b) be limited so as to apply only to agreements or classes of agreement specified in the rules.

(5) A credit agreement secured on a legal mortgage on land which is used or is intended to be used as or in connection with a dwelling where the lender is a housing authority is an exempt agreement.

(6) A credit agreement is an exempt agreement if —

(a) the lender is an investment firm or a credit institution (within the meaning of section 1H of the Act (interpretative provisions)(**a**)), and

(b) the agreement is entered into for the purpose of allowing the borrower to carry out a transaction relating to one or more of the instruments listed in Section C of Annex 1 to the markets in financial instruments directive.

(7) In this article—

"housing authority" means—

(a) in England and Wales, the Regulator of Social Housing and an authority or body within section 80(1) of the Housing Act 1985 (the landlord condition for secure tenancies)(**b**), other than a housing association or a housing trust which is a

(b) in Scotland, a development corporation established under an order made, or having effect as if made, under the New Towns (Scotland) Act 1968(**c**), the Scottish Special Housing Association or the Housing Corporation;

(c) in Northern Ireland, the Northern Ireland Housing Executive;

"relevant credit agreement elating to the purchase of land" means—

(a) a borrower-lender-supplier agreement financing—

(i) the purchase of land, or

(ii) the provision of dwellings on land,

and secured by a legal mortgage on that land;

(b) a borrower-lender agreement secured by a legal mortgage on land; or

(c) a borrower-lender-supplier agreement financing a transaction which is a linked transaction in relation to—

(i) an agreement falling within paragraph (a), or

(**a**) Inserted by section 6 of the Financial Services Act 2012.
(**b**) 1985 c.68. Amended by Schedule 22 to the Localism Act 2011 (c.20), SI 2008/3002.
(**c**) 1968 c.16.

(ii) an agreement falling within paragraph (b) financing—

(aa) the purchase of land,

(bb) the provision of dwellings on land,

and secured by a legal mortgage on the land referred to in paragraph (a) or the land referred to in sub-paragraph (ii);

"relevant housing provision" means any of the following—

(a) section 156(4), 444(1) or 447(2)(a) of the Housing Act 1985(**a**),

(b) section 156(4) of that Act as it has effect by virtue of section 17 of the Housing Act 1996(**b**) (the right to acquire),

(c) section 31 of the Tenants' Rights &c (Scotland) Act 1980(**c**),

(d) Article 154(1)(a) of the Housing (Northern Ireland) Order 1981(**d**), or

(e) Article 10(6A) of the Housing (Northern Ireland) Order 1983(**e**).

60F Exempt agreements: exemptions relating to number of repayments to be made

(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

(2) A credit agreement is an exempt agreement if—

(a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit,

(b) the number of payments to be made by the borrower is not more than four,

(c) those payments are required to be made within a period of 12 months or less (beginning with the date of the agreement),

(d) the credit is provided without interest or other charges, and

(e) paragraph (7) does not apply to the agreement.

(3) A credit agreement is an exempt agreement if—

(a) the agreement is a borrower-lender-supplier agreement for running-account credit,

(b) the borrower is to make payments in relation to specified periods which must be of 3 months or less,

(c) the number of payments to be made by the borrower in repayment of the whole amount of credit provided in each such period is not more than one,

(d) the credit is provided without interest or other significant charges, and

(e) paragraph (7) does not apply to the agreement.

(4) A credit agreement is an exempt agreement if—

(a) the agreement is a borrower-lender-supplier agreement financing the purchase of land,

(b) the number of payments to be made by the borrower is not more than four, and

(c) the credit is provided without interest or other charges.

(5) A credit agreement is an exempt agreement if—

(a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit,

(b) the credit is to finance a premium under a contract of insurance relating to land or anything on land,

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(**a**) 1985 c.68.
(**b**) 1996 c.52.
(**c**) 1980 c.52.
(**d**) S.R. 1981/156 (NI 3).
(**e**) S.R. 1983/1118 (N.I. 15).

(c) the lender is the lender under a credit agreement secured by a legal mortgage on that land,

(d) the credit is to be repaid within the period (which must be 12 months or less) to which the premium relates,

(e) in the case of an agreement secured on land, there is no charge forming part of the total charge for credit under the agreement other than interest at a rate not exceeding the rate of interest from time to time payable under the agreement mentioned at paragraph (c),

(f) in the case of an agreement which is not secured on land, the credit is provided without interest or other charges, and

(g) the number of payments to be made by the borrower is not more than twelve.

(6) A credit agreement is an exempt agreement if—

(a) the agreement is a borrower-lender-supplier agreement for fixed-sum credit,

(b) the lender is the lender under a credit agreement secured by a legal mortgage on land,

(c) the agreement is to finance a premium under a contract of life insurance which provides that, in the event of the death of the person on whose life the contract is effected before the credit referred to in paragraph (b) has been repaid, for payment of a sum not exceeding the amount sufficient to meet the amount which, immediately after that credit has been advanced, would be payable to the lender in respect of that credit (including interest from time to time payable under that agreement),

(d) there is no charge forming part of the total charge for credit under the agreement other than interest at a rate not exceeding the rate of interest from time to time payable under the agreement mentioned at paragraph (b), and

(e) the number of payments to be made by the borrower is not more than twelve.

(7) This paragraph applies to—

(a) agreements financing the purchase of land;

(b) agreements which are conditional sale agreements or hire-purchase agreements;

(c) agreements secured by a pledge (other than a pledge of documents of title or of bearer bonds).

60G Exempt agreements: exemptions relating to the total charge for credit

(1) A credit agreement is an exempt agreement for the purposes of this Chapter in the following cases.

(2) A credit agreement is an exempt agreement if—

(a) it is a borrower-lender agreement, and

(b) the lender is a credit union (within the meaning of the Credit Unions Act 1979(**a**)) and the rate of the total charge for credit does not exceed 26.9 per cent.

(3) A credit agreement is an exempt agreement if—

(a) it is a borrower-lender agreement,

(b) it is an agreement of a type offered to a particular class of individual or relevant recipient of credit and not offered to the public generally,

(c) it provides that the only charge included in the total charge for credit is interest,

(d) interest under the agreement may not at any time be more than the sum of one per cent and the highest of the base rates published by the banks specified in paragraph

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(**a**) 1979 c.34.

(7) and in operation on the date 28 days before the date on which the intrest is charged, and

(e) paragraph (5) does not apply to the agreement.

(4) A credit agreement is an exempt agreement if—

(a) it is a borrower-lender agreement,

(b) it is an agreement of a type offered to a particular class of individual or relevant recipient of credit and not offered to the public generally,

(c) it does not provide for or permit an increase in the rate or amount of any item which is included in the total charge for credit,

(d) in respect of which the rate for the total charge for credit does not exceed the sum of the sum of one per cent and the highest of the base rates published by the banks specified in paragraph (7) and in operation on the date 28 days before the date on which the charge is imposed, and

(e) paragraph (5) does not apply to the agreement.

(5) This paragraph applies to an agreement if—

(a) the total amount to be repaid by the borrower to discharge the borrower's indebtedness may vary according to a formula which is specified in the agreement and which has effect by reference to movements in the level of any index or other factor, or

(b) the agreement is not —

(i) secured on land, or

(ii) offered by a lender who is an employer to a borrower as an incident of employment with the lender,

and does not meet the general interest test.

(6) For the purposes of paragraph (5), an agreement meets the general interest test if—

(a) the agreement is offered under an enactment with a general interest purpose; and

(b) the terms on which the credit is provided are more favourable to the borrower than those prevailing on the market, either because the rate of interest is lower than that prevailing on the market, or because the rate of interest is no higher than that prevailing on the market but the other terms on which credit is provided are more favourable to the borrower.

(7) The banks specified in this paragraph are—

(a) the Bank of England;

(b) Bank of Scotland;

(c) Barclays Bank plc;

(d) Clydesdale Bank plc;

(e) Co-operative Bank Public Limited Company;

(f) Coutts & Co;

(g) Midland Bank Public Limited Company;

(h) National Westminster Bank Public Limited Company;

(i) the Royal Bank of Scotland plc.

60H Exempt agreements: exemptions relating to the nature of the borrower

A credit agreement is an exempt agreement for the purposes of this Chapter if—

(a) the borrower is an individual,

(b) the agreement is either—

(i) secured on land, or

(ii) for credit which exceeds £60,260,

(c) the agreement includes a declaration made by the borrower which provides that the borrower agrees to forgo the protection and remedies that would be available to the borrower if the agreement was a regulated credit agreement and which complies with rules made by the FCA for the purposes of this paragraph,

(d) a statement has been made in relation to the income or assets of the borrower which complies with rules made by the FCA for the purposes of this paragraph,

(e) the connection between the statement and the agreement complies with any rules made by the FCA for the purposes of this paragraph (including as to the period of time between the making of the statement and the agreement being entered into), and

(f) a copy of the statement was provided to the lender before the agreement was made.

The exclusions

60I Arranging administration by authorised person

A person ("A") who is not an authorised person does not carry on an activity of the kind specified by article 60B(2) in relation to a regulated credit agreement where A—

(a) arranges for another person, being an authorised person with permission to carry on an activity of that kind, to administer the contract; or

(b) administers the contract during a period of not more than one month beginning with the day on which any such arrangement comes to an end.

60J Administration pursuant to agreement with authorised person

A person who is not an authorised person does not carry on an activity of the kind specified by article 60B(2) in relation to regulated credit agreement if that person administers the agreement pursuant to an agreement with an authorised person who has permission to carry on an activity of the kind specified by article 60B(2).

60K Other exclusions

Article 60B is also subject to the exclusion in article 72A (information society services).

Supplemental

60L Interpretation etc.

(1) In this Chapter—

"assignment", in relation to Scotland, means assignation;

"associate" means, in relation to a person ("P")—

(a) where P is an individual any person who is or who has been—

(i) P's spouse or P's civil partner;

(ii) a relative of P, P's spouse or P's civil partner;

(iii) the spouse or civil partner of a relative of P or P's spouse or civil partner;

(iv) if P is a member of a partnership, any of P's partners and the spouse or civil partner of any such person;

(b) where P is a body corporate—

(i) any person who is a controller ("C") of P, and

(ii) any other person for whom C is a controller,

"borrower" means a person who receives credit under a credit agreement or a person to whom the rights and duties under a credit agreement have passed by assignment or operation of law;

"borrower-lender agreement" means—

(a) a regulated credit agreement—

(i) to finance a transaction between the borrower and a person ("the supplier") other than the lender, and

(ii) which is not made by the lender under pre-existing arrangements, or in contemplation of future arrangements, between the lender and the supplier;

(b) a regulated credit agreement to refinance any existing indebtedness of the borrower, whether to the lender or another person; or

(c) a regulated credit agreement which is—

(i) an unrestricted-use credit agreement; and

(ii) not made by the lender under pre-existing arrangements between the lender and a person ("the supplier") other than the borrower in the knowledge that the credit is to be used to finance a transaction between the borrower and the supplier;

"borrower-lender-supplier agreement" means—

(a) a regulated credit agreement to finance a transaction between the borrower and the lender, whether forming part of that agreement or not;

(b) a regulated credit agreement—

(i) to finance a transaction between the borrower and a person ("the supplier") other than the lender, and

(ii) which is made by the lender under pre-existing arrangements or in contemplation of future arrangements between the lender and the supplier;

(c) a regulated credit agreement which is—

(i) an unrestricted-use credit agreement, and

(ii) made by the lender under pre-existing arrangements between the lender and a person ("the supplier") other than the borrower in the knowledge that the credit is to be used to finance a transaction between the borrower and the supplier;

"conditional sale agreement" means an agreement for the sale of goods or land under which the purchase price or part of it is payable by instalments, and the property in the goods or land is to remain with the seller (notwithstanding that the buyer is to be in possession of the goods or land) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

"credit" includes a cash loan and any other form of financial accommodation;

"credit agreement" means an agreement between an individual or relevant recipient of credit ("A") and any other person ("B") by which B provides A with credit of any amount;

"deposit" (except where specified otherwise) means any sum payable by a borrower by way of deposit or down-payment, or credited or to be credited to the borrower on account of any deposit or down-payment, whether the sum is to be or has been paid to the lender or any other person, or is to be or has been discharged by a payment of money or a transfer or delivery of goods or other means;

"finance" includes financing in whole or in part, and "refinance" is to be read accordingly;

"fixed-sum credit" means a facility under a credit agreement whereby the borrower is enabled to receive credit (whether in one amount or by instalments) but which is not running-account credit;

"hire-purchase agreement" means an agreement—

(a) which is not a conditional sale agreement,

(b) under which goods are bailed or (in Scotland) hired to a person ("P") in return for periodical payments by P, and

(c) the property in the goods will pass to P if the terms of the agreement are complied with and one or more of the following occurs—

(i) the exercise by P of an option to purchase the goods;

(ii) the doing by any party to the agreement of any other act specified in the agreement;

(iii) the happening of any event specified in the agreement;

"legal mortgage" includes charge and, in Scotland, a heritable security;

"lender" means —

(a) the person providing credit under a credit agreement, or

(b) a person who exercises or has the right to exercise the rights and duties of a person who provided credit under such an agreement;

"payment" means a payment comprising or including an amount in respect of credit;

"regulated credit agreement" means any credit agreement which is not an exempt agreement (see articles 60C to 60H);

"relative" means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendent;

"relevant recipient of credit" means—

(a) a partnership consisting of two or three persons not all of whom are bodies corporate, or

(b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership;

"restricted-use credit agreement" means a regulated credit agreement—

(a) to finance a transaction between the borrower and the lender, whether forming part of that agreement or not,

(b) to finance a transaction between the borrower and a person ("the supplier") other than the lender, or

(c) to refinance any existing indebtedness of the borrower's, whether to the lender or another person;

"running-account credit" means a facility under a credit agreement under which the borrower or another person is enabled to receive from time to time from the lender or a third party cash, goods or services to an amount or value such that, taking into account payments made by or to the credit of the borrower, the credit limit (if any) is not at any time exceeded;

"security" in relation to a credit agreement, means a mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right provided by the borrower or a the implied or express request of the borrower to secure the carrying out of the obligations of the borrower under the agreement;

"total charge for credit" has the meaning given in rules made by the FCA under article 60M;

"total price" means the total sum payable by the debtor under a hire-purchase agreement or a conditional sale agreement, including any sum payable on the exercise of an option to purchase but excluding any sum payable as a penalty or as compensation or damages for a breach of the agreement;

"unrestricted-use credit agreement" means a regulated credit agreement which is not a restricted-use credit agreement.

(2) For the purposes of the definition of "restricted-use credit agreement"—

(a) a credit agreement does not fall within the definition if the credit is in fact provided in such a way as to leave the borrower free to use it as the borrower chooses, even though certain uses would contravene that or any other agreement; and

(b) an agreement may fall within paragraph (b) of the definition even though the identity of the supplier is unknown at the time the agreement is made.

(3) Subject to paragraph (6), a credit agreement is entered into under pre-existing arrangements between a lender and a supplier if it is entered into in accordance with, or in connection with, arrangements previously made between the lender (or the lender's associate) and the supplier (or the supplier's associate) unless the arrangements fall within paragraph (5).

(4) A credit agreement is entered into in contemplation of future arrangements between a lender and a supplier if it is entered into in the expectation that arrangements will subsequently be made between the lender (or the lender's associate) and the supplier (or the supplier's associate) for the supply of cash, goods or services to be financed by the credit agreement unless the arrangements fall within paragraph (5).

(5) The arrangements fall within this paragraph if they are—

(a) for the making, in circumstances specified in the agreement, of payments to the supplier by the lender and the lender holds himself or herself out as willing to make, in such circumstances, payments of the kind to suppliers generally; or

(b) for the electronic transfer of funds from a current account held with an authorised person with permission to accept deposits (within the meaning given by article 3 of this Order).

(6) If a lender is an associate of the supplier's, the credit agreement is to be treated as entered into under pre-existing arrangements between the lender and the supplier unless the lender can show that this is not the case.

(7) Unless paragraph (11) applies, a transaction is a linked transaction in relation to a regulated credit agreement ("the principal agreement") if—

(a) it is (or will be) entered into by the borrower under the principal agreement or a relative of that person,

(b) it does not relate to the provision of security,

(c) it does not form part of the principal agreement, and

(d) one of the following conditions is satisfied—

(i) the transaction is entered into in compliance with a term of the principal agreement;

(ii) the principal agreement is a borrower-lender-supplier agreement and the transaction is financed, or to be financed, by the principal agreement;

(iii) the following conditions are met—

(aa) the other party is a person to whom paragraph (8) applies,

(bb) the other party initiated the transaction by suggesting it to the borrower or the relative of the borrower, and

(cc) the borrower or the relative of the borrower enters into the transaction to induce the lender to enter into the principal agreement or for another purpose related to the principal agreement or to a transaction financed or to be financed by the principal agreement.

(8) The persons to whom this paragraph applies are—

(a) the lender;

(b) the lender's associate;

(c) a person who, in the negotiation of the transaction, is represented by a person who carries on the activity specified by article 36A (credit broking) by way of business who is also a negotiator in negotiations for the principal agreement;

(d) a person who, at the time the transaction is initiated, knows that the principal agreement has been made or contemplates that it might be made.

(9) Unless paragraph (11) applies, a transaction is a linked transaction in relation to a regulated consumer hire agreement ("the principal agreement") if—

(a) it is (or will be) entered into by the hirer under the principal agreement or a relative of that person,

(b) it does not relate for the provision of security,

(c) it does not form part of the principal agreement, and

(d) one of the following conditions is satisfied—

(i) the transaction is entered into in compliance with a term of the principal agreement;

(ii) the other party to the transaction is a person to whom paragraph (10) applies,

(iii) the other party to the transaction initiated the transaction by suggesting it to the hirer or the relative of the hirer,

(iv) the hirer or the relative of the hirer enters into the transaction to induce the owner to enter into the principal agreement or for another purpose related to the principal agreement or to a transaction financed or to be financed by the principal agreement.

(10) The persons to whom this paragraph applies are—

(a) the owner;

(b) the owner's associate;

(c) a person who, in the negotiation of the transaction, is represented by a person who carries on the activity specified by article 36A (credit broking) by way of business who is also a negotiator in negotiations for the principal agreement;

(d) a person who, at the time the transaction is initiated, knows that the principal agreement has been made or contemplates that it might be made.

(11) This paragraph applies if the transaction is—

(a) a contract of insurance,

(b) a contracts which contains a guarantee of goods, or

(c) a transaction which comprises, or is effected under—

(i) an agreement for the operation of an account (including any savings account) for the deposit of money, or

(ii) an agreement for the operation of a current account, under which the customer ("C") may, by means of cheques or similar orders payable to C or to any other person, obtain or have the use of money held or made available by the person with whom the account is kept ("P") and which records alterations in the financial relationship between P and C.

(12) For the purposes of this Chapter, a person by whom goods are bailed or (in Scotland) hired) to an individual or relevant recipient of credit under a hire-purchase agreement is to be taken to be providing that individual or person with fixed-sum credit to finance the transaction of an amount equal to the total price of the goods less the aggregate of the deposit (if any) and the total charge for credit.

(13) For the purposes of this Chapter, where credit is provided otherwise than in sterling, it is to be treated as provided in sterling of an equivalent amount.

60M Total charge for credit

(1) The FCA may make rules specifying how the total charge for credit to the borrower under a credit agreement is to be determined for the purposes of this Order.

(2) Rules made under paragraph (1) may in particular—

(a) specify how the total charge for credit to a person who is to become the borrower under a credit agreement which that person may enter into is to be determined;

(b) what items are to be included in determining the total charge for credit and how the value of those items is to be determined;

(c) the method of calculating the rate of the total charge for credit;

(d) provide for the whole or part of the amount payable by the borrower or a relative of the borrower under a linked transaction to be included in the total charge for credit, whether or not the lender is a party to the transaction or derives a benefit from it.

CHAPTER 14B

REGULATED CONSUMER HIRE AGREEMENTS

The activities

60N Regulated consumer hire agreements

(1) Entering into a regulated consumer hire agreement as owner is a specified kind of activity.

(2) It is a specified kind of activity for the owner or another person to exercise, or to have the right to exercise, the owner's rights and duties under a regulated consumer hire agreement.

(3) In this Chapter—

"consumer hire agreement" means an agreement between a person ("the owner") with an individual or relevant recipient of credit ("the hirer") for the bailment or, in Scotland, the hiring, of goods to the hirer which—

(a) is not a hire-purchase agreement, and

(b) is capable of subsisting for more than three months;

"owner" means—

(a) the person who hires goods under a regulated consumer hire agreement; or

(b) a person who exercises or has the right to exercise the rights and duties of a person who hired goods under such an agreement;

"regulated consumer hire agreement" means a consumer hire agreement which is not an exempt agreement (see articles 60O to 60Q).

60O Exempt agreements: exemptions relating to nature of agreement

(1) An agreement is an exempt agreement for the purposes of this Chapter if the hirer is required by the agreement to make payments exceeding £25,000 if the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the hirer.

(2) For the purposes of paragraph (1), if an agreement includes a declaration which—

(a) is made by the hirer,

(b) provides that the agreement is entered into by the hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the hirer, and

(c) complies with rules made by the FCA for the purposes of this article,

the agreement is to be presumed to have been entered into by the hirer wholly or predominantly for those purposes unless paragraph (3) applies.

(3) This paragraph applies if, when the agreement is entered into—

(a) the owner (or, if there is more than one owner, any of the owners), or

(b) any person who has acted on behalf of the owner in connection with the entering into of the agreement,

knows or has reasonable cause to suspect that the agreement is not entered into by the hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the hirer.

(4) For the purposes of this article, where credit is provided otherwise than in sterling, it shall be treated as provided in sterling of an equivalent amount.

60P Exempt agreements: exemptions relating to supply of essential services

An agreement is an exempt agreement for the purposes of this Chapter if—

(a) the owner is a body corporate which is authorised by or under any enactment to supply gas, electricity or water, and

(b) the subject of the agreement is a meter or metering equipment which is used (or is to be used) in connection with the supply of gas, electricity or water.

60Q Exempt agreements: exemptions relating to the nature of the hirer

An agreement is an exempt agreement for the purposes of this Chapter if—

(a) the hirer is an individual;

(b) the agreement includes a declaration made by the hirer which provides that the hirer agrees to forgo the protection and remedies that would be available to the hirer if the agreement were a regulated consumer hire agreement and which complies with rules made by the FCA for the purposes of this paragraph,

(c) a statement has been made in relation to the income or assets of the hirer which complies with rules made by the FCA for the purposes of this paragraph,

(ed the connection between the statement and the agreement complies with any rules made by the FCA for the purposes of this paragraph (including as to the period of time between the making of the statement and the agreement being entered into), and

(e) a copy of the statement was provided to the owner before the agreement was made.".

(2) In article 72B(1) (activities carried on by a provider of relevant goods or services)(**a**), in the definition of "provider", omit "within the meaning of section 189(1) of the Consumer Credit Act 1974".

Provision of credit information services

7. After article 89 (rights to or interests in investments) insert—

(**a**) Inserted by SI 2003/1476 and amended by SI 2007/3510.

“PART 3A

SPECIFIED ACTIVITIES IN RELATION TO INFORMATION

The activities

Providing credit information services

89A.—(1) Taking any of the steps in paragraph (3) on behalf of an individual or relevant recipient of credit is a specified kind of activity.

(2) Giving advice to an individual or relevant recipient of credit in relation to the taking of any of the steps in paragraph (3) is a specified kind of activity.

(3) Subject to paragraph (4), the steps in this paragraph are steps taken with a view to—

(a) ascertaining whether a credit information agency holds information relevant to the financial standing of an individual or relevant recipient of credit;

(b) ascertaining the contents of such information;

(c) securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information; or

(d) securing that a credit information agency which holds such information—

(i) stops holding the information; or

(ii) does not provide it to any other person.

(4) Steps taken by a credit information agency in relation to information held by that agency are not steps in paragraph (3).

(5) “Credit information agency” means a person who carries on by way of business the activity specified by any of the following—

(a) article 36A (credit broking);

(b) article 39E (debt adjusting);

(c) article 39F (debt-counselling);

(d) article 39G (debt-collecting);

(e) article 39H (debt administration);

(f) article 60B (regulated credit agreements) disregarding the effect of article 60F;

(g) article 60N (regulated consumer hire agreements) (disregarding the effect of article 60P);

(h) article 89B (providing credit references).

89B Providing credit references

(1) Furnishing of persons with information relevant to the financial standing of individuals or relevant recipients of credit is a specified kind of activity if the person has collected the information for that purpose.

(2) There are excluded from paragraph (1) activities carried on in the course of a business which does not primarily consist of activities of the kind specified by paragraph (1).

(3) Paragraph (1) does not apply to an activity of the kind specified by article 36G (operating an electronic system in relation to lending).

The exclusions

89C Other exclusions

Articles 89A and 89B are also subject to the exclusion in article 72A (information society services).

Supplemental

89D Definition of "consumer" etc.

(1) For the purposes of sections 1G, 404E and 425A of the Act (meaning of "consumer")—

(a) an individual or a relevant recipient of credit who is or may be the subject of the information referred to in article 89A, and

(b) an individual or a relevant recipient of credit who is the subject of information furnished in the course of a person carrying on the regulated activity specified under article 89B,

is to be treated as a "consumer".

(2) For the purposes of section 328(8) of the Act (meaning of "clients")—

(a) an individual or a relevant recipient of credit who is or may be the subject of the information referred to in article 89A, and

(b) an individual or a relevant recipient of credit who is the subject of information furnished in the course of a person carrying on the regulated activity specified under article 89B,

is to be treated as a "client".".

The investments

8. After article 88C(**a**), insert—

"88D Credit agreement

(1) Rights under a credit agreement.

88E Consumer hire agreement

(2) Rights under a consumer hire agreement.".

PART 3

Amendments etc. to the Act

Amendments to the Act

9.—(1) The Act is amended as follows.

(2) In section 1H (further interpretative provisions for sections 1B to 1G)(**b**)—

(a) omit paragraph (b) of subsection (2);

(b) in subsection (8), omit the definitions of "accepting" and "consumer credit business".

(3) In section 194 (general grounds on which power of intervention in relation to EEA firm is exercisable), subsections (2) to (4) are omitted.

(4) Sections 203 and 204 (powers to prohibit or restrict the carrying on of Consumer Credit Act business)(**c**) are omitted.

(**a**) Inserted by SI 2006/2383.
(**b**) Inserted by section 6 of the Financial Services Act 2012.
(**c**) Section 203 was mended by SI 2000/2952, Schedule 25 to the Enterprise Act 2002, section 33 of the Consumer Credit Act 2006. Section 204 was amended by Schedule 25 to the Enterprise Act 2002.

(5) Section 226A (consumer credit jurisdiction)(**a**) ceases to have effect except in relation to complaints which relate to an act or omission which took place before the commencement date.

(6) In section 227 (voluntary jurisdiction)(**b**), in paragraph (e) of subsection (2), omit "or the consumer credit jurisdiction".

(7) In section 228 (determination under the compulsory jurisdiction)(**c**), in subsection (1), omit "and to the consumer credit jurisdiction".

(8) In section 229 (awards)(**d**)—

(a) in subsection (1), omit "and to the consumer credit jurisdiction";

(b) omit subsection (4A);

(c) for subsection (11), substitute—

"(11) "Specified" means specified in compulsory jurisdiction rules.";

(d) omit subsection (12).

(9) In section 230 (costs)(**e**)—

(a) in subsection (1), omit "or the consumer credit jurisdiction";

(b) in subsection (7), omit "or (as the case may be) paragraph 16D of that Schedule".

(10) Section 234A (funding by consumer credit licences etc)(**f**) is omitted.

(11) In section 328 (directions in relation to the general prohibition)(**g**), in subsection (6)(b), after "insurance mediation directive" insert "or Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEA(**h**)".

(12) In section 353 (removal of other restrictions on disclosure)(**i**), in subsection (1), omit paragraph (c).

(13) In section 404E (meaning of "consumers")(**j**)—

(a) in subsection (2), omit paragraph (b);

(b) in subsection (6), omit the definitions of "accepting" and "consumer credit business".

(14) In Schedule 1A to the Act (further provision about the consumer financial education body)(**k**)—

(a) in paragraph 7(4), omit paragraph (c);

(b) in paragraph 8(6), omit paragraph (c);

(c) omit paragraph 10(1);

(d) omit paragraph 13.

(15) In Schedule 3 (EEA passport rights)—

(a) in paragraph 15(**l**), omit sub-paragraphs (3) and (4);

(b) omit paragraph 23(**m**).

(16) In Schedule 6 (threshold conditions)(**n**), for paragraph 2A, substitute—

(**a**) Inserted by section 59 of the Consumer Credit Act 2006.
(**b**) Amended by section 61 of the Consumer Credit Act 2006.
(**c**) Amended by section 61 of the Consumer Credit Act 2006.
(**d**) Amended by section 61 of the Consumer Credit Act 2006.
(**e**) Amended by section 61 of the Consumer Credit Act 2006.
(**f**) Inserted by section 60 of the Consumer Credit Act 2006.
(**g**) Amended by SI 2003/1473.
(**h**) OJ L 133/66 22.5.2008 p.1.
(**i**) Amended by section 61of the Consumer Credit Act 2006.
(**j**) Inserted by section 14 of the Financial Services Act 2010.
(**k**) Inserted by section 2 of, and Schedule 1 to, the Financial Services Act 2010.
(**l**) Amended by Schedule 25 to the Enterprise Act 2002 and section 33 of the Consumer Credit Act 2006.
(**m**) Amended by Schedule 25 to the Enterprise Act 2002 and section 33 of the Consumer Credit Act 2006.
(**n**) Amended by S.I [SI under s.55C FSMA].

"**2A**—(1) If the person concerned ("A") carries on, or is seeking to carry on, regulated activities which—

(a) do not consist only of relevant credit activities, and

(b) do not consist of or include a PRA-regulated activity,

the threshold conditions in relation to A that are relevant to the discharge by the FCA of its functions in relation to A are the conditions set out in paragraphs 2B to 2F.

(2) If the person concerned ("A") carries on, or is seeking to carry on, regulated activities which consist only of relevant credit activities, the threshold conditions in relation to A that are relevant to the discharge by the FCA of its functions in relation to A are the conditions set out in paragraphs 2B to 2F, subject to sub-paragraph (3).

(3) Paragraphs 2B to 2F have effect in relation to persons of the kind specified by sub-paragraph (2) as if—

(a) paragraphs (a), (b) and (e) of paragraph 2C(1) were omitted;

(b) for paragraph 2D(3), there were substituted—

"(3) Whether A is capable of meeting A's debts as they fall due is relevant in determining whether A has appropriate financial resources.";

(c) paragraph 2F was omitted.

(4) In this paragraph, "relevant credit activities" means—

(a) an activity of the kind specified by article 36A of the Regulated Activities Order (credit broking) when carried in the case specified in subparagraph (5),

(b) an activity of the kind specified by article 39D of that Order (debt adjusting) when carried on—

(i) in the case specified in sub-paragraph (5) and by a person who also carries on an activity of the kind specified by paragraph (a),

(ii) by a person who also carries on an activity of the kind specified by paragraph (d) or (e), or

(iii) by a not-for-profit body,

(c) an activity of the kind specified by article 39E of that Order (debt-counselling) when carried on—

(i) in the case specified in sub-paragraph (5) and by a person who also carries on an activity of the kind specified by paragraph (a),

(ii) by a person who also carries on an activity of the kind specified by paragraph (d) or (e), or

(iii) by a not-for-profit body,

(d) an activity of the kind specified by article 60B of the that Order (regulated credit agreements) if—

(i) it is carried on by a supplier,

(ii) no charge (by way of interest or otherwise) is payable by the borrower in connection with the provision of credit under the regulated credit agreement, and

(iii) the regulated credit agreement is not a hire-purchase agreement or a conditional sale agreement,

(e) an activity of the kind specified by article 60N of that Order (regulated consumer hire agreements), or

(f) an activity of the kind specified by article 89A of that Order (providing credit information services) where carried on by a person who also carries on an activity of the kind specified by any of sub-paragraphs (a) to (e),

except in so far as the activity relates to a credit agreement under which the obligation of the borrower to repay is secured, or is to be secured, by a legal mortgage on land.

(5) The case specified in this sub-paragraph is where a supplier (other than a domestic premises supplier) carries on the activity for the purposes of or in connection with the sale of goods or supply of services by the supplier to a customer (who need not be the borrower under the credit agreement concerned).

(6) For the purposes of this paragraph—

"borrower" includes—

(a) any person providing a guarantee or indemnity under a credit agreement; and

(b) a person to whom the rights and duties of the borrower under a credit agreement or a person falling within paragraph (a) have passed by assignment or operation of law;

"conditional sale agreement" has the meaning given by article 60L of the Regulated Activities Order;

"customer" means a person to whom a supplier sells goods or supplies services or agrees to do so;

"domestic premises supplier" means a supplier who sells goods or supplies services to customers who are individuals whilst physically present in the dwelling of the customer or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer (though a suppler who does so on an occasional basis is not to be treated as a "domestic premises supplier");

"hire-purchase agreement" has the meaning given by the Regulated Activities Order;

"not-for-profit body" means a body which, by virtue of its constitution or any enactment—

(a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and

(b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes);

"Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

"regulated credit agreement" has the meaning given by the Regulated Activities Order;

"supplier" means a person whose main business is to sell goods or supply services and not to carry on a regulated activity, other than an activity of the kind specified by article 60N of the Regulated Activities Order (regulated consumer hire agreements).".

(17) Schedule 16 (prohibitions and restrictions imposed by the Office of Fair Trading)(**a**) is omitted.

(18) In Schedule 17 (the ombudsman scheme)(**b**)—

(a) in paragraph 3(4), omit ", the function of making consumer credit rules, the function of making determinations under section 234A(1)";

(b) in paragraph 7(2), omit ", functions in relation to its consumer credit jurisdiction";

(c) in paragraph 9(3), omit ", consumer credit";

(d) in paragraph 10(1), omit "or to the consumer credit jurisdiction";

(e) in paragraph 11, omit "or to the consumer credit jurisdiction";

(f) omit Part 3A.

(**a**) Amended by section 278 of and Schedule 25 to the Enterprise Act 2002.
(**b**) Amended by section 59 of the Consumer Credit Act 2006.

Transitional provisions related to article 9

10.—(1) This article makes provisions in connection with the amendments to the Act made by article 9.

(2) The amendments to sections 1H and section 404E do not apply in so far as those provisions relate to, or apply, for the purposes of things done (or not done) prior to the commencement date.

(3) The repeal of section 194(2) to (4) does not affect the continued validity of any requirement imposed under section 194(3) prior to the commencement date and which is in force immediately before the commencement date.

(4) Contributions received by the scheme operator under section 234A of the Act (funding by consumer credit licences etc) may, from the commencement date, be used by the scheme operator for the purpose of funding its operation in relation to the compulsory jurisdiction.

(5) The repeal of sections 203 and 204 and Schedule 16 does not affect the continued validity of any prohibition or restriction which is in force immediately before the commencement date in relation to a person who is, immediately after the commencement date, an authorised person; and in relation to such a prohibition or restriction, sections 203(6), (7) and (9) and 204(3) and (4) and Schedule 16 continue to apply as if each reference to the OFT were a reference to the FCA.

(6) The amendments made to sections 227, 228, 229, 230 and Schedule 17 (complaints to the Financial Ombudsman Service) do not apply to any complaints made under section 226A (whether before or after the commencement date) and which are being dealt with under, or will be dealt with under, the consumer credit jurisdiction.

(7) The repeal of paragraph 23 of Schedule 3 does not affect the continued validity of anything done under section 55L or 55M of the Act prior to the commencement date.

Credit-related regulated activities for the purpose of section 23 of the Act

11. The following kinds of regulated activities are designated for the purposes of section 23(1B) of the Act(**a**) (contravention of the general prohibition)—

(a) an activity of the kind specified by article 39F of the Regulated Activities Order (debt-collecting),

(b) an activity of the kind specified by article 60B of that Order (regulated credit agreements),

except in so far as the activity relates to an agreement under which the obligation of the borrower to repay is secured by a legal mortgage on land.

Obligations of certain credit brokers who are not authorised persons

12.—(1) This article applies to a person ("P") who—

(a) is not an authorised person,

(b) carries on an activity of the kind specified by article 36A(1)(d) to (f) of the Regulated Activities Order (credit broking), and

(c) is not exempt from the general prohibition in relation to the carrying on of that activity by virtue of section 327(1) of the Act (exemption from the general prohibition for members of a designated professional body).

(2) P must indicate in advertising and documentation intended for borrowers or those who may become a borrower the extent of P's powers, in particular whether P works exclusively for one or more lender or does not work for any lender.

(3) P must disclose to the borrower or those who may become a borrower the fee, if any, payable by the borrower to P for P's services;

(**a**) Inserted by Schedule 9 to the Financial Services Act 2012.

(4) Any fee to be paid by the borrower to P must be agreed between the borrower and P and that agreement must be recorded in writing or other durable medium before the credit agreement is entered into.

(5) P must disclose to the lender the fee, if any, payable by the borrower to P for P's services for the purpose of enabling the lender to calculate the annual percentage rate of charge in relation to the credit agreement.

(6) In this article, "borrower" and "lender" have the meanings given by Article 60L of the Regulated Activities Order.

(7) A contravention by P of a provision of this article is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duties.

(8) "Private person" has the meaning prescribed for the purposes of section 138D of the Act (action for damages)(**a**).

(9) Sections 165 (regulator's power to require information: authorised persons etc)(**b**) and 167 (appointment of persons to carry out general investigations)(**c**) apply as if each reference to an authorised person (except in section 165(11) and 167(2)) included a reference to a person who falls within paragraph (1).

(10) Part 14 of the Act (disciplinary measures) applies to the requirements imposed by this article as if each reference to an authorised person included a reference to a person who, at the time of the contravention of the requirement, fell within paragraph (1).

PART 4

Amendments to the Consumer Credit Act 1974 etc

Amendments of the 1974 Act

13.—(1) The 1974 Act is amended as follows.

(2) Section 1 (general functions of OFT)(**d**) is omitted.

(3) Section 2 (powers of Secretary of State)(**e**) is omitted.

(4) Section 4 (dissemination of information and advice)(**f**) is omitted.

(5) Section 6 (form etc of application)(**g**) is omitted.

(6) Section 6A (charge on applicants for licences etc)(**h**) is omitted.

(7) Section 7 (penalty for false information)(**i**) is omitted.

(8) For section 20 (total charge for credit), substitute—

(**a**) Inserted by section 24 of the Financial Services Act 2012.
(**b**) Amended by Schedule 2 to the Financial Services Act 2010, Schedule 12 to the Financial Services Act 2012, SI 2001/3083 and SI 2002/775.
(**c**) Amended by Schedule 12 to the Financial Services Act 2012 and SI 2007/126.
(**d**) Amended by section 278 of, and Schedule 25 to, the Enterprise Act 2002 (c.40) and section 62 of the Consumer Credit Act 2006 (c.14).
(**e**) Amended by section 278 of, and Schedule 25 to, the Enterprise Act 2002, section 58 of the Consumer Credit Act 2006 and SI 2009/1835.
(**f**) Amended by section 278 of, and Schedule 25 to, the Enterprise Act 2002 and section 61 of the Consumer Credit Act 2006.
(**g**) Amended by section 278 of, and Schedule 25 to, the Enterprise Act 2002 and sections 27, 44 and 70 of, and Schedule 4 to, the Consumer Credit Act 2006.
(**h**) Inserted by section 27 of the Consumer Credit Act 2006.
(**i**) Substituted by section 51 of the Consumer Credit Act 2006.

"20 Total charge for credit

In this Act, "the total charge for credit" has the meaning given by rules made by the Financial Conduct Authority under article 60M of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 as they are from time to time amended.".

(9) Part 3 of the 1974 Act (sections 21 to 41ZB)(**a**) is omitted(**b**).

(10) Section 43 (advertisements to which Part IV applies)(**c**) is omitted.

(11) Section 44 (form and content of advertisements) is omitted.

(12) Section 45 (prohibition of advertisement where goods etc not sold for cash) is omitted.

(13) Section 47 (advertising infringements)(**d**) is omitted.

(14) Section 51 (prohibition of unsolicited credit-tokens) is omitted.

(15) Section 51A (prohibition on provision of credit card cheques)(**e**) is omitted.

(16) Section 51B (section 51A: exemption for business) is omitted.

(17) Section 52 (quotations)(**f**) is omitted.

(18) Section 53 (duty to display information)(**g**) is omitted.

(19) Section 54 (conduct of business regulations)(**h**) is omitted.

(20) Section 55A (pre-contractual explanations etc)(**i**) is omitted.

(21) Section 55B (assessment of creditworthiness) is omitted.

(22) Section 74A (information to be provided on current account agreement)(**j**) is omitted.

(23) Section 74B (information to be provided on significant overdrawing without prior arrangement) is omitted.

(24) Section 81 (appropriation of payments) is omitted.

(25) Section 82A (assignment of rights)(**k**) is omitted.

(26) Section 112 (realisation of securities) is omitted.

(27) In section 113 (Act not to be evaded by use of security)(**l**), in subsection (3)(c), omit "40(2)";

(28) Section 115 (penalty for failure to supply copies of pledge agreement, etc) is omitted.

(29) Section 116 (redemption period) is omitted.

(30) Section 118 (loss etc of pawn-receipt)(**m**) is omitted.

(31) Section 140D (advice and information)(**n**) is omitted.

(32) Section 147 (application of Part 3)(**o**) is omitted.

(33) Section 148 (agreements for services of unlicensed trader)(**a**) is omitted.

(**a**) Part 3 is amended by section 278 of, and Schedule 25 to the Enterprise Act 2002, sections 28 to 55 of the Consumer Credit Act 2006, section 26 of the Energy Act 2006, section 24 of, and Schedule 2 to, the Financial Services Act 2010, section 108 of and schedule 18 to the Financial Services Act 2012, SI 2001/3649, SI 2007/126, SI 2009/1835 and SI 2011/99.

(**b**) One consequence of this repeal is that any licences issued by the OFT under the 1974 Act will cease to have effect on the commencement date. Article 23 of this Order makes transitional provision in connection with licences which have effect immediately before the commencement date.

(**c**) Amended by section 5 of, and Schedule 4 to, the Contracts (Applicable Law) Act 1990, Schedule 4 to the Consumer Credit Act 2006 and SI 2001/544.

(**d**) Amended by SI2008/1277.

(**e**) Sections 51A and 51B inserted by section 15 of the Financial Services Act 2010.

(**f**) Amended by SI 2001/544.

(**g**) Amended by SI 2001/544 and SI 2006/2383.

(**h**) Amended by SI 2001/3649.

(**i**) Sections 55A and 55B inserted by SI 2010/10/10.

(**j**) Sections 74A and 74B inserted by SI 2010/10/10.

(**k**) Inserted by SI 2010/10/10.

(**l**) Amended by section 4 of the Minors' Contracts Act 1987 and section 278 of and Schedule 25 to the Enterprise Act 2002.

(**m**) Amended by SI 1998/997.

(**n**) Inserted by section 22 of the Consumer Credit Act 2006.

(**o**) Repealed in part by section 70 of, and Schedule 4 to, the Consumer Credit At 2006.

(34) Section 149 (regulated agreements made on introduction by unlicensed credit-broker)(**b**) is omitted.

(35) Section 151 (advertisements)(**c**) is omitted.

(36) Section 152 (application of sections 52 to 54 to credit brokerage etc)(**d**) is omitted.

(37) Section 156 (entry into agreements)(**e**) is omitted.

(38) In section 160A (credit intermediaries)(**f**), subsections (3) to (7) are omitted.

(39) In section 161 (enforcement authorities)(**g**), paragraph (a) of subsection (1) is omitted.

(40) In section 162 (powers of entry and inspection)(**h**), subsections (5) and (8) are omitted.

(41) In section 165 (obstruction of authorised officers)(**i**), subsection (1A) is omitted.

(42) In section 167 (penalties), subsection (2) is omitted.

(43) In section 171 (onus of proof in various proceedings), subsections (3) and (5) are omitted.

(44) In section 174A (powers to require provision of information or documents etc)(**j**), for subsection (5) substitute—

"(5) In this section, "relevant authority" means an enforcement authority or an officer of an enforcement authority.".

(45) In section 181 (power to alter monetary limits etc)(**k**)—

(a) in both places it appears omit "39A(3),";

(b) omit "118(1)(b), 120(1)(a),".

(46) In section 182 (regulations and orders)(**l**), in subsection (1), omit "2(1)(a),".

(47) In section 183 (determinations etc by OFT)(**m**), omit subsection (2).

(48) In section 189 (definitions)—

(a) in subsection (1)(**n**)—

(i) omit the definitions of "appeal period", "general notice", "group licence", "licence", "licensed", "licensee", "register", "standard licence", "unlicenced";

(ii) for the definition of "total charge for credit" substitute—

""total charge for credit" has the meaning given in section 20;";

(b) in subsection (1A)(**o**), omit "36E(3),";

(c) in subsection (5)(**p**), omit "or the OFT" in the first place those words appear and "or the OFT (as the case may be)".

(49) Section 189A (meaning of "consumer credit EEA firm")(**q**) is omitted.

(**a**) Amended by section 278 of, and Schedule 25 to, the Enterprise Act 2002 and SI 2001/3649.
(**b**) Amended by section 278 of, and Schedule 25 to, the Enterprise Act 2002 and SI 2001/3649.
(**c**) Amended by section 25 of the Consumer Credit Act 2006, SI 2001/544 and SI 2008/1277.
(**d**) Amended by section 25 of the Consumer Credit Act 2006.
(**e**) Amended by section 25 of the Consumer Credit Act 2006.
(**f**) Inserted by SI 2010/1010.
(**g**) Amended by section 278 of, and Schedule 25 to, the Enterprise Act 2002 and SI 2001/3649. There are other amendments not relevant to this Order.
(**h**) Subsection (8) inserted by section 51 of the Consumer Credit Act 2006. There are other amendments which are not relevant to this Order.
(**i**) Subsection (1A) inserted by section 51 of the Consumer Credit Act 2006. There are other amendments which are not relevant to this Order.
(**j**) Inserted by section 51 of the Consumer Credit Act 2006.
(**k**) Amended by section 53 of the Consumer Credit Act 2006. There are other amendments which are not relevant to this Order.
(**l**) To which there are amendments not relevant to this Order.
(**m**) Substituted by section 64 of the Consumer Credit Act 2006.
(**n**) Relevant amendments made by section 278 of, and Schedule 25 to, the Enterprise Act 2002, section 27 of, and Schedule 4 to, the Consumer Credit Act 2006 and SI 2009/1835.
(**o**) Inserted by section 27 of the Consumer Credit Act 2006 and repealed in part by SI 2009/1835.
(**p**) Amended by section 278 of and Schedule 25 to the Enterprise Act 2002.
(**q**) Inserted by SI 2001/3649.

(50) Section 190(2) (financial provisions)(**a**) is omitted.

(51) In section 191 (special provisions as to Northern Ireland)(**b**), subsections (1) and (2) are omitted.

(52) In Schedule 1 (prosecution and punishment of offences)(**c**), in the table, omit the entries for sections 7, 39(1), 39(2), 39(3), 45, 47(1), 49(1), 49(2), 50(1), 51(1), 51A(1), 115, 160A and 162(6).

(53) In Schedule 2 (examples of use of new terminology), in example 5, for ", according to regulations made under section 20(1), constitute the total charge for credit" substitute "constitutes the total cost of credit (within the meaning given by section 20)".

(54) In Schedule 3 (transitional and commencement provisions)(**d**)—

(a) omit the heading before paragraph 5;

(b) omit paragraphs 5 to 7;

(c) omit paragraphs 44, 45 and 46.

Review of retained provisions of the 1974 Act

14.—(1) The FCA must arrange for a review of the matter specified in paragraph (2).

(2) The matter is whether the repeal (in whole or in part) of provisions of the 1974 Act would adversely affect the degree of protection for consumers.

(3) The review must be completed by 1st April 2019.

(4) The FCA may appoint one or more persons to—

(a) conduct the review; or

(b) it the FCA itself is carrying out the review, to provide advice to the FCA in connection with the review.

(5) The review must in particular consider—

(a) the provision which could be included in rules made or guidance given by the FCA under the Act;

(b) the principle that a burden or restriction which is imposed on a person or the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.

(6) The review must result in a report to the Treasury.

(7) The report may include recommendations to the Treasury, including recommendations to the Treasury relating to the exercise of their power to make an order under section 107 of the Financial Services Act 2012.

(8) The Treasury must lay a copy of the report received under this article before Parliament.

Conduct of review

15.—(1) The FCA must prepare an interim report of its initial views on the matter specified in paragraph (2) of article 14 and (where appropriate) setting out its proposed recommendations to the Treasury.

(2) The FCA may prepare additional interim reports.

(3) The FCA must—

(a) provide a copy of any interim report to the Treasury;

(**a**) Amended by section 278 of, and Schedule 25 to, the Enterprise Act 2002 and section 65 the Consumer Credit Act 2006.
(**b**) Amended by section 278 of, and Schedule 25 to. the Enterprise Act 2002.
(**c**) Relevant amendments made by section 32 of the Magistrates' Courts Act 1980 (c.43), section 278 of, and Schedule 25 to, the Enterprise Act 2002, section 15 of the Financial Services Act 2010 and SI 2010/1010.
(**d**) Relevant amendments made by SI 1977/325, SI 1977/2163, SI 1983/1551 and SI 1989/1128.

(b) publish an interim report in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(4) An interim report must, when published, be accompanied by notice that representations about the interim report and any proposed recommendations may be made to the FCA within a specified time.

(5) Before making its report under article 14(6), the FCA must have regard to any representations made to it in accordance with paragraph (4).

(6) The Treasury may make a recommendation to the FCA in relation to—

(a) the scope of the review;

(b) the period during which the review is to be carried out (subject to article 14(3));

(c) the conduct of the review;

(d) the making of reports.

(7) Recommendations under paragraph (6) may in particular—

(a) confine the review to particular matters (subject to article 14(2));

(b) extend the review to additional matters;

(c) require the FCA to make such interim reports as are so specified.

(8) The FCA must have regard to any recommendation made to it under paragraph (6).

PART 5

Amendments to secondary legislation made under the Act

The Financial Services and Markets Act 2000 (Carrying on Regulated Activities By Way of Business) Order 2001

16. In the Financial Services and Markets Act 2000 (Carrying on Regulated Activities By Way of Business) Order 2001(**a**), after article 3D (arranging and advising on regulated sale and rent back agreements), insert—

"3E Debt-adjusting, debt-counselling etc by not-for-profit bodies

(1) A not-for-profit body which carries on an activity of the kind specified by article 39D (debt-adjusting), 39E (debt-counselling) or 89A (providing credit information services) of the Regulated Activities Order is to be regarded as carrying that activity by way of business if the activities being carried on by that body comprise of or relate to that activity.

(2) It is immaterial for the purposes of paragraph (1) if the activities being carried on by the body also comprises of or relates to other activities.

(3) In this article, a "not-for-profit body" means a body which, by virtue of its constitution or any enactment—

(a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and

(b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes).".

The Financial Services and Markets Act 2000 (Exemption) Order 2001

17.—(1) The Financial Services and Markets Act 2000 (Exemption) Order 2001(**b**) is amended as follows.

(**a**) SI 2001/1177. Article 3D was inserted by SI 2009/1342. There are other amending instruments not relevant to this Order.
(**b**) SI 2001/1201.

(2) In paragraph 40(1) of the Schedule to the Order(**a**) (enterprise schemes) for "article 25 of the Regulated Activities Order (arranging deals in investments)" substitute "articles 25, 36A, 39D and 39E of the Regulated Activities Order (arranging deals in investments, credit broking, debt-adjusting and debt-counselling)".

(3) In paragraph 47 of the Schedule to the Order(**b**) (local authorities)—

(a) at the end of paragraph (d), omit "or";

(b) at the end of paragraph (e), insert—

"(f) articles 36A and 60B of that Order (credit broking and entering into etc a regulated credit agreement) in so far as the credit agreement (within the meaning of that Order) is secured on land; or

(g) articles 39D, 39E, 39F, 39G, 60N and 89A of that Order (activities in relation to debt, entering into a regulated consumer hire agreement and providing credit information services).".

(4) After paragraph 51 of the Schedule(**c**) (policyholder advocates) insert—

"*Insolvency practitioners etc.*

52. A person acting as—

(a) an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986(**d**) or article 3 of the Insolvency (Northern Ireland) Order 1989(**e**),

(b) an official receiver within the meaning of section 399 of the Insolvency Act 1986 or article 2 of the Insolvency (Northern Ireland) Order 1989, or

(c) a judicial factor,

is exempt from the general prohibition in respect of any regulated activity of the kind specified by any of articles 39D to 39G (activities in relation to debt) or 89A (providing credit information services) of the Regulated Activities Order.

Cycle to work

53.—(1) An employer who provides or makes available to their employees a cycle or cycle safety equipment up to the value of £1,000 under a relevant employee benefit scheme is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 60N of the Regulated Activities Order (entering into a regulated consumer hire agreement).

(2) For the purposes of this paragraph—

"cycle" has the meaning given by section 192(1) of the Road Traffic Act 1988(**f**) (general interpretation);

"relevant employee benefit scheme" means a scheme operated by an employer which is designed to allow employees to take advantage of section 244 of the Income Tax (Earnings and Pensions) Act 2003(**g**) (no liability to income tax in relation to cycles cycles safety equipment) and under which cycles or cycle safety equipment are made available in the manner described in any guidance issued by the Secretary of State.

Tracing agents

54.—(1) A person who takes steps to ascertain the identity or location (or the means of ascertaining the identity or location) of a borrower is exempt from the general prohibition in

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(**a**) Amended by SI 2007/125 and SI 2007/1821.
(**b**) Amended by SI 2003/1675, SI 2006/2383, SI 2009/1342.
(**c**) Inserted by SI 2007/1821.
(**d**) 1988 c.45. Amended by section 11 of the Bankruptcy (Scotland) Act 1993 (c.6), SI/1994/2421, section 4 of the Insolvency Act 2000 (c.39), SI 2002/1240, SI 2002/2708 and SI 2009/1941.
(**e**) SI 1989/2405 (N.I.19). Amended by SR 1995/225, SR 2002/334, SI 2002/3152 (N.I.6), SR 2003/660, SR 2004/307.
(**f**) 1988 c.52. To which there are amendments not relevant to this Order.
(**g**) 2003 c1. Amended by section 16 of the Finance Act 2005 (c.7).

respect of any regulated activity of the kind specified by article 39F of the Regulated Activities Order (debt-collecting) so long as the person is not the lender under the credit agreement concerned and takes no other steps to procure the payment of debts due under a credit agreement.

(2) In this article, "borrower" and "lender" have the meanings given by the Regulated Activities Order.".

The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001

18.—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(**a**) are amended as follows.

(2) In regulation 2(1) (descriptions of business for which appointed representatives are exempt)(**b**)—

(a) after sub-paragraph (abb) insert—

"(abc)an activity of the kind specified by article 36A of that Order (credit broking);";

(b) after sub-paragraph (ac) insert—

"(ad) an activity of the kind specified by article 39D of that Order (debt adjusting);

(ae) an activity of the kind specified by article 39E of that Order (debt-counselling);

(af) an activity of the kind specified by article 39F of that Order (debt-collecting);

(ag) an activity of the kind specified by article 39G of that Order (debt administration);
";

(c) at the end of sub-paragraph (cc), omit "or" and insert—

"(cd) an activity of the kind specified by article 60N of that Order (entering into a regulated consumer hire agreement);";

(d) at the end of sub-paragraph (d) insert—

"or

(e) an activity of the kind specified by article 89A of that Order (providing credit information services);".

(3) In regulation 3 (requirements applying to contracts between authorised persons and appointed representatives)(**c**), after paragraph (3B) insert—

"(3C) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative effects introductions (in circumstances constituting the carrying on of an activity of the kind specified by article 36A of that Order) of individuals or relevant recipients of credit (within the meaning of that Order) to other counterparties.

(3D) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative gives advice to a borrower (in circumstances constituting the carrying on of an activity of the kind specified by article 39E or 89A of that Order) about the liquidation of a debt due under a credit agreement or consumer hire agreement (in each case, within the meaning of that Order) to another counterparty.

(3E) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative takes steps (in circumstances constituting the carrying on of an activity of the kind specified by article 39F of that Order) to procure the payment of debts due to another counterparty under a credit agreement or consumer hire agreement (in each case, within the meaning of that Order).

(**a**) SI 2001/1217.
(**b**) Amended by SI 2001/2508, SI 2003/1475, SI 2003/1476, SI 2004/453, SI 2004/2737, SI 2006/2383 and SI 2006/3414.
(**c**) Amended by SI 2001/2508, SI 2003/1475, SI 2003/1476. SI 2004/453, SI 2004/2737, SI 2006/2383 and SI 2006/3414.

(3F) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative performs duties (in circumstances constituting the carrying on of an activity of the kind specified by article 39G of that Order) under, or exercises or enforces rights under, a credit agreement (within the meaning of that Order) on behalf of a lender who is another counterparty.".

(4) After regulation 4 (transitional provision in relation to contracts)(**a**), insert—

"Credit related activities: prescribed businesses and qualifying activities

5.—(1) Any business which comprises an activity of the kind specified by regulation 2 of these Regulations is prescribed for the purposes of section 39(1C)(b)(i) of the Act (prescribed business)(**b**) except to the extent that the person carrying on that activity has Part 4A permission carry it on.

(2) The following kinds of regulated activities are prescribed for the purposes of section 39(1E)(a) of the Act(**c**)—

(a) an activity of the kind specified by article 36A of the Regulated Activities Order (credit broking) when carried in the case specified in paragraph (3),

(b) an activity of the kind specified by article 39D of that Order (debt adjusting) when carried on—

(i) in the case specified in paragraph (3) and by a person who also carries on an activity of the kind specified by sub-paragraph (a),

(ii) by a person who also carries on an activity of the kind specified by sub-paragraph (d) or (e), or

(iii) by a not-for-profit body,

(c) an activity of the kind specified by article 39E of that Order (debt-counselling) when carried on—

(i) in the case specified in paragraph (3) and by a person who also carries on an activity of the kind specified by subparagraph (a),

(ii) by a person who also carries on an activity of the kind specified by subparagraph (d) or (e), or

(iii) by a not-for-profit body,

(d) an activity of the kind specified by article 60B of the that Order (regulated credit agreements) if—

(i) it is carried on by a supplier,

(ii) no charge (by way of interest or otherwise) is payable by the borrower in connection with the provision of credit under the regulated credit agreement, and

(iii) the regulated credit agreement is not a hire-purchase agreement or a conditional sale agreement,

(e) an activity of the kind specified by article 60N of that Order (regulated consumer hire agreements), or

(f) an activity of the kind specified by article 89A of that Order (providing credit information services) where carried on by a person who also carries on an activity of the kind specified by any of paragraphs (a) to (e),

except in so far as the activity relates to a credit agreement under which the obligation of the borrower to repay is secured, or to be secured, by a legal mortgage on land.

(3) The case specified in this paragraph is where a supplier (other than a domestic premises supplier) carries on the activity for the purposes of or in connection with the sale of goods or

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(**a**) Inserted by SI 2007/763.
(**b**) Amended by section 10 of the Financial Services Act 2012.
(**c**) Amended by section 10 of the Financial Services Act 2012.

supply of services by the supplier to a customer (who need not be the borrower under the credit agreement concerned).

(4) For the purposes of this regulation—

"borrower" includes—

(a) any person providing a guarantee or indemnity under a credit agreement; and

(b) a person to whom the rights and duties of the borrower under a credit agreement or a person falling within paragraph (a) have passed by assignment or operation of law;

"conditional sale agreement" has the meaning given by article 60L of the Regulated Activities Order;

"customer" means a person to whom a supplier sells goods or supplies services or agrees to do so;

"domestic premises supplier" means a supplier who sells goods or supplies services to customers who are individuals whilst physically present in the dwelling of the customer or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer (though a suppler who does so on an occasional basis is not to be treated as a "domestic premises supplier");

"hire-purchase agreement" has the meaning given by the Regulated Activities Order;

"not–for-profit-body" means a body which, by virtue of its constitution or any enactment—

(a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and

(b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes);

"Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

"regulated credit agreement" has the meaning given by the Regulated Activities Order;

"supplier" means a person whose main business is to sell goods or supply services and not to carry on a regulated activity (other than an activity of the kind specified by article 60N of the Regulated Activities Order (regulated consumer hire agreements).

(5) Regulation 3 of these Regulations applies for the purposes of section 39(1C)(b)(ii) as if references to the representative were references to A.".

The Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001

19. In regulation 3(1) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001(**a**)——

(a) at the end of sub-paragraph (a), omit "and";

(b) at the end of sub-paragraph (b) insert—

"and

(c) a relevant recipient of credit (within the meaning of the Regulated Activities Order) who is not an individual and who has suffered the loss in question in connection with an activity of the kind specified by article 36A, 39D, 39E, 39F, 39G, 60B, 60N, 89A or 89B of that Order,".

(**a**) SI 2001/2256. Amended by SI 2002/1775.

The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

20.—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(**a**) is amended as follows.

(2) In article 2 (interpretation: general)(**b**), insert in the appropriate place the following definitions—

““borrower” has the meaning given by article 60L of the Regulated Activities Order;”;

““consumer hire agreement” has the meaning given by the Regulated Activities Order;”;

““hirer” has the meaning given by the Regulated Activities Order;”;

““lender” has the meaning given by the Regulated Activities Order;”;

““regulated consumer hire agreement” has the meaning given by the Regulated Activities Order;”;

““relevant credit agreement” means a credit agreement (within the meaning of the Regulated Activities Order) other than a regulated mortgage agreement (within the meaning of that Order);

““relevant regulated credit agreement” means a regulated credit agreement (within the meaning of the Regulated Activities Order) under which the obligation of the borrower to repay is not secured (in whole or in part) on land;

““regulated credit agreement” has the meaning given by the Regulated Activities Order;

““relevant recipient of credit” has the meaning given by the Regulated Activities Order;”.

(3) In Article 16(2)(a)(ii) (exempt persons), after “is exempt from the general prohibition” insert “or in relation to which sections 20(1) and (1A) and 23(1A) of the Act(**c**) do not apply”.

(4) In article 28B (real time communications: introductions)(**d**), in paragraph (1)—

(a) in sub-paragraph (a)—

(i) after “paragraph” insert “4B, 5A, 5B,”;

(ii) after “10B,”, insert “10BA, 10BB,”;

(b) in sub-paragraph (b)(ii), after “is exempt from the general prohibition” insert “or in relation to which sections 20(1) and (1A) and 23(1A) of the Act do not apply”.

(5) In article 30(2) (overseas communications: solicited real time communications), in the definition of “relevant investment activities”, after “10 to 10B” insert “or 10BA or 10BB”.

(6) In article 46 (qualifying credit to bodies corporate), for “10B” substitute “10B, 10BA or 10BB”.

(7) After article 46, insert—

“46A Promotions of credit for business purposes

(1) The financial promotion restriction does not apply to a communication which relates to a controlled activity falling within paragraph 10BA of Schedule 1 and which—

(a) indicates clearly (by express words or otherwise) that a person is willing to enter into a regulated credit agreement as lender for the purposes of another person’s business, and

(a) does not indicate (by express words or otherwise) that a person is willing to enter into a regulated credit agreement as lender for any other purpose.

(2) In this article, references to a “business” do not include a business carried on by—

(a) the person communicating the promotion, or

(**a**) SI 2005/1529.
(**b**) Amended by SI 2005/3137, SI 2005/3392, SI 2010/905 and SI 2011/1265.
(**c**) Sections 20 and 23 amended by Schedule 9 to the Financial Services Act 2012.
(**d**) Amended by SI 2006/2383 and SI 2009/1342.

(b) a person carrying on an activity of the kind specified by article 36A of the Regulated Activities Order (credit broking) in relation to the regulated credit agreement to which the promotion relates.

(8) In Schedule 1—

(a) after paragraph 4A (operating a multilateral trading facility)(**a**), insert—

"**4B Credit broking**

(1) Each of the following is a controlled activity—

(a) effecting an introduction of an individual or relevant recipient of credit to a person who enters into as lender relevant regulated credit agreements by way of business;

(b) effecting an introduction of an individual or relevant recipient of credit to a person who enters into as lender regulated consumer hire agreements by way of business;

(c) effecting an introduction of an individual or relevant recipient of credit to a person who carries on an activity of the kind specified in paragraph (a) or (b) by way of business;

(d) presenting or offering an agreement which would (if entered into) be a relevant regulated credit agreement to an individual or relevant recipient of credit;

(e) assisting an individual or relevant recipient of credit by undertaking preparatory work in respect of a relevant regulated credit agreement;

(f) entering into a relevant regulated credit agreement on behalf of a lender.

(2) For the purposes of paragraph (1) it is immaterial whether the relevant regulated credit agreement or regulated consumer hire agreement is subject to the law of a country outside the United Kingdom.";

(b) after paragraph 5 (managing investments), insert—

"5A Debt adjusting

(1) The following activities are, when carried on in relation to debts due under a relevant credit agreement, controlled activities—

(a) negotiating with the lender, on behalf of the borrower, terms for the discharge of a debt;

(b) taking over, in return for payments by the borrower, that person's obligation to discharge a debt;

(c) any similar activity concerned with the liquidation of a debt.

(2) The following activities are, when carried on in relation to debts due under a consumer hire agreement, controlled activities—

(a) negotiating with the owner, on behalf of the hirer, terms for the discharge of a debt;

(b) taking over, in return for payments by the hirer, that person's obligation to discharge a debt;

(c) any similar activity concerned with the liquidation of a debt.

5B Debt-counselling

(1) Advising a borrower about the liquidation of a debt due under a relevant credit agreement is a controlled activity.

(2) Advising a hirer about the liquidation of debts due under a consumer hire agreement is a controlled activity.";

(c) after paragraph 10B (advising on qualifying credit etc.)(**b**), insert—

(**a**) Inserted by SI 2006/3384.
(**b**) Inserted by SI 2006/2383.

"10BA Providing relevant consumer credit

Entering into a relevant regulated credit agreement as lender, or exercising or having the rights to exercise the rights of the lender under such an agreement, is a controlled activity.

10BB Providing consumer hire

Entering into a regulated consumer hire agreement as owner or exercising or having the right to exercise the rights of the owner under such an agreement is a controlled activity.";

(d) after paragraph 26C(**a**), insert—

"26D Relevant credit agreements

Rights under a relevant credit agreement

26E Consumer hire agreements

Rights under a consumer hire agreement".

The Financial Services and Markets Act 2000 (Ombudsman Scheme) (Consumer Credit Jurisdiction) Order 2007

21. The Financial Services and Markets Act 2000 (Ombudsman Scheme) (Consumer Credit Jurisdiction) Order 2007(**b**) ceases to have effect except in relation to any complaints (whenever made) which relate to an act or omission which took place before the commencement date.

The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009

22. In the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009(**c**), after article 6 (specific exemptions in respect of friendly societies), insert—

"6A Specific exemptions in respect of consumer credit

(1) This article provides exemptions from the obligations in sections 178 and 191D of the Act in relation to a person ("A") who decides to acquire, increase, reduce or cease to have control over a UK authorised person ("B") who—

(a) carries on regulated activities which are relevant credit activities, and

(b) does not carry on any other regulated activities.

(2) Where A decides to acquire or increase control over B, A is exempt from the obligation imposed by section 178 unless giving effect to the decision would result in A beginning to be in the position of holding—

(a) 33% or more of the shares in B or in a parent undertaking of B ("P"),

(b) 33% or more of the voting power in B or P, or

(c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

(3) Where A decides to reduce or cease to have control over B, A is exempt from the obligation imposed by section 191D unless giving effect to the decision would result in A ceasing to be in the position of holding—

(a) 33% or more of the shares in B or in a parent undertaking of B ("P"),

(b) 33% or more of the voting power in B or P, or

(**a**) Inserted by SI 2009/1342.
(**b**) SI 2007/383.
(**c**) SI 2009/774.

(c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

(4) In this article, "relevant credit activities" means—

(a) an activity of the kind specified by article 36A of the Regulated Activities Order (credit broking) when carried in the case specified in paragraph (5),

(b) an activity of the kind specified by article 39D of that Order (debt adjusting) when carried on—

(i) in the case specified in paragraph (5) and by a person who also carries on an activity of the kind specified by sub-paragraph (a),

(ii) by a person who also carries on an activity of the kind specified by sub-paragraph (d) or (e), or

(iii) by a not-for-profit body,

(c) an activity of the kind specified by article 39E of that Order (debt-counselling) when carried on—

(i) in the case specified in paragraph (5) and by a person who also carries on an activity of the kind specified by sub-paragraph (a),

(ii) by a person who also carries on an activity of the kind specified by sub-paragraph (d) or (e), or

(iii) by a not-for-profit body,

(d) an activity of the kind specified by article 60B of the that Order (regulated credit agreements) if—

(i) it is carried on by a supplier,

(ii) no charge (by way of interest or otherwise) is payable by the borrower in connection with the provision of credit under the regulated credit agreement, and

(iii) the regulated credit agreement is not a hire-purchase agreement or a conditional sale agreement,

(e) an activity of the kind specified by article 60N of that Order (regulated consumer hire agreements), or

(f) an activity of the kind specified by article 89A of that Order (providing credit information services) where carried on by a person who also carries on an activity of the kind specified by any of paragraphs (a) to (e),

except in so far as the activity relates to a credit agreement under which the obligation of the borrower to repay is secured, or to be secured, by a legal mortgage on land.

(5) The case specified in this paragraph is where a supplier (other than a domestic premises supplier) carries on the activity for the purposes of or in connection with the sale of goods or supply of services by the supplier to a customer (who need not be the borrower under the credit agreement concerned).

(6) For the purposes of this article—

"borrower" includes—

(a) any person providing a guarantee or indemnity under a credit agreement; and

(b) a person to whom the rights and duties of the borrower under the regulated credit agreement or a person falling within sub-paragraph (a) have passed by assignment or operation of law;

"conditional sale agreement" has the meaning given by article 60L of the Regulated Activities Order;

"customer" means a person to whom a supplier sells goods or supplies services or agrees to do so;

"domestic premises supplier" means a supplier who sells goods or supplies services to customers who are individuals whilst physically present in the dwelling of the customer or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer (though a suppler who does so on an occasional basis is not to be treated as a "domestic premises supplier");

"hire-purchase agreement" has the meaning given by the Regulated Activities Order;

"not-for-profit body" means a body which, by virtue of its constitution or any enactment—

(a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and

(b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes);

"Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

"regulated credit agreement" has the meaning given by the Regulated Activities Order;

"supplier" means a person whose main business is to sell goods or supply services and not to carry on a regulated activity (other than an activity of the kind specified by article 60N of the Regulated Activities Order (regulated consumer hire agreements).".

PART 6

Transitional provisions

Interim permission

23.—(1) Unless paragraph (9) applies, from and including the commencement date, any relevant person ("P") who, immediately before the commencement date, held a standard licence under the 1974 Act(**a**) is to be treated as having an interim permission to carry on—

(a) if P's licence covered the carrying on of an ancillary credit business in so far as it comprised or related to credit brokerage (within the meaning of the 1974 Act), the regulated activity specified in article 36A of the Regulated Activities Order (credit broking),

(b) if—

(i) P's licence covered the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act), and

(ii) immediately before the commencement date P carried on an activity which, if carried on after the commencement date would be an activity of the kind specified in article 36G of the Regulated Activities Order (maintaining arrangements in relation to lending),

the regulated activity specified in article 36G of the Regulated Activities Order,

(c) otherwise, those regulated activities which are activities which were described in the licence.

(2) On and after the commencement date, any relevant person ("P") who, immediately before the commencement date—

(a) held a standard licence under the 1974 Act, and

(b) was a credit intermediary (within the meaning given by section 160A of the 1974 Act(**a**)),

(**a**) "Standard licence" is defined in section 189 of the 1974 Act. By virtue of section 32A(5) of that Act, a licence under a suspended licence (see section 32A) is to be treated, in respect of the period of suspension, as if the licence had not been issued.

is to be treated as having an interim permission to carry on regulated activities of the kind specified by articles 36A(1)(d) to (f) of the Regulated Activities to the extent that P was carrying on such activities immediately before the commencement date; and such interim permission may be in addition to any interim permission the person obtains by virtue of paragraph (1).

(3) For the purposes of paragraphs (1) and (2), P is a "relevant person" if P has, in the period beginning with XXX 2013 and ending on 31st March 2014 (including both days), notified the FCA of P's desire to obtain interim permission under this article and paid any fee which is provided for in rules made by the FCA for this purpose.

(4) On and after the notice date (see paragraph (6)), a relevant recent licensee ("P") is to be treated as having an interim permission to carry on—

(a) if—

(i) P's licence covered the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act), and

(ii) immediately before the commencement date P carried on an activity which, if carried on after the commencement date would be an activity of the kind specified in article 36G of the Regulated Activities Order (maintaining arrangements in relation to lending),

the regulated activity specified in article 36G of the Regulated Activities Order,

(b) if P's licence covered the carrying on of an ancillary credit business in so far as it comprised or related to credit brokerage (within the meaning of the 1974 Act), the regulated activity specified in article 36A of the Regulated Activities Order (credit broking),

(c) otherwise, those regulated activities which are activities which were described in the licence.

(5) On and after the commencement date, any relevant recent licencee ("P") who, immediately before the commencement date—

(a) held a standard licence under the 1974 Act, and

(b) was a credit intermediary (within the meaning given by section 160A of the 1974 Act(**b**)),

is to be treated as having an interim permission to carry on regulated activities of the kind specified by articles 36A(1)(d) to (f) of the Regulated Activities to the extent that P was carrying on such activities immediately before the commencement date; and such interim permission may be in addition to any interim permission the person obtains by virtue of paragraph (4).

(6) For the purposes of paragraphs (4) and (5), P is a "relevant recent licensee" if—

(a) P has been given a standard licence under the 1974 Act in the period beginning 18th March 2014 and ending on 31st March 2014 (including both days),

(b) on a date in the period beginning on 1st April 2014 and ending on 14th April 2014 (including both days) ("the notice date") P notified the FCA of P's desire to obtain interim permission under this article and has in that period paid any fee which is provided for in rules made by the FCA for this purpose.

(7) Subject to paragraph (7) and article 26 (application of Act), an interim permission is to be treated as—

(a) if P was an authorised person immediately before commencement, a variation of permission,

(b) in any other case, a Part 4A permission.

(8) If P was, immediately before the commencement date, subject to a requirement imposed by the OFT under section 33A of the 1974 Act(**a**) and P obtains interim permission under this article,

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(**a**) Inserted by SI 2010/1010.
(**b**) Inserted by SI 2010/1010.

that requirement is to be treated as a requirement imposed by the FCA under section 55L of the Act (subject to any necessary modifications).

(9) For the purpose of paragraph (1) and (4), it is the effect of the licence that matters, not how the activities for which a licence is given are described.

(10) This paragraph applies if—

(a) P has, prior to the commencement date, notified the FCA that P does not wish to obtain interim permission under this article; or

(b) the FCA has, prior to the commencement date, notified P in writing, that in the FCA's opinion, P is not carrying on the activities which are described in P's licence.

Procedure for notifying FCA

24.—(1) Notices under article 23(3), (6) and (10)(a) must—

(a) be made in such manner as the FCA may direct; and

(b) contain or be accompanied by such other information as the FCA may reasonably require.

(2) Different directions may be given and different requirements imposed, in relation to different applications or categories of application.

(3) At any time after receiving the notification, the FCA may require the person giving the notification to provide the FCA with such further information as it reasonably considers necessary to enable the FCA to discharge its functions.

(4) The FCA may require information to be provided in such form, or for it to be verified in such a way, as the FCA may direct.

Duration of interim permission

25.—(1) P's interim permission, in so far as it relates to a particular regulated activity or class of activity ceases to have effect—

(a) if P applies to the FCA or PRA (as appropriate) for Part 4A permission to carry on that activity or (as the case may be) to vary P's permission to add that activity to those to which the permission relates, before a date specified in a direction given by the FCA ("the application date"), the date on which that application is determined;

(b) if P does not make such an application before the application date, the application date;

(c) in any other case, 1st April 2016.

(2) Paragraph (1) does not affect the ability of the FCA or PRA to vary or to cancel an interim permission under the Act.

(3) For the purposes of paragraph (1)(a) the date on which an application is determined is—

(a) if the applicant by notice withdraws the application under section 55V(4) of the Act, the date on which the notice of withdrawal takes effect;

(b) if the application is granted by the FCA or PRA (as appropriate), the date on which the written notice given under section 55V(5) of the Act takes effect;

(c) if FCA or PRA gives a decision notice under section 388 of the Act in relation to the application, the date on which that notice takes effect.

(4) Different directions may be given in relation to different classes of person and different dates may be specified for different descriptions of activities.

(**a**) Inserted by section 38 of the Consumer Credit Act 2006.

Application of the Act to persons with an interim permission

26.—(1) This article applies to each person ("A") who has an interim permission by virtue of this Order.

(2) A's interim permission is to be disregarded for the purposes of—

(a) section 38(2) of the Act (exemption orders);

(b) section 55A(3)(**a**) of the Act (application for permission);

(c) sections 55E and 55F of the Act (giving permission).

(3) For the purposes of section 21(2) of the Act (restrictions on financial promotions), if A does not have permission other than an interim permission, A may only approve the content of a communication if the communication invites or induces a person to—

(a) enter into (or offer to enter into) an agreement the making or performance of which constitutes a controlled activity which corresponds to a regulated activity for which A has interim permission; or

(b) exercise any rights conferred by a credit agreement (within the meaning of the Regulated Activities Order) to acquire, dispose of, underwrite or convert a controlled investment which is relevant to the regulated activity for which A has interim permission to carry on.

(4) For the purposes of section 39 of the Act (appointed representatives), A—

(a) may not be a principal in relation to an activity for which A has interim permission;

(b) may be an appointed representative in relation to an activity which A does not have interim permission to carry on.

(5) If A applies to the FCA or PRA—

(a) under section 55A of the Act for Part 4A permission to carry on a regulated activity, or

(b) under section 55H or 55I of the Act to vary a Part 4A permission that A has otherwise than by virtue of this Order by adding a regulated activity to those which the permission relates,

the application is to be treated as relating also to the regulated activities for which A has interim permission.

(6) When the FCA or PRA—

(a) exercises its power under section 55J of the Act (variation or cancellation on initiative of regulator) in relation to A,

(b) exercises its power under section 55H (in the case of the FCA) or section 55I of the Act (in the case of the PRA) (variation at request of authorised person) to remove a regulated activity from those for which A has interim permission relates, or

(c) exercises its power under section 55L of the Act (in the case of the FCA) or section 55M of the Act (in the case of the PRA) (imposition of requirements by the regulator) in relation to A,

section 55B(3) of the Act (satisfaction of threshold conditions) does not require the regulator to ensure that A will satisfy, and continue to satisfy, in relation to the regulated activities for which A has an interim permission, the threshold conditions for which that regulator is responsible.

(7) A is not to be regarded as an authorised person for the purposes of Part 12 of the Act (control over authorised person) unless A has permission otherwise than by virtue of an interim permission.

(8) Subsection (3)(a) of section 213 (compensation scheme) does not apply to a person who is a relevant person (within the meaning of that section) only by virtue of having an interim permission.

(**a**) Sections 55A to 55Z4 inserted by section 9 of the Financial Services Act 2012.

(9) For the purposes of this article, a "credit-related regulated activity" is an activity which is a regulated activity by virtue of Part 2 of this Order.

Grandfathered permission for certain debt-counsellors

27.—(1) On and after the commencement date, a not-for-profit body which, immediately before the commencement date, was covered by a group licence under the 1974 Act to carry on the activity of debt-counselling (within the meaning of the 1974 Act) is to be treated for all purposes as having Part 4A permission to carry on a regulated activity of the kind specified by articles 39E (debt-counselling), 39D (debt adjusting) and 89A (providing credit information services) of the Regulated Activities Order to the extent that those regulated activities are activities which are described in the licence.

(2) In this article, a "not-for-profit body" means a body which, by virtue of its constitution or any enactment—

(a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and

(b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes).

Credit-related rules and guidance made by the FCA

28.—(1) This article applies to rules made or guidance given by the FCA which relates to credit-related regulated activities or the carrying on of those activities.

(2) Section 1B(4) of the Act (competition duty) does not apply to the making of rules or to the giving of such guidance to which this article applies to the extent that—

(a) the rules are the same as, or substantially the same as, or have the same, or substantially the same effect, as any of the Consumer Credit Act provisions, or

(b) the guidance is the same as, or substantially the same as, or which has the same, or substantially the same effect, as any of the Consumer Credit Act provisions.

(3) Section 138I(2)(a) of the Act (cost benefit analysis) does not apply in relation to a draft of rules to which this article applies which are the same as, or substantially the same as, any of the Consumer Credit Act provisions or which have the same, or substantially the same, effect as any such provisions.

(4) For the purposes of this article, the "Consumer Credit Act provisions" are—

(a) the Consumer Credit Act 1974,

(b) any subordinate legislation made, or guidance issued, under that Act, and

(c) any notice issued by the OFT under section 86A of that Act(**a**) (information sheets on arrears and defaults),

disregarding the effect of article 13 (amendment of the Consumer Credit Act 1974) and any order made prior to the commencement date under section 107 of the Financial Services Act 2012.

(5) Section 138I of the Act (consultation by the FCA) is to apply as if for subsections (7) and (8) there were substituted—

"(7) "Cost benefit analysis" means—

(a) an analysis of the difference between the costs and benefits of the Consumer Credit Act provisions and the costs and benefits that will arise—

(i) if the proposed rules are made, or

(ii) if subsection (5) applies, from the rules that have been made, and

(b) subject to subsection (8), an estimate of that difference.

(**a**) Inserted by section 8 of the Consumer Credit Act 2006.

(7A) For the purposes of subsection (7), the "Consumer Credit Act provisions" are—

(c) the Consumer Credit Act 1974,

(d) any subordinate legislation made, or guidance issued, under that Act, and

(e) any notice issued by the OFT under section 86A of that Act (information sheets on arrears and defaults),

disregarding the effect of article 13 (amendments of the Consumer Credit Act 1974) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 and any order made prior to the commencement date under section 107 of the Financial Services Act 2012.

(8) If, in the opinion of the FCA—

(f) the difference referred to in subsection (7) cannot reasonably be estimated; or

(g) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate the difference but must include a statement of the FCA's opinion and an explanation of it.".

(6) The requirements of section 138I of the Act (as modified above) in so far as they apply to a proposal to make rules to which this article applies may be satisfied by things done (wholly or in part) before the date on which this article comes into force.

(7) It is immaterial for the purposes of paragraph (5) if, when the things were done, they were not compatible with section 138I of the Act or, in the case of things done by the Financial Services Authority prior to 1st April 2013, section 155 of the Act.

(8) In this article, "credit-related regulated activities" means the activities which will, from the commencement date, be regulated activities by virtue of Part 2 of this Order.

Credit-related rules made by the PRA

29.—(1) This article applies to rules made by the PRA which relate to credit-related regulated activities or the carrying on of those activities.

(2) Section 138J(2)(a) of the Act (cost benefit analysis) does not apply in relation to a draft of rules to which this article applies which are the same as, or substantially the same as, any of the Consumer Credit Act provisions or which have the same, or substantially the same, effect as any such provisions.

(3) For the purposes of this article, the "Consumer Credit Act provisions" are—

(a) the Consumer Credit Act 1974,

(b) any subordinate legislation made, or guidance issued, under that Act, and

(c) any notice issued by the OFT under section 86A of that Act(**a**) (information sheets on arrears and defaults),

disregarding the effect of article 13 (amendments of the Consumer Credit Act 1974) and any order made prior to the commencement date under section 107 of the Financial Services Act 2012.

(4) Section 138J of the Act (consultation by the PRA) is to apply as if for subsections (7) and (8) there were substituted—

"(7) "Cost benefit analysis" means—

(a) an analysis of the difference between the costs and benefits of the Consumer Credit Act provisions and the costs and benefits that will arise—

(i) if the proposed rules are made, or

(ii) if subsection (5) applies, from the rules that have been made, and

(b) subject to subsection (8), an estimate of that difference.

(**a**) Inserted by section 8 of the Consumer Credit Act 2006.

(7A) For the purposes of subsection (7), the "Consumer Credit Act provisions" are—

(c) the Consumer Credit Act 1974,

(d) any subordinate legislation made, or guidance issued, under that Act, and

(e) any notice issued by the OFT under section 86A of that Act (information sheets on arrears and defaults),

disregarding the effect of article 13 (amendment of the Consumer Credit Act 1974) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 and any order made prior to the commencement date under section 107 of the Financial Services Act 2012.

(8) If, in the opinion of the PRA—

(f) the difference referred to in subsection (7) cannot reasonably be estimated; or

(g) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate the difference but must include a statement of the PRA's opinion and an explanation of it.".

(5) The requirements of section 138J of the Act (as modified above) in so far as they apply to a proposal to make rules to which this article applies may be satisfied by things done (wholly or in part) before the date on which this article comes into force.

(6) For the purposes of paragraph (4))—

(a) it is immaterial if, when the things were done, they were not compatible with section 138J of the Act or, in the case of things done by the Financial Services Authority prior to 1st April 2013, section 155 of the Act;

(b) the requirements may be satisfied by things done by the Financial Services Authority.

(7) In this article, "credit-related regulated activities" means the activities which will, from the commencement date, be regulated activities by virtue of Part 2 of this Order.

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies additional activities which are to be treated as "regulated activities" for the purposes of the Financial Services and Markets Act 2000 (c.8) ("the Act"). The effect of this is that a person who carries on such an activity in the United Kingdom must be authorised under the Act to carry out the activities or an exempt person (see section 19 of the Act).

Part 2 of the Order specifies the new regulated activities. These are credit broking, maintaining arrangements in relation to lending, debt adjusting, debt-counselling, debt-collecting, debt administration, entering into etc. a regulated credit agreement, entering into etc a regulated consumer hire agreement, providing credit information services and providing credit references.

Part 3 of the Order amends the Act in connection with the new regulated activities provided for in Part 2. Part 3 also contains transitional provisions relating to those amendments. Part 3 also designates the regulated activities which are relevant for the purpose of section 23(1B) of the Act (authorised person carrying on regulated activities without permission to be guilty of an offence). Part 3 also sets out requirements relating to information which certain persons who are not authorised persons who carry on credit broking must comply with.

Part 4 of the Order amends the Consumer Credit Act 1974 (c.39).

Part 5 of the Order amends secondary legislation made under the Act.

Part 6 of the Order contains transitional provisions.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.hm-treasury.gov.uk and is published alongside the Order on www.legislation.gov.uk.

DRAFT FOR CONSULTATION

Draft Order laid before Parliament under section 116(2) of the Financial Services Act 2012, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2013 No.*

FINANCIAL SERVICES AND MARKETS

The Financial Services Act 2012 (Consumer Credit) Order 2013

Made - - - -	***
Coming into force - -	1st April 2014

In accordance with section 116(2) of the Financial Services Act 2012(**a**), a draft of this Order has been laid before Parliament and approved by a resolution of each House.

In accordance with section 107(5) of the Financial Services Act 2012, the Department of Enterprise, Trade and Investment has consented to the provisions of this Order which are made by virtue of section 107(2)(i).

The Treasury make the following Order, in exercise of the powers conferred by sections 107 and 115(2) of the Financial Services Act 2012:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services Act 2012 (Consumer Credit) Order 2013 and comes into force on 1st April 2014.

(2) In this Order—

"the Act" means the Financial Services and Markets Act 2000(**b**);

"the 1974 Act" means the Consumer Credit Act 1974(**c**);

"relevant offence" has the meaning given in section 107(4)(b) of Financial Services Act 2012.

Application of provisions of the Act to failure to comply with requirements of the 1974 Act

2.—(1) The Act is applied as follows.

(2) Section 1L(2) (supervision, monitoring and enforcement)(**d**) applies as if the reference to requirements imposed by or under the Act included a reference to requirements imposed by or under the 1974 Act.

(**a**) 2012 c.21.
(**b**) 2000 c.8.
(**c**) 1974 c.39.
(**d**) Inserted by section 6 of the Financial Services Act 2012.

(3) Section 66 (disciplinary powers)(**a**) applies if the reference in subsection (2)(b)(i) to a requirement imposed by or under the Act included a reference to a requirement imposed by or under the 1974 Act.

(4) Section 168(3) (appointment of persons to carry out investigations in particular cases)(**b**) applies if it appears to the FCA that there are circumstances suggesting that a person may have failed to comply with a requirement imposed by the 1974 Act where failure to comply with the requirement is, under the 1974 Act, a criminal offence.

(5) Section 194(1) (general grounds on which power of intervention is exercisable)(**c**) applies as if the reference to a requirement imposed by or under the Act includes a reference to a requirement imposed by or under the 1974 Act.

(6) Section 204A (meaning of "relevant requirement" and "appropriate regulator")(**d**) applies as if—

(a) the definition of "relevant requirement" in subsection (2) includes a requirement imposed by or under the 1974 Act;

(b) as if the reference in subsection (6) to any other requirement imposed by or under the Act included a requirement imposed or by or under the 1974 Act.

(7) Section 380 (injunctions)(**e**) applies as if the definition of "relevant requirement" in subsection (6) included a requirement imposed by or under the 1974 Act.

(8) Section 382 (restitution orders)(**f**) applies as if the definition of "relevant requirement" in subsection (7) included a requirement imposed by or under the 1974 Act.

(9) Section 384 (power of FCA or PRA to require restitution)(**g**) applies as if the definition of "relevant requirement" in subsection (7) included a requirement imposed by or under the 1974 Act.

(10) Section 402(1) (power of FCA to institute proceedings for certain offences)(**h**) applies as if, at the end the following is inserted—

"(d) the Consumer Credit Act 1974.".

Statements of Policy

3.—(1) The FCA must prepare and issue a statement of policy setting out its policies and procedures in relation to the exercise of its powers under sections 66, 194, 205, 206 and 206A of the Act in relation to the failure of any person to comply with a requirement imposed by or under the 1974 Act.

(2) Before the FCA issues a statement of policy under paragraph (1), the FCA must prepare and issue a statement of policy with respect to—

(a) the imposition of penalties, suspensions or restrictions imposed under section 66, 194,205, 206 or 206A of the Act;

(b) the amount of penalties imposed under section 66 and 206 of the Act;

(c) the period for which suspensions or restrictions imposed under sections 66, 194 and 206A of the Act are to have effect.

(**a**) Amended by S.I. 2007/126, section 12 of and Schedule 2 to the Financial Services Act 2010 and Schedule 5 to the Financial Services Act 2012.
(**b**) Amended by S.I. 2007/126, section 62 of and Schedule 7 to the Counter Terrorism Act 2008, section 24 and Schedule 2 to the Financial Services Act 2010, S.I. 2012/1906, S.I. 2012/2554, and Schedule 12 to the Financial Services Act 2012.
(**c**) Amended by Schedule 25 to the Enterprise Act 2002, section 33 of the Consumer Credit Act 2006, section 3 of the Financial Services Act 2010 and Schedule 4 to the Financial Services Act 2012.
(**d**) Inserted by Schedule 9 to the Financial Services Act 2012.
(**e**) Amended by S.I. 2007/126 and by Schedule 9 to the Financial Services Act 2012.
(**f**) Amended by S.I. 2007/126 and Schedule 9 to the Financial Services Act 2012.
(**g**) Amended by S.I. 2007/126 and by Schedule 9 to the Financial Services Act 2012.
(**h**) Amended by Schedule 7 to the Counter-Terrorism Act 2008 and Schedule 9 to the Financial Services Act 2012.

(3) The FCA's policy in determining what the amount of a penalty should be, or what period for which a suspension or restriction is to have effect should be, must require the FCA to have regard to—

(a) the seriousness of the failure to comply in question in relation to the nature of the requirement at issue;

(b) the extent to which that failure to comply was deliberate or reckless;

(c) whether the person against whom the action is to be taken is an individual.

(4) The FCA may at any time alter or replace a statement issued by it under this article.

(5) If a statement issued under this article is altered or replaced by the FCA, the FCA must issue the altered or replacement statement.

(6) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this article.

(7) A statement by the FCA issued under this article must be published by the FCA in a way appearing to the FCA to be best calculated to bring it to the attention of the public.

(8) In exercising, or deciding whether to exercise, its powers under section 66, 194, 205, 206 or 206A of the Act in the case of any particular contravention, the FCA must have regard to any statement published by it under this article and in force at the time when the failure to comply in question occurred.

Disciplinary measures: criminal proceedings and conviction under the 1974 Act

4. A person may not be convicted of an offence under the 1974 Act in respect of an act or omission in a case where the FCA has exercised its powers under sections 66, 194, 205, 206, 206A, 380, 382 or 384 of the Act in relation to that person in respect of that act or omission.

Amendments to the Consumer Credit Act 1974

5.—(1) The 1974 Act is amended as follows.

(2) In section 16 (exempt agreements)(**a**)—

(a) for subsection (1) substitute—

"(1) The Act does not regulate a consumer credit agreement where the creditor is a local authority or a body specified or of a description specified in rules made by the FCA under section 60E(3) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.";

(b) omit subsections (3) to (4);

(c) in subsection (5), for "Secretary of State" substitute "Treasury";

(d) in subsection (6), for "Secretary of State" substitute "Treasury".

(3) In section 16A(1) (exemption relating to high net worth debtors and hirers)(**b**), for of State" substitute "Treasury".

(4) In section 16B(4) (exemption relating to businesses)(**c**), for "Secretary of State" substitute "Treasury".

(5) In section 60 (form and content of agreements)(**d**)—

(a) in subsection (1)—

(**a**) Amended by Schedule 4 to the Telecommunications Act 1984, section 120 of and Schedule 18 to the Buildings Societies Act 1986, section 22 of the Housing and Planning Act 1986, section 88 of the Banking Act 1987, Schedule 19 to the Housing Act 1996, S.I. 1997/627, S.I. 2001/544, S.I. 2001/3649, Schedule 17 to the Communications Act 2003, section 22 of and Schedule 4 to the Consumer Credit Act 2006, Schedule 8 to the Charities Act 2006, S.I. 2006/2383, S.I. 2009/1941, S.I. 2010/866 and Schedule 18 to the Financial Services Act 2012.

(**b**) Amended by section 3 of the Consumer Credit Act 2006.

(**c**) Amended by section 4 of the Consumer Credit Act 2006 and section 25 of the Energy Act 2011.

(**d**) Amended by Schedule 25 to the Enterprise Act 2002 and S.I. 2010/1010.

(i) for "Secretary of State" in each instance that it occurs substitute "Treasury";

(ii) for "him" substitute "them".

(b) in subsection (3), for "OFT" in each instance that it occurs substitute "FCA";

(c) in subsection (4), for "OFT" substitute "FCA".

(6) In section 64(4) (duty to give notice of cancellation rights)(**a**), for "OFT" in each instance that it occurs substitute "FCA".

(7) In section 74 (exclusion of certain agreements from Part V)(**b**)—

(a) omit paragraph (a) of subsection (1B);

(b) omit paragraph (b) of subsection (1C);

(c) omit paragraphs (b) and (c) of subsection (1D);

(d) omit paragraphs (b) and (c) of subsection (IF);

(e) in subsection (3), for "OFT" in each instance that it occurs substitute "FCA".

(8) In section 86A (OFT to prepare information sheets on arrears and default)(**c**)—

(a) in the heading, for "OFT" substitute "FCA";

(b) in subsection (1), for "OFT shall prepare, and give general notice of," substitute "FCA shall prepare";

(c) in subsection (6), for "OFT" substitute "FCA".

(9) In section 93(b) (interest not to be increased on default), omit "by virtue of section 20(2)".

(10) In section 101 (right to terminate hire agreement)(**d**)—

(a) in subsection (8), for "OFT" in each instance that it occurs substitute "FCA";

(b) in subsection (8A)—

(i) for "OFT" substitute "FCA";

(ii) omit the word "general" before the words "notice direct that".

(11) In section 113 (Act not to be evaded by use of security)(**e**), in subsection (2), for "OFT" substitute "FCA".

(12) In section 123(6) (restrictions on taking and negotiating instruments), for "Secretary of State" substitute "Treasury".

(13) In section 159(8)(a) (correction of wrong information)(**f**), for "OFT" substitute "FCA".

(14) In section 160 (alternative procedure for business consumers)(**g**)—

(a) in subsection (1), for "OFT" substitute "FCA";

(b) in subsection (3), for "OFT" substitute "FCA"; and

(c) in subsection (4), for "OFT" in each instance that it occurs substitute "FCA".

(15) In section 161 (enforcement authorities)(**h**)—

(a) after subsection (1), insert—

"(1A) Subsection (1) operates without prejudice to the powers of the FCA in relation to this Act further to the Financial Services Act 2012 (Consumer Credit) Order 2013;

(b) in subsection (3), for "OFT" substitute "FCA".

(**a**) Amended by Schedule 25 to the Enterprise Act 2002 and S.I. 2004/3236.
(**b**) Amended by section 38 of the Banking Act 1979, S.I. 1987/2117, Schedule 25 to the Enterprise Act 2002, S.I. 2008/1816 and S.I. 2010/1010.
(**c**) Inserted by section 8 of the Consumer Credit Act 2006.
(**d**) Amended by S.I. 1998/997, Schedule 25 to the Enterprise Act 2002 and section 63 of the Consumer Credit Act 2006.
(**e**) Amended by section 4 of the Minors' Contracts Act 1987 and Schedule 25 to the Enterprise Act 2002.
(**f**) Amended by section 62 of and Schedule 14 to the Data Protection Act 1998, S.I. 2000/183, Schedule 2 to the Freedom of Information Act 2000 and Schedule 25 to the Enterprise Act 2002.
(**g**) Amended by section 62 of and Schedule 14 to the Data Protection Act 1998 and Schedule 25 to the Enterprise Act 2002.
(**h**) Amended by Schedule 25 to the Enterprise Act 2002.

(16) In section 166 (notification of convictions and judgments to OFT)(**a**)—

(a) in the heading, for "OFT" substitute "FCA"; and

(b) in paragraph (a)—

(i) for "functions of the OFT under this Act" substitute "functions of the FCA under the Financial Services and Markets Act 2000 or this Act"; and

(ii) for "brought to the OFT's attention" substitute "brought to the FCA's attention".

(17) In section 170 (no further sanctions for breach of Act)(**b**)—

(a) in subsection (1) after "except to the extent (if any) expressly provided for by or under this Act" insert "or by or under the Financial Services and Markets Act 2000 by any order made under section 107 of the Financial Services Act 2012";

(b) in subsection (2), for "OFT" substitute "FCA".

(18) In section 171 (onus of proof in various proceedings)(**c**), omit subsections (3), (5), and (6).

(19) In section 173 (contracting-out forbidden)(**d**), in subsection (3), for "OFT" substitute "FCA".

(20) In section 174A (powers to require provision of information or documents etc)(**e**), for subsection (5) substitute—

"(5) In this section "relevant authority" means an enforcement authority or an officer of an enforcement authority."

(21) In section 189 (definitions)(**f**)—

(a) after the definition of "exempt agreement" insert—

""FCA" means the Financial Conduct Authority".

Application of provisions of the 1974 Act in relation to failure to comply with the Act

6.—(1) The 1974 Act is applied as follows.

(2) Section 162 (powers of entry and inspection)(**g**) applies as if references to "any provision of or under this Act" included a reference to sections 19(1) and 23(1A) of the Act insofar as they relate to a relevant offence.

(3) Section 163 (compensation for loss) applies in connection with the powers of a duly appointed officer of an enforcement authority as if the reference to "an offence under this Act" in subsection (1) also included a reference to an offence under section 19(1) or 23(1A) of the Act which is a relevant offence.

(4) Section 164 (power to make test purchases etc) applies as if—

(a) the reference to "any provisions of or under this Act" in subsection (1) includes a reference to sections 19(1) and 23(1A) of the Act insofar they relate to a relevant offence; and

(b) the reference to "proceedings under this Act" in subsection (4) included a reference to proceedings for an offence under section 19(1) or 23(1A) of the Act which is a relevant offence.

(**a**) Amended by Schedule 25 to the Enterprise Act 2002.
(**b**) Amended by Schedule 25 to the Enterprise Act 2002.
(**c**) Amended by Schedule 4 to the Consumer Credit Act 2006.
(**d**) Amended by Schedule 25 to the Enterprise Act 2002.
(**e**) Inserted by section 51 of the Consumer Credit Act 2006.
(**f**) Amended by Schedule 2 to the Sale of Goods Act 1979, Schedule 17 to the Local Government Act 1985, Schedule 18 to the Building Societies Act 1986, section 88 of the Banking Act 1987, Schedule 16 to the Electricity Act 1989, Schedule 2 to the Age of Legal Capacity (Scotland) Act 1991, Schedule 22 to the Friendly Societies Act 1992, the Electricity (Northern Ireland) Order 1992, S.I. 1992/231, S.I. 2001/3649, Schedules 16 and 18 to the Local Government (Wales) Act 1994, Schedule 13 to the Local Government etc (Scotland) Act 1994, Schedules 25 and 26 to the Enterprise Act 2002, S.I. 2004/3236, sections 5, 18, 23, 24, 25, 27, 51, 58 of and Schedule 4 to the Consumer Credit Act 2006, S.I. 2006/242, S.I. 2008/2826, S.I. 2009/1835 and S.I. 2010/1010.
(**g**) Amended by section 51 of and Schedules 4 and 25 to the Consumer Credit Act 2006.

(5) Section 165 (obstruction of authorised persons)(**a**) applies as if—

(a) the reference to "acting in pursuance of this Act" in paragraph (a) of subsection (1) also included a reference to acting in pursuance of a relevant offence;

(b) the reference to "performing his functions under this Act" in paragraph (c) of subsection (1) also included a reference to performing functions in relation to section 19(1) or 23(1A) of the Act insofar as those provisions relate to a relevant offence.

(6) Section 174A (powers to require provision of information or documents etc) applies where a relevant authority (as defined in subsection (5)) is performing functions in relation to section 19(1) or 23(1A) of the Act insofar as those provisions relate to a relevant offence.

Functions of the FCA under the Consumer Credit Act 1974

7. References in the Act to the FCA's functions under the Act are to be treated as including the FCA's functions under the 1974 Act resulting from this Order.

Functions of local weights and measures authorities and the Department of Enterprise, Trade and Investment in Northern Ireland under the Act

8.—(1) Local weights and measures authorities may institute proceedings in England and Wales for a relevant offence.

(2) The Department of Enterprise, Trade and Investment in Northern Ireland may institute proceedings in Northern Ireland for a relevant offence.

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in connection with the transfer of responsibility for the regulation of consumer credit from the Office of Fair Trading to the Financial Conduct Authority (the FCA) to be responsible for the regulation of consumer credit from 1 April 2014.

Article 1 applies certain provisions of the Financial Services and Markets Act 2000 (the Act) to the Consumer Credit Act 1974 (the 1974 Act). These provisions ensure that the FCA is able to use its powers the Act to investigate and take appropriate action in relation to contraventions of the 1974 Act.

Article 2 provides for the FCA to issue a statement of policy setting out its policies and procedures in relation to the application of sections 66, 194, 205, 206 and 206A of the Act (covering disciplinary powers, intervention, public censure, financial penalties and suspending permission to carry on regulated activities) to contraventions of the 1974 Act.

Article 3 ensures that a person does not commit an offence under the 1974 Act in relation to an act or omission in cases where the FCA has already taken certain disciplinary or enforcement action under the Act for that act or omission.

Article 5 makes a number of amendments to the 1974 Act to reflect the fact that the FCA will take be responsible for regulating consumer credit (rather than the Office of Fair Trading)

Article 6 applies certain provisions of the 1974 Act to contraventions of certain provisions of the Act. These provisions ensure that where a duly appointed officer of a local weights and measures authority (commonly known as trading standards) or the Department of Enterprise, Trade and

(**a**) Inserted by section 51 of the Consumer Credit Act 2006.

Investment in Northern Ireland (an "enforcement authority" under the 1974 Act) considers an offence under section 19(1) or 23(1A) of the Act, which relates to consumer credit may have been committed, that officer may use certain 1974 Act powers to investigate.

Article 7 provides that references in the Act to the FCA's functions under the Act are treated as including references to the FCA's functions under the 1974 Act.

Article 8 provides for trading standards bodies to institute proceedings in England and Wales for certain offences under the Act in so far as they relate to an activity connected to consumer credit.

Article 8 also provides for the Department of Enterprise, Trade and Investment in Northern Ireland to institute proceedings in Northern Ireland for such offences.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.hm-treasury.gov.uk and is published alongside the Order on www.legislation.gov.uk.

D Impact Assessment

D.1 This annex contains a 'consultation stage' impact assessment which assesses the costs and benefits of the transfer of consumer credit regulation from the OFT to the FCA. A 'final stage' impact assessment will be issued when the Government lays secondary legislation before Parliament later this year.

D.2 This impact assessment draws on research and analysis commissioned by the FSA to support the cost-benefit analysis it has published alongside its consultation paper. Respondents may wish to read the FSA's CBA alongside this impact assessment.

D.3 The Government is keen to use this consultation exercise to gather further evidence to support our analysis of the impact of the transfer. **We would therefore welcome responses in relation to the costs and benefits to industry and consumers of the proposed regime, and on any unintended consequences. Responses should include evidence where possible.**

D.4 **Consultation responses on the impact assessment, specifically responses to the question above, are requested by 17 April.** Details of how to respond are set out in Annex A. This slightly earlier deadline is requested in order to allow Government sufficient time to take account of stakeholder views and evidence in the final stage impact assessment and for the independent Regulatory Policy Committee to scrutinise the IA before publication. We are grateful for respondents' understanding and cooperation in this matter.

Title: REFORM OF THE CONSUMER CREDIT REGULATORY FRAMEWORK **IA No:** BIS 0389 **Lead department or agency:** DEPARTMENT FOR BUSINESS INNOVATION AND SKILLS **Other departments or agencies:** HM TREASURY	**Impact Assessment (IA)** **Date:** 14/02/2013 **Stage:** Consultation **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** John Wright 020 7215 3507 Matt Bowhill 020 7215 6445

Summary: Intervention and Options

RPC Opinion: Amber

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, One-Out?**	**Measure qualifies as**
£443m	-£289m	**£31m**	Yes	IN

What is the problem under consideration? Why is government intervention necessary?

Consumer credit is regulated by the OFT under the Consumer Credit Act 1974 (CCA). Other retail financial services are regulated by the FSA under the Financial Services and Markets Act 2000 (FSMA). There are two issues to be addressed. First, the CCA is insufficiently flexible to keep pace with a rapidly evolving market and tackle consumer detriment. Second, the lack of a single regulatory regime for retail financial services can lead to a lack of coherence in consumer protection and market oversight, and to duplication for firms and consumers. Replacing the current basis of consumer credit regulation with the FSA's rules-based approach will allow rapid intervention in problem practices, products, firms and individuals.

What are the policy objectives and the intended effects?

The intended effect is to deliver a regulatory regime that keeps pace with developments in the market, is more flexible and contains stronger powers for the regulator to tackle detrimental practices and root out rogue firms. This can best be achieved by transferring responsibility for consumer credit regulation from the OFT to the new Financial Conduct Authority (FCA) which will have a wider range of tools to tackle consumer detriment, including the ability to make binding rules on firms and their activities, stronger controls on market entrants, and powers to secure redress for consumers where firms cause detriment.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Three options have been considered.
The "do nothing" option was ruled out as Ministers have confirmed that the OFT will cease to exist from April 2014. The "do nothing" option would therefore lead to a gap in the regulation of consumer credit, potentially exposing consumers to harmful practices.
The second option, to enhance the existing CCA regime, was ruled out because it was considered unlikely to deliver the flexible, rapid intervention of a rules-based regime.
The third option is preferred as the FCA will have a wider, stronger and more responsive range of tools to tackle consumer detriment than those available to the OFT under the CCA regime.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 2019

Does implementation go beyond minimum EU requirements?			NA		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** NA	**Non-traded:** NA	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Senior Economist Chris Jenkins Date: 14/02/13

Summary: Analysis & Evidence — Policy Option 2

Description: Transfer of Consumer Credit Regulation to FCA

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 11	Net Benefit (Present Value (PV)) (£m)		
			Low: -9	**High:** 896	**Best Estimate:** 443

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	60	3	29	**224**
High	102		45	**353**
Best Estimate	81		37	**289**

Description and scale of key monetised costs by 'main affected groups'

Firms that wish to be authorised by the FCA will (a) pay one-off authorisation and ongoing fees and (b) incur administrative costs for authorisation and supervision compliance. These vary by size of firm. Minimum capital rules are proposed to apply to debt management firms. Total one-off (authorisation + admin) costs for firms are £60m-102m for the interim and permanent licensing periods. Annual costs (authorisation + admin) for firms of £29m-45m (all costs net of the £10m pa existing OFT cost).

Other key non-monetised costs by 'main affected groups'

The more intensive regulatory FCA regime involves increased authorisation and supervision costs, differentiated by firm size and risk profile. Some firms may choose not to incur these costs and exit the consumer credit market. While the possible extent of exit and market impact is discussed qualitatively it is not monetised. We do not anticipate a change to the supply of consumer credit in the economy but, if some small firms exit, there may be a reduction in consumer credit options in some local areas.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	128	3	43	**343**
High	418		140	**1,121**
Best Estimate	273		91	**732**

Description and scale of key monetised benefits by 'main affected groups'

Benefits for consumers: detriment in consumer credit is estimated at £166m-450m a year of which evidence and assessment suggests a realistic estimate of £43m-£140m per year at least could be addressed by FCA. The FCA will improve consumer protection through an enhanced regulatory gateway to prevent rogue firms entering the market and more intensive supervision, using a broad toolkit and flexible rule-making powers, to address actual and potential consumer detriment and facilitate consumer redress.

Other key non-monetised benefits by 'main affected groups'

Benefits for industry: Consumer credit firms may benefit from reputational benefits of a better regulated market where poor practices and rogue firms are proactively tackled. Firms may benefit if FCA regulation improves their lending decisions, risk management and strengthens firms' financial stability. There may be wider benefits to the economy if consumers are more willing to engage in the market and both consumers and firms behave more responsibly.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

Increased regulatory costs may cause firms to cease consumer credit activity. The volume of exit has been assumed based on existing trends and survey evidence on whether firms intend to carry on consumer credit business. While the supply of consumer credit in the economy is unlikely to change, if some small firms exit there may be a localised reduction in consumer credit options.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 31	**Benefits:** 0	**Net:** -31	Yes	IN

Evidence Base

Background

1. In December 2010 the Government launched a consultation on transferring responsibility for the regulation of consumer credit from the Office of Fair Trading (OFT) under the Consumer Credit Act 1974 (CCA) to the Consumer Protection and Markets Authority (now known as the Financial Conduct Authority (FCA)) under the Financial Services and Markets Act 2000 (FSMA)[1]. A summary of consultation responses was published in July 2011[2].

2. In January 2012, the Government announced its intention to proceed with the transfer, subject to the design of an FCA regime that was proportionate and suited to the different segments of the consumer credit market[3]. The Government also committed to maintain the core consumer rights and protections afforded by the CCA under any new FCA regime. The Financial Services Act 2012, which received Royal Assent in December 2012, includes provision enabling the transfer of consumer credit regulation.

3. In its response to the March 2012 BIS Select Committee report into debt management[4], the Government indicated in May that, subject to a proportionate regulatory regime being designed, the transfer to the FCA would take place in April 2014[5].

4. This impact assessment (IA) builds on the initial 'consultation stage' IA published in December 2010, alongside the Government's initial consultation on the transfer of consumer credit regulation. This further 'consultation stage' IA is published as part of a more detailed consultation document, which sets out, at a high level, the proposed regulatory regime and explains the draft secondary legislation that will effect the transfer. A 'final stage' IA will be published later this year, when Government lays secondary legislation before Parliament.

5. The Financial Services Authority (FSA) is consulting in parallel on the proposed regulatory regime for consumer credit under the FCA. The FSA's consultation paper is accompanied by a cost-benefit analysis (CBA). The Government and FSA have worked together in developing the IA and CBA, and for the most part, the assumptions and methodology underpinning the IA and CBA are consistent between the two documents. The Government will continue to work with the FSA as it finalises the Government IA and the FSA further refines its CBA.

6. The Government is keen to use this consultation exercise to gather further evidence to support our analysis of the impact of the transfer. We would therefore welcome responses in relation to the costs and benefits to industry and consumers of the proposed regime, and on any unintended consequences. Responses should include evidence where possible.

Current Regulatory Responsibilities

FSA

7. The FSA is the UK's main financial services regulator with responsibility for most retail financial services, including insurance, investments, deposits, payment services, and first-charge residential mortgages.

8. The FSA's remit, functions, objectives[6] and powers are set out in FSMA. To carry on FSMA regulated activities, firms must usually become authorised by the FSA (or become the Appointed Representative of an authorised person), in so doing showing that they satisfy 'threshold conditions'

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[1] http://www.hm-treasury.gov.uk/consult_consumer_credit.htm

[2] http://www.hm-treasury.gov.uk/consult_consumer_credit.htm

[3] http://www.hm-treasury.gov.uk/consult_financial_regulation.htm

[4] http://www.parliament.uk/business/committees/committees-a-z/commons-select/business-innovation-and-skills/news/debt-management-chairmans-comments/

[5] http://news.bis.gov.uk/Press-Releases/Better-help-for-consumers-in-financial-difficulty-from-payday-loans-67a77.aspx

[6] http://www.fsa.gov.uk/pages/about/aims/statutory/index.shtml

required of all authorised firms. Firms must comply with the rules set out in the FSA's Handbook, which are subject to cost-benefit analysis and consultation and have the force of secondary legislation.

OFT

9. The OFT is the UK's consumer and competition authority, with a broad remit covering the whole of the UK economy. The OFT does not have rule-making powers. The statutory requirements with which firms must comply are set out in the CCA and secondary legislation.

10. The OFT is required to issue guidance setting out how it will exercise its functions under the CCA on the practices that would call into question a firm's fitness to hold a licence. The CCA also confers rights on consumers, for example the right to withdraw from a consumer credit agreement within a specified time-period.

Consumer and Competition Landscape and Financial Services Regulatory reform

11. Both the FSA and the OFT are being replaced as part of the Government's wider reforms to financial regulation and the competition and consumer landscape.

12. As part of the Government's response to the financial crisis, the FSA will be replaced with a new set of more focused regulatory authorities, the FCA and the Prudential Regulation Authority. The FCA will take on responsibility for regulating the conduct of all financial institutions and prudentially regulating non-systemically important firms[7]. The FCA will take on its new functions and role in April.

13. The Government will also establish a new Competition and Markets Authority (CMA) that will operate the combined OFT and Competition Commission markets regime.

Issue

14. Concern regarding how the current regulatory regime functions centres on two main issues:

1. the limitations of the CCA regime, namely:
    1a. the limitations of CCA powers;
    1b. the time it takes to change primary legislation to react to the rapidly changing and diversifying market; and
2. the split in regulatory responsibilities between the OFT and FSA.

1. Limitations of the CCA Regime

15. Concerns have been raised that the consumer credit licensing system has not worked sufficiently well to protect consumers from abuse by some financial service providers[8]. The OFT is not empowered to outlaw emerging unfair practices. It relies, to some extent, on the deterrent effect of individual enforcement cases - which can be subject to a lengthy appeals process. Its enforcement powers are very limited, particularly when compared with the FSA's broad suite of powers and sanctions over other financial services sectors.

16. Amending and making changes to the CCA requires Parliamentary approval and can therefore entail substantial delays between identification of problems in the market and enactment of additional legislation to address them. The FSMA regime, in contrast, has broad rule-making powers to address new problems as they arise.

1a. Limitations of CCA powers

17. Under the current regime, permanently revoking a firm's consumer credit licence (the principal sanction available to the OFT) can be a lengthy process which in some cases has taken up to two years.

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[7] Systemically important financial institution (SIFI) is a bank, insurance company, or other financial institution whose failure could trigger a global financial crisis. Prudential regulation of such firms will be the responsibility of the Prudential Regulation Authority.

[8] http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtrdind/591/591we10.htm

For example, the OFT first imposed requirements on Yes Loans in 2009, but it was not until 2012 that a decision was taken to revoke their consumer credit licence after the OFT found that the company had not complied with the previous requirements imposed on it[9]. The OFT found that the company was harming consumers by (among other practices) using high pressure sales tactics to persuade consumers to provide their debit or credit card details on false premises, and deducting brokerage fees without making it clear that a fee was payable, and/or without the consumer's consent.

18. There are two main limitations in the OFT's regulatory powers that can cause problems for consumers. Because the OFT has limited control over the individuals running consumer credit firms, should the OFT identify areas of consumer detriment or non-compliance, it is possible for a firm to establish another consumer credit firm, perhaps with a different colleague applying for the licence, and then operate as before using the same detrimental business practices. In addition, other firms in the market might be able to continue the same detrimental practices, but the OFT would have to take action against each one separately, including court action where necessary.

19. The CCA requires the OFT to issue guidance on behaviours and practices which it considers may call into question a firm's fitness to hold a consumer credit licence. For example, it has issued guidance in relation to irresponsible lending[10], debt collection[11] and debt management[12]. This requirement to issue guidance is intended to ensure that the OFT makes clear what behaviours it views as unacceptable - but there are significant limits on the OFT's ability to require specific behaviours or actions because it has no rule-making powers.

Box: Criticism of the current regulatory arrangements

Consumer representatives

A number of consumer organisations are critical of the current regulatory arrangements. For example, in a recent submission to BIS, Citizens Advice set out views that current consumer protection regulation as under-resourced, too slow to respond to problems in the market and too reactive[13]. In sum, Citizens Advice felt that the current regime does not ensure adequate protection for consumers, and Citizens Advice would prefer a consumer credit regulator to have rule-making powers.

BIS Select Committee

The BIS Select Committee carried out an investigation into Credit and Debt in 2011/12[14]. They concluded that improvements needed to be made to the regulation of the debt and credit industry. Amongst their recommendations were that higher-risk credit businesses should be charged higher consumer credit licence fees, a fast-track procedure to suspend credit licences should be introduced and the regulator should be given the power to ban harmful products[15].

National Audit Office

The National Audit Office (NAO) has recently conducted a review of the value for money of the current consumer credit regulatory regime. Among their initial conclusions was that the OFT has a low level of resources to regulate credit: the OFT spends £1 on regulation for every £18,000 lent.

The NAO found that the OFT has a good working relationship with consumer organisations and business, and the level of OFT knowledge of credit regulations and the credit landscape was valued.

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[9] http://www.oft.gov.uk/news-and-updates/press/2012/15-12

[10] http://www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/irresponsible

[11] http://www.oft.gov.uk/OFTwork/publications/publication-categories/guidance/consumer_credit_act/oft664

[12] http://www.oft.gov.uk/shared_oft/business_leaflets/credit_licences/oft366.pdf

[13] http://www.citizensadvice.org.uk/print/bis_credit_and_debt_review_-_initial_indication_of_strategic_issues-2.pdf

[14] http://www.parliament.uk/business/committees/committees-a-z/commons-select/business-innovation-and-skills/inquiries/parliament-2010/debt-management/

[15] http://www.oft.gov.uk/news-and-updates/press/2012/95-12

However, it also found that there are real issues with the lack of information about the market and individual firms, meaning that OFT enforcement action was not properly targeted and that there was a lack of understanding of levels of consumer detriment for the different credit sectors. It also identified a key weakness in the current regime in that the OFT has inadequate regulatory powers for such a complex market.

1b. Changing primary legislation

20. The fast pace at which the UK credit market has developed in recent years, combined with the dynamic nature of product development, has not always been matched by changes to the legislative and regulatory framework. The 2006 reforms of the CCA, which significantly reformed the 1974 Act, was the first major overhaul of consumer credit legislation for 32 years. Since the 2006 reforms the consumer credit market has changed markedly with innovations such as instant loans via the internet or text message, and the increase in the availability and provision of payday loans as an alternative to mainstream credit.

21. Many requirements of the consumer credit regime are enshrined in the CCA itself, meaning that primary legislation can be needed even to make relatively small legislative changes. Under FSMA, in contrast, the FCA has access to a range of powers delegated from legislation (including powers to make and enforce rules), allowing a more flexible and quicker approach to regulation in this rapidly evolving market.

2. The split in regulatory responsibilities between the OFT and FSA

22. Because of the split in regulatory responsibility there are overlaps in the population of firms regulated by the FSA and the OFT[16] and across financial products. For example, a firm may be authorised and regulated under FSMA for the provision of mortgage advice and arranging insurance and also licensed under CCA to carry on the business of consumer credit, debt adjusting and debt counselling. This can lead to duplication of compliance costs and burdens for firms and differences in regulatory approach, which may lead to uncertainty for business as well as consumers.

23. Accountability for some objectives relating to retail financial services is split between the OFT, FSA, LATSS[17], specialist Illegal Money Lending teams, the Department for Enterprise, Trade and Investment in Northern Ireland (DETI), the Department for Business, Innovation and Skills (BIS) and HM Treasury. This can be made to work most of the time, helped by concordats between the relevant organisations, and can indeed deliver benefits. However, the split in responsibility makes it difficult for regulators to take a strategic view of priorities across the entire retail financial services sector. Decisions are driven by the different legal duties and powers of individual regulators.

24. Overall, respondents to the Government's December 2010 consultation on consumer credit regulation balance favoured a single regulator for consumer credit and other retail financial services.

25. In addition to overlaps in the regulated population, there are also regulatory overlaps in relation to particular financial services products which may be confusing for consumers. For example, a current account is regulated by the FSA but the overdraft facility is regulated by the OFT under the CCA. Mortgage products with unsecured loan elements span both regimes, as do credit cards (because the use of credit cards as payment instruments is regulated by the FSA, but the underlying credit agreement is regulated by the OFT). Specific "boundary issues" that currently concern both regulators include the right of set-off, unfair bank charges and product bundling and the treatment of consumers in financial difficulty (e.g. where consumers have both mortgage and unsecured debts).

Rationale for Intervention

[16] The FSA directly authorise around 19,000 firms of which around half also hold a consumer credit licence. In addition there are around 83,000 Appointed Representatives of which around 11% also hold a consumer credit licence. Of the 47,600 active OFT Consumer Credit licence holders, around 10,000 were also directly authorised by the FSA, 9,000 were appointed representatives and 26,000 were OFT licensed only.

[17] For example, Trading Standards Services currently have powers to prosecute under the CCA (and take enforcement action under the Enterprise Act 2002) and consequently collect evidence on the activities of licence holders (which contributes to market oversight), provide local advice to businesses on credit matters, supply intelligence to OFT for licensing purposes and monitor compliance with OFT sanctions.

26. The consumer credit market shares many common features with other financial services markets but with specific issues in relation to vulnerable consumers, including:

- Information asymmetry – given the complexity of consumer credit contracts, consumers often have access to insufficient or imperfect information about the product or firm with whom they are transacting. This is compounded by the fact that financial capability is low, consumers may seek credit infrequently, and often in times of crisis, when they are particularly vulnerable.
- Imbalance in bargaining power – often, the information asymmetry is compounded by consumers' circumstances in a way which tilts the balance of power to the lender; for example, consumers who may find themselves unable to access traditional sources of credit due to a poor credit history or because their income is simply too low may resort to illegal money lenders.
- Financial stress - the Bristol University research into the impact of proposals for a cap on the cost of credit suggest that over half of consumers of certain high cost credit products, pawnbroking, retail payday and online payday loans, had experienced financial stress in the previous 12 months.[18]

27. Regulation should ensure that a market functions well: that there is a thriving, competitive industry which serves consumers' needs and where consumers are treated fairly. The Government believes that the market is not functioning as well as it should and the regulatory regime cannot keep pace with the market. The nature of the credit marketplace – where consumers are often, by definition, at a disadvantage – and evidence of considerable unaddressed detriment in the consumer credit sector has confirmed the Government's view that there is a strong argument for a new regulatory approach, which should seek to ensure that firms treat consumers fairly.

28. The Government also wants to reap the benefits of bringing regulation of how retail financial services firms conduct business with their customers under a single regulator and a unified, coherent regulatory approach.

29. The Government's ambition is to create a world-class regulatory regime that keeps pace with a dynamic consumer credit market; responds to actual or potential gaps in consumer protection; and places a proportionate regulatory burden on business.

Description of options considered

30. Alternatives to regulation were ruled out early in the process as it was clear that in identifying potential options for reform, non-regulatory options are unlikely to satisfactorily achieve the objectives set out above. Member States are also obliged by the Consumer Credit Directive to ensure that creditors are supervised.

Three options were therefore considered:

- Do nothing;
- Retain and enhance the CCA to ensure better consumer protections and leave enforcement in a separate regulatory body; and
- The preferred option:Transfer regulation of consumer credit to the FCA under a FSMA-based regime.

Do Nothing

31. 'Do nothing' would leave the regulation of consumer credit with the OFT or its successor body. On 14 October 2010 the Secretary of State for Business, Innovation and Skills announced major reforms to the consumer landscape[19] with far reaching implications for the future of the OFT. BIS consulted in June 2011[20] as part of a wider review of consumer empowerment and protections. The Government response[21], published in April 2012, set out that in future, responsibility for each aspect of consumer advice, representation and enforcement should rest mainly with one of three key institutions: the Citizens

[18] University of Bristol (2013) the Impact on Business and Consumers

[19] http://www.bis.gov.uk/consumer

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

[21] http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/12-510-empowering-protecting-consumers-government-response.pdf

Advice Service, LATSS and the proposed new Competition and Markets Authority (CMA). The OFT will be abolished on 31 March 2014.

32. In March 2011, BIS published a consultation[22] on proposals to merge the competition functions of the OFT and the Competition Commission to create the CMA. The Government responded[23] in March 2012 confirming that it intended to create the CMA with the aim of improving markets and helping consumers and businesses by providing greater coherence in competition practice and a more streamlined approach to decision making.

33. There were a number of concerns raised by stakeholders should responsibility for consumer credit move to the new CMA. There was a risk that consumer credit would not be a natural fit with the CMA's competition responsibilities, which would impact the ability of the CMA to deliver credit regulation satisfactorily in the future. There would also be a risk of distracting the CMA from building the core competition functions of the new organisation.

34. In light of the above, doing nothing and leaving the regulation of consumer credit with the OFT would be impossible to achieve once the OFT is formally abolished. However, it remains the counterfactual to compare to the other options.

Option 1: Establish a new regulatory body with enhanced powers under the CCA

35. Option 1 would involve setting up a new regulator for consumer credit. Establishing a new dedicated credit regulator would require an entirely new body to be set up with additional governance costs. It was estimated that the new body would require an additional board and some additional administrative staff (the Consumer Credit Group within OFT already pays for its proportion of OFT overheads, rent etc via the consumer credit licence fee so such costs would not be additional to this option).

36. Two options for the new regulator were considered – transfer consumer credit regulation to the new CMA or establish a new dedicated consumer credit regulator.

37. Benefits of this option include a high degree of continuity in terms of regulatory processes (including the licensing regime and enforcement powers), as well as consumer protections and business requirements, with retention of well-known and understood requirements on firms. It would also allow a targeted approach, addressing specific issues known to give rise to consumer detriment, while minimising additional costs to business.

38. A package of measures was considered as a means to enhance the CCA to allow a new CCA-based regulatory approach to prevent consumer detriment before it arises and to tackle rogue firms. Measures include:

- Expanding current supervision and enforcement activities by classifying more licensing categories as high-risk and undertaking more sectoral compliance reviews;
- Undertaking new supervision and enforcement activities, by undertaking a one-off relicensing of firms in high-risk categories; and
- Giving new powers to the regulator including a power for the regulator to be able to apply to the courts for compensation orders and increasing the fines limit.

39. However, the measures considered do not address all the issues raised during the consultation in relation to limitations of the CCA regime, and do not replicate FSMA-style regulation. In particular, they did not include FSMA-style rule-making powers which would mean that the enhanced regime would continue to be constrained by a lack of flexibility. There are also a number of disadvantages to this approach including no improvement in coherence of the regulatory landscape and no market oversight across all retail financial services.

Costs for Option 1

[22] http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/11-657-competition-regime-for-growth-consultation

[23] http://www.bis.gov.uk/Consultations/competition-regime-for-growth

40. Option 1 would be funded by a variable fee for credit licensees. The OFT consulted in December 2009 on the possibility of introducing a differentiated fee structure to take account of the different costs arising from its risk-based approach to regulation, to ensure that fees were fair and proportionate and to enhance the regulator's financial sustainability during periods of change in the size of the credit market.

41. It set out a preferred option for a system which defined applications as straightforward, moderately complex or complex, to be further refined with a scaling factor to include size of credit business and/or overall size of business. The proposal received a mixed reception, with approximately half of respondents opposed. At the time the OFT estimated that it would take around two years before a differentiated fees system could be implemented.

42. This option would mean a considerable increase in the licence fee to fund the increase in authorisation and supervision costs. The table below gives an indication of the potential cost to business of introducing an enhanced CCA regime.

Enhanced CCA (BIS estimates)	**£m**
Pre Transfer	
Transfer costs, IT, Staff moves[24]	2.5
Transition one–off costs	**2.5**
Relicensing – costs to regulator[25]	5-7
Reporting[26]	4.7
Total Transitional/one-off (approx)	**14-17**
Ongoing annual costs	**£m**
Periodic and authorisation fees[27]	11.6-12.6
Reporting[28]	1-3.5
Total ongoing annual costs	**12.6-16.1**

43. An enhanced CCA-based approach would provide additional scrutiny at the gateway to the market (to ensure rogue firms were not given licences). We assume this would involve additional reporting costs for firms and additional scrutiny costs for this new regulator.

44. We assume that additional ongoing supervision would involve additional market reviews (which the OFT has costed at up to £1m in cost to them) and other information requests by OFT, which would create additional reporting costs for business.

45. At this stage we believe that all the changes to supervision and authorisation in this option are possible under the existing Consumer Credit Act; thus these costs are not associated with a change in regulation (and so not in scope of OIOO), but with administrative change of establishing the standalone body. However, the costs are useful as a comparison to the transfer to the FSA.

Option 2: Transfer responsibility for regulation and supervision of consumer credit from the OFT to the FCA

Background

[24] See annex

[25] Cost to regulator of authorising firms = 47,000 firms * 4 hours * £17 (hourly rate of HEO)

[26] Admin cost to firms of authorisation form = 47,000 firms * 7 hours * £25 (hourly rate of director)

[27] Existing OFT licence fees of £10m + £1 to £2m for additional market reviews + £0.6m for additional board members for new regulator's board

[28] Additional annual reporting by firms to regulator = £43,000 * 3 hours * £25 (hourly rate of director)

46. The Government wants to bring about a step-change in regulation of consumer credit, achieved through the FCA's wider range of tools and powers, increased resources and greater flexibility to tackle detriment and respond more quickly to market changes. It also wants to establish a regime which is suited to the consumer credit market, that the requirements placed on firms are proportionate and which helps to support a thriving and competitive marketplace that meets consumers' needs.

47. The FCA has developed a regime which takes a differentiated approach, reflecting the highly diverse nature of the consumer credit market. Resources will be targeted at those activities most likely to cause consumer harm, whilst ensuring lower risk activities are subject to an appropriate degree of intervention. There are two tiers to the FCA's proposed approach: a regime for higher risk firms and one for certain lower risk firms. There is also an option for certain firms to become an appointed representative of an authorised firm.

48. The regime for higher risk firms would deliver a more rigorous approach to consumer credit regulation and supervision. The regime for higher risk firms is proposed to have the following features:

- A robust authorisation gateway appropriate to the risks of the activities carried out by the firm;
- Proactive supervision;
- Regular reporting of key information; and
- For debt management firms only, requirements to hold capital to support consumer redress and wind-down in the event of liquidation – in order to protect client money held by these firms.

49. The 'limited permission' regime is a bespoke approach targeted at firms who are deemed to be lower risk. Firms eligible for this regime are expected to be, broadly, those firms brokering credit as an activity secondary to their main business, and firms undertaking certain types of lower risk lending e.g. deferred payments for gym membership or consumer hire companies. [29]

50. The limited permission regime for lower risk firms is proposed to have the following proportionate features:

- A shorter, tailored list of threshold conditions;
- Reactive supervision, primarily responding to intelligence about crystallised risk;
- Regular reporting of basic information; and
- A lower assessment fee.

51. As an alternative to authorisation, certain low risk firms may instead make arrangements with an authorised firm to become their appointed representative. The authorised firm (the principal) will take responsibility for assessing the suitability of the appointed representative for providing regulated consumer credit activities and will be responsible for the appointed representative's ongoing compliance.

52. To ensure a smooth transition for all firms from the OFT regime to the FCA regime, there will be a transitional period, with the full 'steady state' regime expected to be in place by April 2016. OFT licensees will have the opportunity to register for an interim permission to continue the consumer credit activities for which they are licensed. At April 2016, interim permissions will expire[30], requiring firms to be authorised or to be appointed representatives. The compliance costs and burden for firms of applying for an interim permission will be minimal.

[29] Not for profit debt advice bodies will also have their own bespoke model based on a tailored and proportionate interpretation of the limited permissions regime.

[30] There may be instances where the authorisation process is in train but not complete although the intention is to have most firms authorised by April 2014

Benefits of the Preferred Option

53. Earlier sections set out the evidence supporting the need for an overhaul of consumer credit regulation and a fundamentally different approach. The key difference in approach is that the FCA will be able to tackle potential as well as actual consumer detriment in the following ways:

- it will strengthen scrutiny at the gateway to the market, especially of higher risk firms, preventing firms who do not meet its new and more stringent standards and requirements from entering the market. It will also, with LATSS and, in Northern Ireland, DETI, police the regulatory boundary, taking enforcement action against illegal lenders and firms offering credit services without appropriate authorisation;
- it will require higher standards of firms, for example, through more scrutiny of the integrity and competence of individuals in key positions in all firms and the application of high-level conduct standards;
- it will supervise and monitor firms' behaviour on an ongoing basis, focusing its resources on areas which could result in greatest consumer detriment;
- it can make rules to address product and service innovations that are harmful to consumers promptly and responsively and it can put restrictions on products and take action on advertising (financial promotions);
- it has a broader and more flexible enforcement toolkit, including the power to make unlimited fines and to take action against individuals in firms. These enforcement powers will act as a strong deterrent for non-compliance; and
- it can ensure that consumers get redress – the FCA will have the power to require firms to provide redress. This will bring benefits to consumers where redress is given, and should also incentivise firms to take due care when dealing with consumers.

54. The Government's view therefore is that the transfer of consumer credit regulation to the FCA will bring significant benefits to both consumers and industry through the regulatory approach described above.

55. In particular, the FCA's more effective regulatory tools and framework discussed above will be effective in tackling known consumer detriment occurring in the non-mainstream lending market, payday loans[31], credit brokerage[32], debt management[33] and home collected credit[34].

56. Issues identified in the non-mainstream consumer credit market include:

- High default charges and fees
- Lack of competition leading to excess profits
- Customers failing to engage with the high cost credit market
- Loans being continually rolled over with new loans being given on top of old
- Widespread non-compliance with OFT Guidance
- Misleading advertising
- Making false claims about the nature of the business
- Lack of competence amongst debt advisors
- Unauthorised debiting of customer accounts
- Failure to pay refunds when they are due

57. Underlying problems have been highlighted in some parts of the market, including the lack of competition identified by the Competition Commission in the home collected credit market [35] and the excess profits identified by the OFT[36] being made in some sectors.

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[31] http://www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/debt-management#named4

[32] http://www.oft.gov.uk/news-and-updates/press/2011/62-11

[33] http://www.oft.gov.uk/OFTwork/credit/review-high-cost-consumer-credit/

[34] http://webarchive.nationalarchives.gov.uk/+/http://www.competition-commission.org.uk/inquiries/current/homecredit/

[35] http://webarchive.nationalarchives.gov.uk/+/http://www.competition-commission.org.uk/inquiries/current/homecredit/

[36] http://www.oft.gov.uk/OFTwork/credit/review-high-cost-consumer-credit/

Monetised benefits

58. In order to estimate monetised benefits, the Government has taken a 'top down' calculation (i.e. estimating how much of the current levels of detriment the FCA will be able to address). A 'bottom up' calculation is not possible because:

- it does not make sense to attempt to ascribe specific benefits to each component of the FCA's approach which 'exceeds' the current regime under the OFT - the FCA's approach, powers and tools need to be viewed as a holistic package to tackle detriment across the market;
- the FCA's regulatory approach is designed to tackle potential as well as actual detriment; and
- there is no available 'bottom up' baseline assessment of the OFT's effectiveness in regulating consumer credit.

59. The Government has therefore used the recent assessment of the National Audit Office on levels of detriment in the consumer credit market (based on consumer complaints), and applied assumptions as to the nature and extent of detriment that the FCA will be equipped to tackle.

60. There are challenges in basing the benefits assessment on complaints data. By definition, this reflects only crystallised detriment, it only represents a proportion of the detriment in the market and there are issues around self-reporting.

61. As set out in the summary sheet of the costs and benefits of the preferred option (page 2), the Government has put forward a best estimate of monetised benefits for consumers of consumer credit at £91m per year on average. The following sections explain how the Government arrived at its estimates for monetised benefits.

Consumer detriment estimates

62. There are two main sources for recent estimates of consumer detriment in the consumer credit markets: 1) the Consumer Focus Consumer Detriment Report 2012 and 2) the recent NAO report into OFT's regulation of consumer credit. These are used as the high and low estimates of consumer detriment.

1) **Consumer Focus data**

63. Data from the 2012 Consumer Detriment survey indicates that there were around 237,000 consumer problems in the 'ancillary credit business, hire and unsecured credit' market over the 'last 12 months' for the UK. This data source, which is representative of the UK population, is used as a proxy for the kind of detriment that consumers experience in consumer credit. This is used as evidence from a robust, representative survey of consumer detriment for the purpose of quantification. The detriment these consumers experienced can be quantified by using a) the cost of resolving the problem and b) the cost of lost personal time spent resolving the problem.

a. The cost of resolving the problem includes respondents' estimates of lost earnings, travel costs, expert advice and sundry costs. The mean cost of consumer detriment from consumer problems was £660. This is multiplied by the number of problems to yield £156.4m.
b. Lost personal time spent trying to resolve these problems totalled 870,000 hours, according to respondents. Multiplying these hours by the 2011 median wage of employees of £11.14 per hour as a proxy for the cost to consumers yields a total cost of lost personal time of £9.7 million.

64. The sum of the two figures yields an estimate of £166 million for consumer detriment in the consumer credit market. The confidence interval for the survey gives a range of £109m to £220m for upper and lower bound. These figures are used as the LOW estimate of (remedied and unremedied) detriment in consumer credit.

2) **NAO estimate of unremedied consumer detriment in the consumer credit market**

65. The NAO estimated that the total unremedied financial harm in the market was at least £450m in 2010/11. This was based on the Consumer Direct (CD) database of complaints[37] about consumer credit products. From the sample of cases the NAO looked at, it estimated the average value to a complainant of resolving a consumer credit problem to be around £200 with varying averages by credit product. This was derived from a survey of CD complainants (OFT 2009[38]) who reported the value of the payments associated with the problem product and the value to the complainant of resolving their problem.

66. The OFT estimates (2009) that for every 1 CD complaint about financial services, 59.3 problems were not reported to CD. Complaints about consumer credit products to CD were multiplied by 59.3 (to capture hidden complaints) and by the average consumer detriment for each credit product to yield a total estimated consumer detriment of £450m in 2010/11. This is the HIGH unremedied detriment estimate.

67. Therefore the Government has estimated that the consumer detriment range is £166m-£450m.

Consumer benefit estimates

68. To assess the likely consumer benefit of the new regime the following steps were applied to the detriment estimates.

HIGH consumer benefit estimate (£140m per year)

69. We reviewed the CD database of 2011 consumer complaints and assessed which categories of detriment on the database are likely to be addressed by the proposed FCA regime. This assessment identified that 63% of reported detriment could be addressed by the FCA regime (see Annex E). Even so, it may not be realistic to expect that the regulator would be able to tackle all reported detriment falling into these categories. So for illustration purposes, we assumed that of the 63% of reported detriment only 50% would be resolved. We believe that this is a realistic assumption, given the proposed extent and the nature of the FCA's regulatory regime.

(£450m * 63%) * 50% = £140m per annum consumer benefit

LOW consumer benefit estimate (£43m per year)

70. The same 50% assumption was applied to the Consumer Focus survey estimate of (remedied and unremedied) consumer detriment of £166 per annum. This yields £83m per year.

71. However, the Consumer Focus survey (unlike the NAO estimate) includes problems that were remedied under the current regime. Therefore the impact of OFT CCA intervention needs to be netted off. The best estimate for the impact of the OFT CCA work is the NAO's (unpublished) cost effectiveness analysis. The NAO estimated the benefit to consumers of a set of OFT enforcement actions (using data as described for the NAO consumer detriment estimate above, as well as analysis of complaints about firms where the OFT intervened). This yielded a cost benefit ratio of 7.9 (benefit) to 1 (cost). This analysis was based on a small sample of OFT cases to provide an indication of the cost-effectiveness. There is no evidence to assume that this sample is representative across all OFT cases. However, if we are to use this as the only available basis for measuring impact, and we use the estimate of 7.9 to 1, then the impact of the OFT CCA enforcement work is around £40m per year (£5.1m cost * 7.9). This £40m is subtracted from the £83m to yield £43m.

Benefits to Business

Proportionality

[37] This data is used to help quantify consumer detriment in consumer credit. It is not intended to exactly reflect they way consumer detriment is tackled. For example neither the OFT nor the FSA necessarily responds as such to individual complaints. Rather detriment as a whole is considered (which includes evidence from complaints) and powers and tools are used to intervene in the market as a whole or by firm.

[38] Office of Fair Trading (2009) Trading Standards impact. An evaluation of the impact of the fair trading of local authority Trading Standards Services in the UK. OFT1085

72. The Government is committed to ensuring that the new regulatory regime places proportionate burdens on firms. The Government recognises that the credit market is diverse, the current regulatory model is light-touch and therefore low cost, and that excessive new burdens on consumer credit firms could lead to some firms, especially those firms for whom offering credit is not the main driver of their business, leaving the market and reducing access to credit for consumers. The Government has worked with the FSA to design a regime where the regulatory burdens on firms are proportionate. Consumer credit firms will pay lower fees than other FCA regulated firms and will be subject to fewer regulatory burdens compared with other FCA regulated firms.

73. The approach will be tailored to the credit market in the following ways:

- establishing a new regulatory approach differentiated by firms' risk profile, where lower risk firms will pay lower costs and compliance burdens will be lower;
- setting fees which reflect the size and type of firm and reducing costs of the FCA regime where possible;
- applying only FCA requirements which suit the credit market; some elements of the FCA regime which apply to other financial services sectors will not be applied to consumer credit – for example, prudential requirements will not apply to credit firms (apart from debt management firms), reflecting that, in general, lenders rather than consumers bear capital risk in the consumer credit market; there will be proportionate application of approved persons requirements and firms will not be required to be covered by the Financial Services Compensation Scheme; and
- limited reporting requirements, especially for those firms with lower risk profiles.

Reputational benefits of a Better Regulated Market

74. The FCA's more proactive approach to consumer credit regulation will benefit the whole sector: rogue firms will find it more difficult to operate in the market and so firms that behave responsibly and treat their customers fairly should avoid the reputational tarnish caused by disreputable firms in the market that cause harm to consumers.

Better Lending Decisions

75. Debt write-offs are high despite creditors showing increased levels of forbearance in recent years. In the 4 quarters to Q2 2012 £5.3 billion was written off in the UK. The FCA will have better market oversight and will proactively supervise firms to enforce responsible lending requirements and support an improvement in the quality of lending decisions.

Improved resilience

76. The FCA will put in place requirements which will help firms manage risk better and support increased resilience. For example:

- The FCA's approved persons regime and greater scrutiny of business models will ensure that there is appropriate governance and certain standards required of those occupying key roles in a firm, resulting in greater financial resilience for firms;
- FCA supervision will promote better standards in risk management, leading to fewer or lower losses (such as 'bad debt' or fraud) and in general lead to a more stable financial position for firms; and
- The appointed representatives regime will allow firms acting as principal to maintain improved oversight and control of their intermediaries.

More responsive approach

77. Firms will be able to benefit from a more responsive approach to regulation too. Where requirements in rules are no longer appropriate, the FCA can more easily remove these unnecessary burdens from firms than if regulation continued to be underpinned by primary legislation.

Dual-regulated firms

78. As discussed above, firms who are already regulated by the FCA will gain from the greater coherence and reduced compliance costs associated with dealing with a single regulator.

Direct Costs of the Preferred Option

Main areas of additional costs for firms

79. This section sets out, at a high level, the nature of the costs for firms of the FCA's regulatory approach. Further detail of these costs can be found in the FSA's CBA.

Interim permission

80. OFT licence-holders will need to apply for an interim permission to carry out the regulated activities that are included on their OFT licence from April 2014. This will be a simple process: firms will need to provide basic information confirming their contact details and activities undertaken.

81. The FSA will consult on the fee charged to cover the administrative costs of the application process for interim permission (proposed to be in the region of £350). Firms will also incur their own administrative costs in completing the application form, although this cost is anticipated to be low.

Authorisation and Variation of Permission

82. Firms will pay a fee with the levels differentiated according to the size and risk level of the activities undertaken. Firms will also incur administration costs in completing the applicable application pack (existing FCA authorised firms will complete a 'Variation of Permission' application to add consumer credit activities).

Approved persons

83. Firms will incur administrative costs in completing the application pack for approved persons.

Reporting requirements

84. Authorised firms will be required to report key information to the FCA at least annually. Firms with limited permission will report certain basic information (contact details and type of consumer credit activities carried out). Firms will therefore have some set up costs to establish processes for reporting and will incur an annual administrative cost in completing the reporting return. These are anticipated to be low.

High-level standards, Conduct standards, Financial Promotions

85. In general, firms will need to ensure that they meet conduct standards, especially where these are additional to existing CCA requirements or OFT guidance, or where CCA requirements have not been precisely replicated in FCA rules. In particular, firms will have to satisfy themselves that they meet the FCA's new high-level conduct standards. Firms will also be subject to the new standards relating to financial promotions (current CCA requirements on advertising will become part of the financial promotions regime). This will incur some compliance costs.

Conduct Review

86. Costs of reviewing systems and processes in advance of the change in regime and costs of changing their arrangements for dealing with complaints which stem largely from the proposal to require firms whose complaints exceed a certain number a year to publish complaints data.

Additional rules for debt management firms

87. The FCA has proposed certain prudential requirements for debt management firms and client asset requirements for larger firms.

Appointed representatives

88. Appointed representatives may incur costs in entering into arrangements with principals.

Annual Fees

89. It is expected that all firms regulated by the FCA will pay an annual fee, covering all the FCA's costs of regulation. The annual fee will recover, amongst other things, the cost of supervision, operating the customer contact centre, enforcement, any unrecovered authorisation costs, policing the perimeter to ensure that only authorised firms are carrying on regulated activities, information technology costs, policy and legal work and firm communications. It also includes recovery of the costs of establishing the consumer credit regime such as the costs of transferring staff from OFT to the FCA.

90. The FCA will consult on annual fees, including minimum fees later this year. Minimum fees are expected to be no more than £1,000 for authorised firms and no more than £500 for firms with limited permission. The minimum fee is proposed to be additional to any fee already being paid by a firm for other FSMA regulated activities.

Estimated costs

91. The estimated costs[39] are estimates of the additional costs incurred by firms of the transfer compared with the current regime, and are based on estimates about the number of firms who will be carrying out consumer credit activity at the time of the transfer in April 2014 and the proportion that may exit the market following the increase in admin and fee costs.

92. The total one-off costs for firms are estimated to be approximately £14m-17m for the interim permission regime, approximately £76m-114m for one-off costs when firms become authorised and annual costs[40] for firms of approximately £39m-54m. These figures are quoted without netting off the fees counterfactual which is the OFT consumer credit fees of £10m. Admin costs, however, are additional to those generated by OFT.

93. The estimated costs have been calculated on the following assumptions, and on the basis of independent analysis commissioned by the FSA:

- To support the **population estimates**, the FSA commissioned a third party research company to survey a sample of OFT licence holders. The research has found that around 47,600 firms are active. [41]
- To estimate **additional costs** the FSA commissioned Policis and Europe Economics to undertake in-depth conversations with firms of various category and size to estimate the costs of the proposed regime (methodology in the annex). These estimates are used in this IA.

[39] The costs estimates show the costs to firms transferring from the OFT regime. They do not explicitly show the costs for new firms entering the market. However, the market exit assumptions are based on a balanced assessment of firms entering and exiting the market.

[40] The staff element of FCA licence fee (estimated by FSA to be 70%) are uplifted up 2% pa which is the OBR's forecast of labour productivity growth.

[41] An active firm is defined as one that used its consumer credit licence in the previous 12 months and intended to do so in the next 12 months, as at the time of survey in May to July 2012.

- Small and medium firms are defined here as those with a consumer credit related turnover of £5m, large firms of £5m - £50m and very large over £50m. This size categorisation has been adopted for the purposes of providing cost-estimates for this IA and does not indicate how the FCA will categorise firms in the future. Many firms found it difficult to answer how much of their turnover related to consumer credit.
- The ongoing FCA costs, where they reflect staff costs, may be expected to rise in real terms. We use the OBR's forecast of productivity growth of 2% per annum as the growth rate of staff costs. FSA estimates that 70% of the fees that it is required to recover is to account for staff costs.

AGGREGATE COST TABLE[42] Source: Europe Economics report to FSA

	Small			Large			Total		
	£m		£m	£m		£m	£m		£m
Interim									
Fees and administration	12.6	-	15.4	1.6	-	2.0	14.1	-	17.4
Other one-off costs									
Authorisation	23.0	-	28.6	14.3	-	20.0	37.3	-	48.5
Approved Persons	2.6	-	3.4	0.7	-	2.6	3.3	-	5.9
High-level Principles and Conduct Standards	1.9	-	2.4	0.1	-	0.8	2.0	-	3.3
Client Asset Requirements for DM Firms	-	-	-	-	-	0.3	-	-	0.3
Prudential Standards for DM Firms	0.0	-	0.1	0.1	-	0.8	0.2	-	0.8
Supervision and Regulatory Reporting	6.8	-	8.5	0.6	-	1.3	7.4	-	9.9
Complaints and Redress	0.2	-	0.4	0.0	-	6.0	0.2	-	6.5
Financial Promotions	4.1	-	5.9	0.4	-	1.4	4.6	-	7.4
Appointed Representative Regime	5.3	-	6.5	0.1	-	0.1	5.4	-	6.6
Retail conduct review	7.2	-	9.7	8.3	-	15.6	15.5	-	25.3
	51.1		65.5	24.6		49.0	75.7		114.5
All one-off costs	63.7		80.9	26.2		51.0	89.9		131.9
On-going costs									
Annual fees	13.3	-	16.4	5.0	-	6.8	18.3	-	23.3
Approved Persons	0.4	-	0.5	0.1	-	0.3	0.5	-	0.8
High-level Principles and Conduct Standards	0.1	-	0.2	-	-	0.1	0.1	-	0.3
Client Asset Requirements for DM Firms	-	-	-	-	-	0.4	-	-	0.4
Prudential Standards for DM Firms	0.1	-	0.1	0.2	-	1.0	0.2	-	1.1
Supervision and Regulatory Reporting	2.0	-	2.8	0.3	-	0.4	2.3	-	3.3
Complaints and Redress	0.1	-	0.2	0.0	-	2.2	0.1	-	2.4
Financial Promotions	3.6	-	5.9	0.3	-	2.8	3.9	-	8.8
Appointed Representative Regime	3.1	-	3.8	0.1	-	0.1	3.2	-	3.9
	22.6		30.0	5.9		14.2	28.6		44.2

Example admin and fee costs for small firms[43]

Type of cost	Approximate cost £	Approximate cost £
	Small ancillary credit broker (subject to limited permission regime)	Small firm e.g. home-collected credit provider (subject to full authorisation)
Interim permission		
Interim permission fee	300	300
One-off costs of application for interim permission	40	40
Interim permission one-off	**340**	**340**
One-off fees	500	1,500
One-off application admin costs	300	600
One-off costs of approved persons	500	500*

[42] NB the aggregate cost table nets off the counterfactual including OFT fees

[43] Exact numbers to be confirmed

Reporting	30 – 100	110 – 140
Total one-off	**1,330 – 1,400**	**2,710 – 2,740**
Ongoing costs		
Annual fees**	500	1,000
Reporting	15 – 40	60 – 80
Total ongoing	**515 - 540**	**1,060 - 1,080**

* Assumes the firm has one person in a significant influence function who acts as the approved money laundering compliance function

** In comparison the current OFT licence application fee for a corporate is £1225. £1075 of this is the consumer credit licence element (with the remainder being the Financial Ombudsman Service levy, the level of which is not affected by this policy). As firms renew their licence every 5 years, the annual cost to firms of the consumer credit licensing element of their OFT fee is £215 for a corporate.

Business population estimate

94. The Government believes that the risk that consumer credit licence holders will find the new admin and fee costs too burdensome has been significantly mitigated by the design of a proportionate regime. However, some firms may choose not to seek authorisation to continue to carry on consumer credit activities and therefore exit the market. To estimate this impact the FSA commissioned Europe Economics to undertake an independent and robust analysis of profitability and possible exit.

95. Policis interviewed 120 firms/trade associations of various consumer credit categories and sizes to discuss the impact of the proposals. The discussions also included data on profitability and revenue which Europe Economics used in a profitability model. Combining businesses' views and the model Europe Economics estimated exit by consumer credit category. The impact varied from negligible for a large bank to significant for a small credit broker.

96. This behavioural analysis yields an estimated exit of just under 19% of active firms or a change from 47,600 active firms to 38,600.

97. Europe Economics found that, "The more marginal participants will be affected most. This is particularly evident in the credit broker and ancillary intermediary (i.e. motor and other retailer) segments where the involvement of a number of firms is currently low-scale (e.g. intermediating low volumes of low value loans). This means that a large number of exiting firms will not have significant consequences for the consumer credit market as a whole."

Impact on firms that choose to exit

98. We do not quantify the impact of the proposals on licence holders that choose not to seek FCA authorisation which may include loss of revenue for some. There is a possible methodology in annex E.

Risks

99. There are two main risks accompanying the transfer of responsibility for consumer credit from the OFT to the FCA. The first is that the **timescales** for the transfer may not give business and consumer organisations sufficient time to come to terms with the new regime and the second is on the impact that the transfer may have on the **supply of consumer credit**.

Timescales

100. The Government has announced that the transfer will take place in April 2014, when the OFT ceases to exist.

101. To address concerns about the speed of the transfer the Government has announced that there will be a two year transition period (April 2014 - April 2016). Prior to April 2014, existing consumer credit licence holders will be able to obtain an 'interim permission' from the FCA to continue trading until they become FCA authorised or appointed representatives.

102. In addition, the FCA intends to adopt OFT guidance into its own guidance or rules; it will also consider taking the most effective elements of the many voluntary codes developed across the market and translate these into binding rules or formal guidance. To give firms time to get used to the new framework of rules and guidance, the FCA is proposing a six-month transitional period, during which, if firms can demonstrate that they are acting in accordance with a corresponding rule or guidance from the previous regime which is the same in substance as ours, we will not take action against them.

103. The FCA will need to respond and adapt as new issues emerge. Subject to the outcome of the consultation exercises, there is, however, no intention to alter the proposals for the FCA model in the medium-term (i.e. the next 3-5 years). However, as the FCA understanding of the risks in the market increases during this period, it may determine that some aspects of the model are not proportionate to the risks faced by consumers and changes need to be made. If the FCA decided any significant changes to the model were necessary, it would work closely with the industry and consumer groups, and where further changes affect FCA rules and guidance, they will be subject to consultation in the usual way.

Supply of consumer credit

104. The Government believes that the transfer is unlikely to affect the aggregate supply of credit because the majority of consumer credit in the UK is supplied by large financial institutions that are already regulated by the FSA. The transfer would lead to an increase in regulatory fees for these firms, as the increase in their FCA annual fee would be greater than the existing OFT licence fee. But the increase in compliance costs would be minimal, as they are already subject to the FSMA regime.

105. The main risk of a reduction in credit supply with results from the possibility of market exit by small lenders and credit intermediaries not currently regulated by the FSA. There could be a few effects here. There is a risk that some such firms may exit the market due to the higher cost of the FCA regime and, similarly, potential small entrants may be deterred from entering. To the extent that this happens this could affect competition in some local areas and associated benefits such as innovation or price. It may also encourage some firms to operate outside the regulatory perimeter. This, in turn, may affect some customers of such small businesses in the short term before they find alternatives. These risks has been mitigated by the proportionate proposals for the higher risk authorisation regime and lower cost regime for lower risk firms, which offer credit as a secondary activity to their main business.

Wider Impacts

Devolved issues

106. Financial services matters are reserved in Wales, Scotland and Northern Ireland and FSMA applies to the whole of the UK. Consumer credit matters are reserved in Wales and Scotland but consumer credit is a devolved (transferred) matter in Northern Ireland where trading standards functions are dealt with by the Department of Enterprise, Trade and Investment. However, the key consumer credit legislation which is relevant to this consultation (the Consumer Credit Acts 1974 and 2006 and associated regulations) applies to the whole of the UK.

107. The Minister of Enterprise, Trade, and Investment for Northern Ireland agreed that Northern Ireland should be included in the December 2010 consultation with a view to ensuring that Northern Ireland consumers can be consulted on any changes that may impact on their consumer credit legislation. The provisions of the statutory instrument affecting the Department of Enterprise, Trade and Investment's role further to the preferred option cannot be made without its consent.

One in One Out (OIOO)

108. The policy is in scope of OIOO. The costs are approximately £14m-17m for the interim permission licensing, approximately £82m-114m for one-off costs (spread equally over years 1 and 2) when firms become authorised or licensed and annual costs for firms of approximately £39m-54m. The existing regime costs £10m per year (which is paid for by CC licence fees) and that is deducted each year to estimate the additional cost. On the mid point this yields an EANCB IN of £31m (£62m for OI2O).

Micro Businesses Exemption

109. Micro businesses are not exempt because they are not exempt under the existing regulation. Many of the activities considered high risk (debt management, debt collection, short term credit) are undertaken by micro businesses and consumer protection would be at risk if they were to be exempt. Additional burdens to micro businesses are mitigated by the lower cost regime for certain lower risk firms, the option to become an Appointed Representative (open to certain firms) and the adaptations made to the regulatory regime to ensure it is proportionate and suited to the consumer credit market.

List of Annexes

Annex A – Europe Economics cost and exit estimates
Annex B – Option 1 cost estimates
Annex C – Consumer Direct complaints

Annex A – Europe Economics cost and exit estimates

The following is an excerpt from Europe Economics report to FSA "Transfer of the Consumer Credit Regime: Compliance Costs and Firm Behaviour".

Introduction

In this section we consider the impact of the policies described previously upon each of the segments that we have identified within the consumer credit sector.

For each segment we quantify the incremental compliance cost impacts by proposal and in aggregate, and also show separately how these divide between one-off and on-going costs. We describe the underlying assumptions of our analysis, and identify the key cost drivers. We also describe the interaction between these estimates and the assumptions made about firm behaviour, particularly market entry and exit.

Modelling Approach Adopted for each Policy Proposal

This section describes briefly how we have modelled the compliance cost impacts of each policy proposal. Where applicable we differentiate between the top down and bottom up approaches below.

Interim regime

All firms (including those that would opt for appointed representative status) — other than not-for-profit debt advisers — remaining within the market are assumed to pay the interim registration fee (being £350, or a reduced rate of £150 for sole traders).

In contrast to the other administrative tasks that we describe below, there is no evidence available on the likely time duration to deal with the interim permission form, because no one has yet used it. We took as our reference point the least onerous task of those where we had information, i.e. completing an approved person application (0.5 days). The level of information involved in the interim application is expected to be qualitatively different, however we note that most business interactions (including form-filing) with government or regulatory bodies tend to consume more time than anticipated and — more importantly we consider that any extra time here contributes to the pool of time available to firms to consider the new regime and its implications.

We have split the time taken 20:80 between senior management staff and compliance/ finance or IT staff (except in the case of sole traders). This balance is similar to what we have used in previous studies: e.g. in our work on the introduction of FSA-authorisation to general insurance and mortgage intermediaries we assumed that for large firms 10 per cent of the time was from management-level staff, with the balance from compliance or other staff, whereas for very smallest firms as much as 70 per cent of the time was allocated to management.[44]

Full authorisation and limited permission

Firms identified by the FSA as lower risk, such as consumer hire firms and secondary credit brokers, have been assumed to pay a £500 fee for a limited permission, regardless of size. This applied in both the bottom-up and top-down models. In the latter case secondary intermediaries have been modelled as discrete segments. About one third of the non-bank lender and consumer hire category were taken to be lower risk, based upon our interpretation of Critical's population research.

For other firms there are three levels of authorisation fee depending on the sum of their consumer credit related turnover:

- Up to £250k per year: £1,500 (consumer credit related turnover of up to and including £250,000 per annum is the FSA's working definition of a small firm in this context);
- £250k to £5m per year: £5,000; and
- Over £5m per year: £15,000.

44 Europe Economics (2002), "The Costs and Benefits of Mortgage and General Insurance Authorisation".

In the bottom up model, these fees were allocated based upon the firm's reported level of consumer credit revenue. Where a variation of permission was applicable — because the firm self-identified as being already FSA-authorised — these fee levels were halved.

In the top down model we used our estimates of the distribution of the population to assess the proportion of firms expected to be in each of these categories and used that as the basis of the calculation. The proportion of each segment, between 0 and 100 per cent, taken to be already FSA authorised so that a variation in permission would be relevant, was based upon our analysis of the Critical research and other sources (see Section 8).

Our analysis of the data generated in the Policis survey indicated 1–2 days as being the typical time spent on preparing the OFT's licence application. The reference point for the administrative aspects of authorisation was also taken from responses to the survey run by Policis, albeit in case using data only from those firms with actual experience of being supervised by the FSA, being an average of 3–4 days in total. The incremental administrative cost assumed in both models for preparing the authorisation pack was therefore taken as two days. The administration around a variation of permission has been taken as half this level, which was again in line with the data gathered by Policis.[45] In the "bottom up" version we also considered whether a business plan, or additional supporting materials, might be required by the FCA which would complicate the authorisation process. This additional cost was incurred where a firm had consumer credit turnover above £10 million per annum, but had identified its business planning as incomplete or limited (which was in fact rare in the Policis sample).

The annual fee was taken to be £1000, subject to a variable element applicable to firms above a certain size threshold. The latter was calculated as 0.02 per cent of the firm's stated consumer credit turnover (i.e. firms with consumer credit turnover up to and including £5 million per annum would pay £1000; those with turnover above this level would pay more). The administrative side of paying the annual fee was taken to be equivalent to annual average time spent relating to renewing the OFT licence.

Approved persons

The responses to the quantitative survey identified the number of senior management in each firm and also how many of these — if any — were already approved persons by the FSA.[46] The net of these has been taken as the number of senior managers requiring approval under the new regime. To these were added an individual to take responsibility for the oversight of anti-money laundering activity or of compliance where that has been built-in as a requirement of the new regime (see Section 3).

This approach has been over-ridden in the case of secondary credit brokers where a single person only will be required to take responsibility for apportionment and oversight.

In consideration of the time taken to obtain the approval we have used the research data as our reference point, specifically the estimates from firms that are already FSA authorised (i.e. we have not relied upon estimates from those without experience of the processes involved). These estimates averaged about 0.5 days per approval. This is slightly above past estimates. The time has been allocated 80 per cent to compliance (or finance staff where no compliance staff were in situ), with the balance allocated to senior management.

In the top down approach we drew upon earlier research conducted by Critical, as well as the results from the Policis survey. Those small (below £250,000 consumer credit revenues) and larger lenders (i.e. above this level) without prior experience of the FSA (e.g. those in home credit), and excluding sole traders, were assumed to have two and five persons respectively each requiring pre-approval. The approach in other segments was fundamentally similar except that small and large firms were assumed to have one and two persons respectively each requiring approval.

Sole traders were excluded from this requirement.

Appointed representatives

45 There is no doubt that some firms will take significantly longer on this, particularly larger, more complex firms. Then again, smaller, less complex firms — of which there are significantly more — are likely to spend rather less.

46 A substantial minority of firms actively using an OFT licence are also registered with the FSA with respect to another part of their business, such as variously mortgage lending, insurance intermediation, etc. These firms are modelled as having a slight advantage in adapting to the new regime over those firms without such experience of the FSA.

The Appointed Representative (AR) regime has the potential to lower costs by substituting a principal, with whom the AR has a pre-existing business relationship, for the FCA. A key restriction here is that the qualitative feedback and quantitative survey data indicated very clearly that the firms who might act as principals had little enthusiasm for this and we have therefore kept participation in the AR regime to a relatively low level.

We have assumed that a principal would seek full compensation for its activities in training and bolstering the control environment from ARs (e.g. by adjusting other pricing arrangements between the parties). We have assumed that an AR would, as a minimum receive two days additional training and be subject to external costs of £825 (e.g. to cover additional IT support). In the credit broker segment, where many firms are already ARs in other business areas these estimates were halved to reflect prior knowledge of FSMA-style requirements. These one-off costs of being an AR are below those from authorisation.

In terms of on-going costs, monitoring and continuing support would be necessary: we have estimated these at £750 per annum. This is below the cost of being directly authorised for a small firm, but comparable — even slightly above — the likely cost of a limited permission. A trade-off between the upfront saving and such an on-going additional cost may still mean that the AR regime is economically advantageous for firms with the option of a limited permission. On the other hand, we do not see the AR regime as purely as numbers-based decision by firms: some firms are likely to well prefer dealing only with their already established commercial partners rather with than the FCA. Nevertheless this may change the relative appeal of the appointed representative regime in those areas where limited permission is the comparator (see the discussion of secondary credit brokers in the main document).

High-level standards

The FSA's intention is to map across conduct standards broadly unchanged. We focus here on the "nuts and bolts" changes that we believe are implied (but consider the likelihood and scale of firms reviewing their retail conduct below, at 0).

On PRIN, we considered the requirements for record-keeping and for adequate risk management to be a potential driver of process change and hence cost. Those firms indicating that they were not fully confident in risk management were considered as requiring additional training. The time duration and likely cost of this was with reference to desk-top research into relevant training vendors.

In terms of record-keeping we distinguished between adequate record-keeping for the OFT regime and what we deemed the qualitative shift in requirement necessary for the FSA/FCA. Firms currently have an obligation to have satisfactory records (not just to satisfy the OFT's needs) so those firms that were not confident in their own record-keeping were deemed examples of non-compliance (i.e. by having inadequate financial records) so that the cost of these becoming adequate should not be reflected in the compliance cost numbers.

However our view is that when firms look ahead to life with the FCA they will readily identify a supervisor that is more pro-active, requires regular reporting and also seeks ad hoc reporting: the effect being that some firms will need to upgrade their systems in order to cope. For example, in the bottom up model, a firm reliant on manually prepared accounts or on external accounts preparation was assumed to acquire a simple financial management system.

On SYSC, the treatment of financial crime oversight was taken as a key cost driver. This has the following elements. First we have data from the survey on whether there is an MLRO or not already in place (we have assumed that firms without an MLRO will need to incur additional training costs). Where there is not one, and the firm is not a sole trader, this can be treated as either a pay-grade difference, e.g. the gap between the cost of a compliance person and, say, a manager (with that uplift reflected as an extra on-going cost) or as a requirement to have training on financial crime (as a one-off cost) to transition someone into that role. We have taken the latter approach. This is not low cost: such training is likely to consume at least two days and may involve external costs of at least £1,000.

Second, where the relevant MLRO is required to be an Approved Person then an extra person has been added to the Approved Persons costing calculations. We have not assumed that those firms currently without a system for reporting suspicious transactions in place would need to acquire one: implicitly this assumes that such firms are broadly coping with the money-laundering regulations now.

In the top down model we assumed that:

- Half of sole traders would require additional investment in financial management or compliance software at a cost per firm of £205. This cost is based on entry–level quotes from vendors of financial management software. This affected about 12 per cent of the firms in the top down model, against about 10 per cent in the bottom up variants.
- Twenty-five per cent of small firms, and five per cent of other firms, would need additional training or other remedial action in terms of financial crime (if there was no prior contact with the FSA) at a one-off cost of £1400. This cost is based upon estimates from vendors of relevant training. About 22 per cent of the firms in the Policis sample required such training.
- Ten per cent of small and five per cent of large firms were assumed to require remedial risk management training (this was about 15 per cent in the Policis sample).

Financial promotions

The market research indicated what processes firms typically adopted with their promotions — e.g. obtaining prior sign-off from a compliance officer or lawyer. For those firms whose current processes were lacking to some degree we assumed a one-off training cost and an incremental time cost attached to each new advert, the latter being applied to each of the declared number of new promotions used. Where it was indicated by a firm that web-based advertising was used we assumed that this was updated weekly by larger firms and monthly by smaller ones. The average time taken to approve an advert was taken as one hour: this was a judgement.

In the top down model data on the number of promotions and firm-level approaches were not available to us. We assumed that those small and large firms without prior contact with the FSA would seek one and two days training respectively to familiarise themselves with the new requirements, and with an on-going time commitment of one day for small firms and five days — on average — for larger ones. At one hour per approval, this can be interpreted as 7–8 adverts per annum for a small firm and 40 for a larger one.

Supervisory reporting

The new regime involves firms reporting data to the FCA, at least once per annum, to support supervisory analysis. In the former case the data set is expected to be readily available for the vast majority of firms (turnover, customer numbers). However in most cases — where more data are required — this may be more onerous, although as we have noted already the contents of the data sets remain undefined.

For these firms we have modelled the following costs:

- Training to adapt the firm's Financial Management system, e.g. to develop new reporting modules to capture the required data.
- GABRIEL (the FSA's reporting engine) training if the firm is not already FSA-authorised. This has been taken as a half-day and is drawn from the results of the quantitative research run by Policis.
- Time-related costs in which actually to file the necessary report, based upon one day. This was reduced to half a day for lower risk firms, which will have a lower key reporting obligation. This is drawn from the results of the quantitative research run by Policis.

Complaints publication

Where complaints exceeded 500 per annum and a firm lacked a system capable of publishing these it was assumed in the first instance publication would be a manually-driven process, with a time cost allocated to each complaint. If complaints exceeded this level it was assumed that an IT system to handle this would be additionally necessary, with one-off and on-going support costs based upon the past experience of market participants with such systems already (an upgrade to publishing was assumed to cost £15,000 where a reporting system was already in place). Those firms with a system already in place able to publish complaints were assumed to suffer no additional costs.

In the top down model we assumed that one per cent of firms would be affected and that each of these would incur one-off costs of over £1,000 and on-going costs a little below that (these estimates are based on the FSA's own experience, as set out in CP 09/21).

Prudential standards for debt management firms

We have based our calculations on a proposal whereby the capital requirement would be equal to 2.5 per cent of turnover, subject to a minimum of £5,000, to the currently available capital and identified any shortfall firm by firm.

In our top down approach we have taken four per cent as a likely cost of raising such capital, which would cover legal fees and any fees charged by external share-holders as well as any internal administrative costs of actually raising the capital.[47] It can be argued that — given the extent of the advance notice in the prudential regime, and the likely small scale of the additional capital required in most cases — that many firms will seek to adjust capital levels through profit retention and so avoid these external costs of raising capital. To this extent our estimates can be viewed as conservative (although increasing profit retention can be argued to increase a firm's cost of capital). In our bottom up model we were able to match the requirement to the individual balance sheets of the firms responding to the survey, with three from 12 needed to raise additional funds based on this work, with one needing to raise a substantial sum (about £1m). The costs of raising capital were calculated with reference to the sums being raised and the disclosure within the survey as to shareholder composition (e.g. whether the firm was quoted, an unlisted PLC, etc.)

We were also provided with financial reporting data on a larger sample of debt management firms by the FSA. This included 35 firms with turnover and net assets data to enable a calculation of the capital requirement. We compare the outcomes of these different approaches in the main document.

There is an important distinction between the one-off cash costs associated with raising additional capital and the on-going opportunity cost of holding that additional capital on the firm's balance sheet. With respect to the latter we estimated the cost of capital — specifically the cost of equity capital — for quoted debt management firms within a CAPM framework. The sample available for this work was extremely small — there are currently just two quoted debt management firms (two more de-listed in the recent past). The results indicated a cost of 4.5–6 per cent. These are post-tax figures, with the equivalent pre-tax return being about 5.9–7.9 per cent.[48] We have assumed that this extra capital would be invested, e.g. in government bonds, and, after deducting the returns on this, our estimated on-going cost of holing any additional capital raised to meet the initial shortfall is 4.4–6.1 per cent. We used the mid-point of this range, about 5.25 per cent.

We note that this money can still be used in the business such that additional profits may be available on such capital. On the other hand, bearing in mind that these firms have not seen fit to inject such capital already, we must assume that such opportunities are limited or else the firms prefer alternative ways of accessing them.

In the top down model we assumed that 80 per cent of small firms would need the minimum value and that half of the full sum of the capital required by larger firms would need to be raised. These are highly conservative assumptions. On the other hand we have not made any adjustment for any on-going need to raise additional capital each year, e.g. because the debt management is growing).

Client asset requirements for debt management firms

Again, this policy relates only to the debt management segment — indeed to just the largest firms (in terms of client assets held) within that segment.

One practical problem here is that the threshold for this has yet to be set. From October 2011 £1 million in client assets has been the threshold for treatment as a medium-sized firm under CASS and we have adopted this as the threshold in this case: where a firm has indicated that it held over £1 million in client assets at least at one moment in time during the past twelve months we have assumed that the client asset requirements would apply to them.

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47 For instance Hennessey (2007) estimated a marginal cost of fund-raising of 5-11 per cent for quoted firms and Kaserer (2008) estimated 9-12 per cent for UK-based firms. Since firms raising extra capital from retained profits will not incur any cash costs. Four per cent can be seen as a blended rate (if you like, 40 per cent of funds raised are from external shareholders at 10%, the rest is from retained profits).

48 Whilst the sample is very small, this is in fact close to the long-run range of stock market return data.

The Policis research indicated what each firm currently did (e.g. whether it used annual external audits). This was used to model whatever remedial strategies would be required to become complaint with the new regime. The costs of these, such as a new IT system, were based upon evidence from those firms with such a system already in place. Where processes changed additional training was also assumed to be necessary. On the other hand where a firm was already — by its own estimation at least — compliant with the requirements of the new regime no incremental costs were calculated.

In the top down model we assumed that around ten large firms would require one-off and on-going expenditure both in excess of £30,000 in order to comply. These estimates are drawn from the FSA's CP12/20, considering client money rules and their impact on insurance intermediaries.

Retail conduct review costs

We have reviewed in the main document some of the issues around the transfer in regime from the OFT to the FCA.

The calculation of the cost of the conduct review has two parts: a *de minimis* period in days and a variable component linked to the estimated number of customers. Once combined these provide estimates that reflect the restricted nature of the review (i.e. no need to re-paper existing contracts and no major system changes because the conduct rules are remaining broadly the same — as described in the main document — such that implied change may be arguably classified as due to current non-compliance with those conduct rules).

Provided that the FCA will be concerned only with the application of the new regime to post-transfer contracts, then it can be argued that there is no obligation on firms to do anything about the pre-transfer paperwork (assuming that client contact in the normal course of business is enough to deal with rolling contracts). If participants believed there to be any ambiguity here or some residual exposure to FCA action then they might re-paper at least some pre-existing contracts: this could be expensive. This contingent cost might result in a level of cost attributable to this area several times that represented here. For example, the banks' stated experience with the CCA can be used for comparative purposes. Taking the numbers provided to us (£5-£10m per large bank) at face value and noting that the largest banks have 5 million to maybe 12 million contracts (some customers will have multiple contracts) implies a cost per customer of 40 pence up to £2, depending on how you slice it. This level of cost incorporated re-papering and also system and process change, however: given the intention of not changing conduct requirements, then even with such ambiguity this level of costs should not be fully replicated for re-papering alone.

Clear — and early — guidance from the FCA on the details of the policy framework would help keep such costs down, e.g. identifying where the CCA will still apply, etc. Limited permission firms will only have a fraction of the FSA rule book to assess and think about, but in most cases these will have little or no prior exposure to it: therefore the more pointers that the FSA/FCA can provide to what firms need to look at (or indeed, avoid looking at) the better in order to reduce any regulatory culture-shock. Equally, more guidance in user-friendly language will be valuable.

EXIT ANALYSIS: Approach to Modelling Firm Behaviour

We describe here how we have approached the modelling of firm behaviour, and the analytical framework within which that model has been constructed. The modelling uses the data on revenue, costs etc collected in the survey of firms.

Direct Impact of Compliance Costs for Existing Suppliers

We take profitability to be the baseline criterion that drives business decisions. When faced with multiple possibilities, firms will choose the option that would lead to the highest profits.

In their simplest form, profits equal revenue minus costs. Firms' decisions typically affect outcomes in multiple time periods. In that case, firms must consider the present value of the profits of all future periods, discounted by

the appropriate factor (i.e. their cost of capital). In addition, firms have often multiple revenue streams. When firms engage in various activities, the total revenue is the sum of revenues from each separate product or service.

To conduct this analysis and construct our model for the behavioural analysis, we have made some simplifying assumptions. Specifically we have assumed that:

- If in profit the firm would not exit the market (even if could earn greater return on investment elsewhere).
- If making a loss and in the long-term and the business cannot be made profitable, the firm will always exit the market.

We focus here on the impacts of the completed shift to the FSMA regime. However, there will be a transitional period, between April 2014 when the OFT closes and April 2016 when the FCA will be ready to introduce its full new consumer credit regime.[49] Firms will be likely to incur different costs during the transition period and after the transition period.

Revenue

Revenue for a specific product is equal to the price times the volume of sales. The price that a firm can charge depends largely on consumers' willingness to pay and the prices of competitors and substitutes. In a perfectly competitive market, firms would have no power to influence the market price. Most real world markets, however, allow firms some degree of discretion to choose their prices. The second element that determines revenue is the volume of sales.

Firms can operate in more than one business, resulting in multiple revenue streams. For example, retailers might not only receive revenue from mark-up on prices, but also from the financial services or intermediation they offer their customers.

Costs

For economic decision purposes, costs consist of accounting (or out-of-pocket) costs plus opportunity costs. The latter are defined as foregone revenue of using resources in alternative activities and include the cost of capital (even if it is owned by the firm) and the wage of the owners, if the firm is owner-managed.

In the short-run, costs are classified into fixed and variable costs. Variable costs are the ones that depend directly on the volume of output and can be avoided if the firm decides to cease operations. Fixed costs, on the other hand, have to be incurred independently of the level of output. Examples of fixed costs include property taxes and insurance payments. These costs are sometimes referred to as overhead costs.

When a new regime is introduced, firms will typically bear incremental costs. These additional costs can also be classified into one-off and on-going costs. It is important to understand how these costs map into fixed and variable costs. While one-off costs are fixed costs, on-going costs can be either fixed or variable, depending on whether their amount varies with output. For example, renewing a license every period would be an on-going fixed cost. On the other hand, training new employees in regulatory compliance could be considered an on-going variable cost, as the number of new employees would depend on the volume of sales. Such variable costs also have greater scope to be absorbed into "business as usual" costs.

Acquiring new customers

If markets were perfectly competitive and consumers had perfect information, firms could rely exclusively on the price to influence the total volume of sales of a particular. However, typically both firms and consumers must incur search costs to complete a transaction. In particular, firms use advertising and intermediaries to secure new customers. The extent to which firms use such methods depends on factors such as the profitability of a

[49] Proposals for this are currently still being developed but are expected to include the following features:
- Firms with OFT licences will be given interim permissions to continue doing consumer credit activities until they obtain FCA authorisation (or a variation of permission if they are already FCA authorised) or become appointed representatives of authorised firms;
- Any prudential and reporting requirements will then come into effect; and
- During the transitional period firms will be required to comply with the new conduct standards but supervision is likely to be less intense than it will be when the full regime comes into effect from 2016 onwards.

particular segment and/or the amount and quality of information available to consumers in the market. When market conditions change, the incentives for acquiring this type of information could be affected.

Risk

In the presence of uncertainty, firms must rely on their assessment of their expected profits. Firms consider various possible scenarios and estimate their profits in each of them. The expected profit incorporates these estimations together with the probability of each scenario.

The extent to which firms are willing to trade off profits for reduced levels of risk will depend on their risk aversion. A firm that is risk averse will prefer not to have large variability across scenarios. Consequently, firms might be willing to reduce their expected return in exchange for lower risk.

In corporate finance theory all agents are framed as risk averse. However, the risk appetite of an organisation can vary depending on its ownership and debt structure. A 100 per cent debt financed firm will have a lower risk appetite than a firm with 100 per cent equity debt.

This is because a 100 per cent debt-funded organisation will be disciplined only by its lenders (as opposed to shareholders). Lenders want to be repaid. So the lender's concern is to minimize downside risk – there is no upside risk for a lender. By contrast, an organisation with equity will have shareholders that experience upside as well as downside risk. Such shareholders will want to maximise enterprise value, which includes upside risk. The consequence is that the organisation will have a higher risk appetite if it has shareholders.[50]

Scenario 1: Costs have increased, but can be passed on to consumers

In the event that the change in the regulatory regime would imply increase compliance costs the first question to ask would be whether or not such costs could be passed on to consumers. This will determine the impact on the firm's profitability.

In a competitive market firms can only charge the customer the marginal cost of providing the service. To the extent that the additional compliance costs represent fixed cost (e.g. authorisation fee) these would not be passed on to consumers but borne by the supplier. Where the compliance cost represents a variable cost (e.g. reporting of individual agreements) we would assume that this would be passed on to consumers.

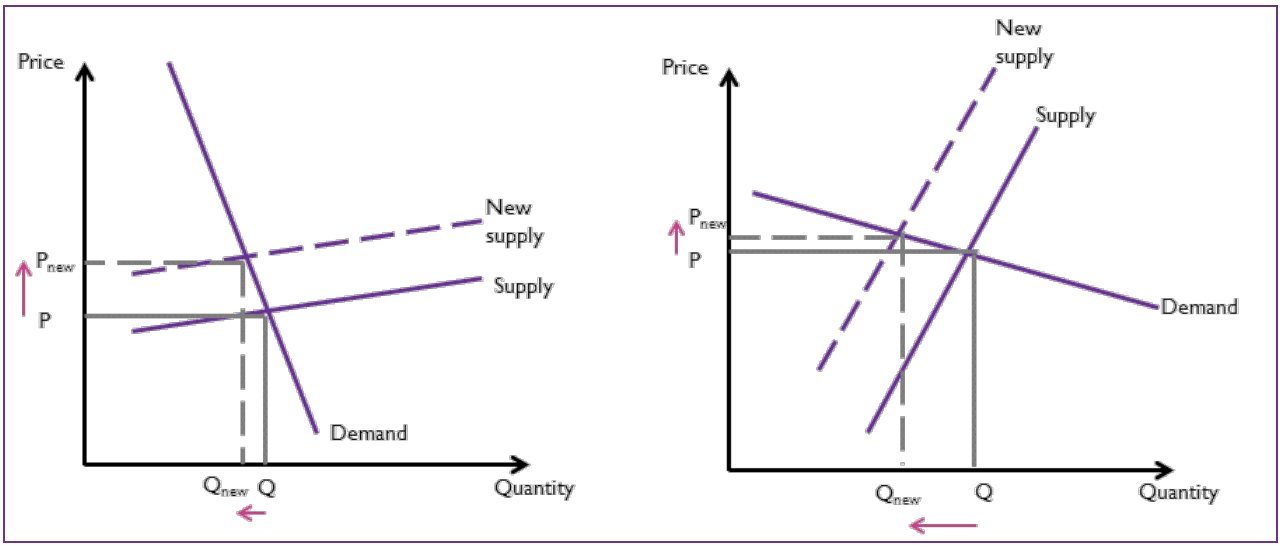
In competitive markets, the pass-through rate is determined by the relative price sensitivity of consumers and firms. If consumers are very price sensitive (relative to firms), it would not be possible to increase prices without a significant drop in demand. Therefore, in the short term at least, firms are likely to pass-through a lower proportion of any increase in the cost, rather they would reduce the supply of credit. In the opposite case, when the firm's supply is more sensitive to changes in price than consumer demand is to changes in price, the firm would be less able to continue supplying the market if they absorb a large fraction of costs and therefore, the pass-through would be greater and the reduction in supply smaller.[51]

The charts below offer a simple illustration of these dynamics. In the left hand diagram demand is less sensitive to changes in price than supply; consequently the reduction in supply (Q to Q_{new}) is comparatively less than the increase in price (P to P_{new}). Conversely in the right hand diagram consumer demand is relatively more sensitive to changes in price than the supply of credit, as such the reduction in supply (Q to Q_{new}) is larger than the price increase (P to P_{new}).

50 This is purely from the capital structure risk management side, ignoring the cost management side for now.

51 To note we have assumed here that markets are competitive, and as such inelastic demand matched with perfectly elastic supply would result in 100 per cent pass through. In contrast, a monopoly would only pass through 50 per cent of the cost increase. See for example Donghun Kim and Ronald W. Cotterill (2008), "Cost Pass-Through in Differentiated Product Markets: The Case of U.S. Processed Cheese", *The Journal of Industrial Economics*, Vol. 56, No. 1, pp. 32-48, March 2008.

Figure 7.1: Extent of Pass-Through with Different Degrees of Price Sensitivity



Source: Europe Economics

The rate of pass through would also be affected by the persistence of any cost increase. The less persistent the increase in marginal cost is expected to be the lower the pass-through rate will be to consumers.[52]

Where the firm is able to pass cost increases on to consumers this would represent a change in its strategy. Where the cost increases are temporary and consumer demand is thought to be relatively sensitive to price changes compared to supply, we would not expect the firms' pricing strategy to change dramatically.

In contrast, if the cost increases are more permanent in nature and consumer demand is thought to be relatively insensitive to changes in the price of credit, we would expect the pricing strategy of the firm to change. Specifically we would expect prices charged by the firms operating in the market to increase. This would have implications for consumers (Refer to section 4 for a discussion of the impacts on consumers).

Where cost increases cannot be passed on to consumers, we would need to consider whether bearing these additional costs would undermine the firm's profitability.

Scenario 2: Profits have decreased, but are still positive

In the event that any increases in the costs of compliance created by the changes to the regulatory regime cannot be passed on to consumers but do not undermine the firm's profitability, we assume that firms would not, as a direct consequence of this, alter their business strategy.

In order to determine the impact on profitability both the incremental one-off and on-going costs of compliance must be considered. Depending on the nature of the one-off costs these would need to be spread over an appropriate period of time. Current guidance from the UK Government requires that certain types of expenditure are spread over a specified number of years. According to the guidance, staff costs, such as recruitment, training, or external advice, would all be written off immediately. In contrast, for software and capital expenditure (such as new computers and/or premises) the cost is spread over a number of years (between two and five years depending on the nature of the expenditure and the expected life of the capital stock). Since the main sources of one-off compliance costs are likely to be related to staffing and advice and investment in software (which according to the guidelines is written off after two years), we have — for simplicity — applied an amortisation rate of 25 per cent to one-off costs incurred when comparing them with profitability.

Scenario 3: Short run losses as a consequence of one-off costs, but the on-going business is still profitable

When the long run profitability is not threatened, firms might choose to continue operating despite losses in the short run.For example, a one-off investment to set up required compliance systems may cause the firm to incur a

52 See for example John Taylor (2000), "Low inflation, pass-through, and the pricing power of firms", *European Economic Review*, 44 (2000), 1389-1408

loss in the short-term, while relatively small increases in on-going costs do not undermine the continued profitability of the business. This decision is inter-temporal in nature: it would depend how current losses compare to the present value of future benefits. This calculation would be affected primarily by the ability of firms to access capital in the short-run and the cost of doing so.

Firms might decide to stay in a particular market at the expense of short term negative profits for different reasons. In particular, if a firm decides to exit the market, it would incur a loss equivalent to its fixed costs.[53] If the loss in profitability that a firm incurs as a result of the regime change is smaller than its fixed costs, it is still more profitable not to exit.

Scenario 4: Profits become consistently negative

Where the impacts of an increase in cost are permanent and result in negative profits in the long-term, the firm has various options.

Where such losses are not tenable, we consider four possibilities:

- the firms change their strategy
- the firms expand the business, either through growth or merger
- the firms exit the market
- the firms over to grey market

The first point to establish is whether or not the profitability of all product lines/consumer groups served would be affected, or whether only certain revenue streams would become unprofitable.

Change Strategy

If only certain revenue streams are affecting the overall profitability of the business, if the firm can distinguish between these streams, the firm could address any fall in profitability via a change in their business strategy. In particular, firms can offset cost increases by altering their pricing and marketing strategies. For example, if firms are able to price discriminate (i.e. charge different prices depending on the characteristics of the customers), they might be able to adjust prices charged to certain groups to restore the profitability in each of them.

Such strategies would not be feasible if the firms cannot differentiate between the different revenue streams, the losses would run across all revenue streams, and/or the firm cannot distinguish between different consumers (and so would not be able to adopt separate strategies for the unprofitable groups).

Pricing strategies

There are various forms of price discrimination, each of which requires different information to achieve. These are generally referred to as follows:

- First degree price discrimination — charging each consumer their willingness to pay;
- Second degree price discrimination — offering discounts for different quantities demanded; and
- Third degree price discrimination — charging different prices to different types of consumers.

The more common forms of price discrimination relate to quantity discounts (i.e. reduced prices for bulk purchasing) and charging different prices for different types of consumers (e.g. elderly, businesses, etc.). In order to price discriminate in this way it is important that the firm can distinguish between the relative price sensitivity of different groups. For example, to be able to price discriminate effectively a firm needs to have sufficient information on its customers or be able to structure their products in such a way that consumers are self-selecting, that is they select themselves the products most suited to their own willingness to pay.

53 These represent sunk costs – once incurred, sunk costs cannot be recovered. Money invested in sunk costs is effectively lost on exiting the market. As indicated by Friedman: "While the same costs are often both fixed and sunk, they need not always be. Fixed costs are costs you must pay in order to produce anything. One could imagine a case where such costs were fixed but not sunk, either because the necessary equipment could be resold at its purchase price or because the equipment was rented and the rental could be terminated any time the firm decided to stop producing." Here we assume here that all fixed costs are sunk costs.

In the consumer credit market access to customers' credit ratings and income can facilitate this type of pricing strategy, similarly setting credit agreements of different lengths and with different penalty structures can allow self-selection by consumers. It is likely that pricing strategies would be easier in certain segments than others, for example credit rating information may allow price discrimination in the credit card or store-card segment, while the scope for such pricing strategies would be less feasible in pawn.

If price discrimination is not possible the firms marketing strategy may become more relevant. For example, firms may choose to focus their business efforts into attracting the customer base that is most valuable while neglecting other market segments.

Marketing strategies

Firms could also alter their marketing strategies. Where the additional costs render the business unprofitable, firms may decide to change the way in which they target consumers, and/or the types of consumers that they target.

Assuming that these firms are profit maximisers, it is not unreasonable to assume that they currently employ the most efficient (or optimal) method of acquiring customers. As such, in the absence in any change in the cost of acquiring consumers via the various methods, we would not expect their behaviour in this respect to change in this context.

However, if the cost of serving certain types of consumers increases more than for others firms may have an incentive to change the types of customers they serve (and thus target). For example, if certain types of customers become disproportionately less profitable, firms may choose to either stop serving them completely, or reduce the supply of credit to those groups in order to free up credit for more profitable customers. Ultimately firms will aim to maximise their expected return.

This may have a knock-on effect for the way in which they acquire customers, if different types of customers are targeted in different ways. The implications for credit intermediaries would need to be considered here.

Expand or Merge

Where such strategies are not feasible firms may attempt to make the business profitable by expanding their operations, including the possibility of merging with other firms. There are typically incentives for expansion/consolidation when economies of scale are present (i.e. when the cost per customer decreases as the volume of sales increases). An increase in fixed costs due to regulatory compliance would be such an example. For instance, if the cost of renewing licenses is independent of the volume of sales, small firms will suffer as they must divide this cost among fewer customers.

Exit

Firms may be willing to bear continued losses if:

- they operate in several markets and are able to cross-subsidise across revenue streams and providing the loss-making service offers some benefit (e.g. allows the company to offer a package of products/act as a one-stop shop); and/or
- the losses are offset by benefits obtained in a complementary activity.

In the absence of such benefits to their business as a whole, and without the scope to change their business strategy or take advantage of any economies of scale, the firm would ultimately exit the market.

Market exit could take a variety of forms. A firm could:

- sell the business on in its entirety;
- sell part of the business; or
- close down the business.

Whichever approach is adopted, the impact on market concentration would be the same unless new firms enter the market.

Model for Assessing Impact

Based on these dynamics and the factors underpinning business decisions we have developed a model to determine how a firm may react to an increase in the cost of compliance. In particular the model considers likelihood of:

- No change in the business;
- A change in the business strategy — including the potential for a firm to increase prices and/or reduce supply, to specific customers or across the board, and to change the range of products/services it offers;
- Expansion of the business;
- Consolidation (i.e. merger); and
- Market exit.

To construct this model we have made some simplifying assumptions. Specifically we have assumed that:

  - If profits remain non-negative (after accounting for the cost of capital) the firm would not exit the market (even if it could earn greater return on investment elsewhere).
  - If profit becomes negative in the long-term and the business cannot be made profitable, the firm will always exit the market.
  - Non-SMEs will be able to cover any short-term costs
  - That incremental compliance costs represent increases to on-going fixed costs
  - If fixed costs increase by more than 10 per cent post regulatory change there will be an economies of scale effect
  - If firms can pass through the costs to consumers they will just change their prices, if not they will change the consumers they target but not their prices to those consumers

The outputs of the model have allow us to assess the impact on:

- competition in market
- prices
- consumers served

Competition in the market

The extent of competition will be determined largely by any change in the concentration of firms operating in the market. In particular the extent of any market exit, and expansion and merger activity will have important implications for the competitive environment. Any reduction in the number of firms and increase in the concentration of the market would potentially reduce the competitive pressure between the firms operating in the market.

Aside from such changes in firm behaviour, any impact on the scope for firms to enter the market and changes in demand side behaviour for different credit products will also be important in determining the competitive dynamics in individual markets. These are considered in Sections 3 and 4 respectively.

Prices

Prices may be affected via two mechanisms:

- a change in the business strategy of the firm; and/or
- a change in the competitive pressure in the industry — a reduction in competitive pressure may be accompanied by a rise in prices.

The extent to which a change in the competitive environment would result in a change in prices would depend not just on the scale of any change in the competitive dynamics, but also any changes in the quality of the service offered.

Consumers served

Any changes in the numbers or types of consumers being served will be driven primarily by any changes in the business strategies of individual firms as well as the extent of any market exit. If firms decide to alter supply to certain consumer groups, and/or the types of firms exiting the market tend to serve particular groups then there may be a shift in the types of consumers served by lenders. (An important part of any overarching analysis of the impacts on consumers, however, would also need to consider the extent and supply of alternatives available to affected consumers.) This feeds into our analysis of the impacts on consumers.

Annex B – Option 1 cost estimates

Standalone option - Additional costs

Ongoing
Management
Chief Exec £120k
Head of Corp Services £80k
Operation Director £70k
Strategy and Consumer £70k

Board
Chair £125k
Dep Chair £75
6 Board members £25k * 6

Transition
Move staff
£500 * # staff

Back office
Branding, web £500k
IT £2m

ANNEX C - Consumer Direct complaints

Complaints about consumer credit products to Consumer Direct 2011

	% of all complaints	proportion FCA could tackle
(01) Defective goods	4.1%	0%
(02) Substandard services	33.1%	0%
(03) Credit	1.6%	100%
(04) Prices	3.0%	100%
(05) Delivery/Collection/Repair	0.7%	0%
(06) Cancellation	3.3%	100%
(07) Selling practises	8.7%	100%
(08) Misleading Claims/Omissions	16.8%	100%
(09) Offers of inadequate redress	2.0%	100%
(-1) Unknown	0.0%	NA
(10) Terms and Conditions	1.3%	100%
(11) Problems pursuing a claim	1.6%	100%
(12) Business Practices	23.5%	100%
	100.0%	62%

HM Treasury contacts

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If you require this information in another language, format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

E-mail: public.enquiries@hm-treasury.gov.uk

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