

# Retail Banking Market Investigation Order 2017 Variation Order 2019

## Background

1. The Retail Banking Market Investigation Order 2017<sup>1</sup> was made following a Competition and Markets Authority market investigation into the retail banking sector.<sup>2</sup> Part 6 of the Retail Banking Market Investigation Order 2017 implemented *inter alia* a programme of overdraft alerts with grace periods for PCA customers.
2. On 18 December 2018 the Financial Conduct Authority (FCA) announced its intention to bring into force new rules on consumer overdraft alerts. The new rules are brought into force through the Personal Current Accounts and Overdrafts (Information and Tools for Customers) Instrument 2018 (Instrument number FCA2018/52) as amended, which inserts an additional section into the FCA handbook, specifically sub-section 'BCOBS 8.4 alerts'<sup>3</sup> (the new FCA rules).
3. On 1 July 2019 the CMA launched a review under its duty in section 162 of the Enterprise Act 2002 (the Act), to consider whether, by reason of any change of circumstances, Part 6 of the Retail Banking Market Investigation Order 2017 is no longer appropriate and needs to be varied or revoked.
4. On 12 September 2019, the CMA published its provisional decision that the coming into force in the UK of the new FCA rules constitutes a relevant change of circumstances such that it is appropriate to vary the Retail Banking Market Investigation Order 2017. A Notice of Intention to vary the Retail Banking Market Investigation Order 2017 was published alongside the provisional decision.

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<sup>1</sup> [The Retail Banking Market Investigation Order 2017 and Explanatory Note](#)

<sup>2</sup> [Retail Banking Market Investigation Final Report](#)

<sup>3</sup> [FCA Handbook, BCOBS 8.4 alerts](#)

5. The CMA makes this order exercising its powers under section 161(4) of the Act for the purpose of varying the Retail Banking Market Investigation Order 2017.

## **The Order**

The CMA makes this order exercising its powers under section 161(4) of the Enterprise Act 2002 for the purpose of varying the Retail Banking Market Investigation Order 2017. The Retail Banking Market Investigation Order 2017 was made to remedy adverse effects identified in the report of the Competition and Markets Authority (CMA) entitled 'Retail banking market investigation: Final report', which was published on 9 August 2016.<sup>4</sup>

### **1. Citation, commencement and purpose**

- 1.1. This order may be cited as the 'Retail Banking Market Investigation Order 2017 Variation Order 2019'.
- 1.2. This order shall come into force on [...] which is the which is the date of publication of the signed final order.
- 1.3. The purpose of this order is to vary the Retail Banking Market Investigation Order 2017.

### **2. Interpretation**

- 2.1. The definitions, interpretations and meanings ascribed to words and expressions in the Retail Banking Market Investigation Order 2017 apply to this order except where words and expressions are expressly defined.

### **3. Variations to the Retail Banking Market Investigation Order 2017**

- 3.1. Article 3.2 will apply from the commencement date of the Personal Current Accounts and Overdrafts (Information and Tools for Customers) Instrument 2018 (as amended).
- 3.2. The Retail Banking Market Investigation Order 2017 is amended as follows:
  - a) In article 3 (General Application), in article 3.1.3 the words "Parts 6 and 7 apply" are replaced with "Part 7 applies";

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<sup>4</sup> [Retail banking market investigation: Final report](#)

- b) In article 4 (De minimis exemption) -
- i. article 4.7 is omitted;
  - ii. in article 4.10, the phrase “4.7” is omitted.
- c) Article 6 (Derogation) is omitted.
- d) In article 9.1 (Interpretation)
- i. The definition of ‘Alert’ is omitted and replaced with  
“ **‘Alert’** means either a text message sent to a mobile phone or a push alert from a mobile banking application that complied with the requirements of Part 6 of this Order prior to the FCA Overdraft alert regime commencement date.”
  - ii. The definition of ‘Alert Trigger’ is omitted and replaced with  
“ **‘Alert Trigger’** means a point which, prior to the FCA Overdraft Alert regime commencement date, would have required the Provider to send an Alert under the provisions of Part 6.”
  - iii. The definition of ‘Programme of Alerts’ is omitted and replaced with  
“ **‘Programme of Alerts’** refers to the programme of alerts that was in place under the requirements of Part 6 of this Order prior to the FCA Overdraft alert regime commencement date.”
  - iv. The definition of ‘Scheduled Payments’ is omitted.
  - v. After the definition of ‘FCA’ insert the following definitions  
“ **‘FCA Overdraft alert regime’** refers to the Personal Current Accounts and Overdrafts (Information and Tools for Customers) Instrument 2018 (Instrument number FCA2018/52) as amended.  
**‘FCA Overdraft alert regime commencement date’** means the date that the FCA Overdraft alert regime comes into force.”
  - vi. After the definition of ‘NatWest’ insert the following definition  
“ **‘Near limit alert’** means an alert that informed a customer that either:

(a) their PCA was approaching a Pre-agreed credit limit which may be based on the account exceeding a low balance threshold agreed by the customer; or

(b) that there was a significant risk that an Alert Trigger circumstance would have arisen on that day

and as a result they could have incurred a Relevant Charge.”

- vii. After the definition of ‘Part 3 Thresholds’ insert the following definition

“ **‘Part 6 Final Report Period’** refers to the period of time from 31 January 2019 up to and including the day prior to the FCA Overdraft alert regime commencement date.”

- viii. After the definition of ‘Representative’ insert the following definition

“ **‘Retry alert’** means an alert that informs a customer about the retry system as agreed between providers and the FCA.”

- e) Part 6 (Automatic Enrolment in a Programme of Alerts) is omitted.

- f) In Article 50 (Obligation to submit Compliance Reports on compliance with Part 6)

- i. Article 50.1 is omitted and replaced with the following

“50.1 Providers who were subject to Part 6 on the day prior to the FCA Overdraft alert regime commencement date must submit a Part 6 Compliance Report to the CMA by the first Working Day after 31 January in the year following the FCA Overdraft alert commencement date, confirming whether all the requirements of Part 6 were complied with during Part 6 Final Report Period, and provide the information set out in Article 50.2.”

- ii. Article 50.2 is omitted and replaced with the following

“50.2 The information required to be provided pursuant to Article 50.1 is:

50.2.1 confirmation of the type of alerts (eg Retry alerts, Near-limit alert etc) and medium of alerts (eg text message or push alert) that customers were automatically enrolled into whether or not they were in the Programme of Alerts, and the template content by medium;

50.2.2 the auto-enrolment policies (and the supporting data collection policies) implemented;

50.2.3 what was communicated to customers about these alerts;

50.2.4 how and when the alerts were triggered and sent;

50.2.5 the messages included in the Alert;

50.2.6 the number and percentage of new and existing accounts for which a mobile is held and/or subscribed to mobile banking; and

50.2.7 By medium:

(a) the number and percentage of new and existing accounts registered for the Alert;

(b) the number and percentage of new and existing accounts that had opted out of the Alert;

(c) where possible, the number and timing of successful and failed deliveries of these alerts; and

(d) effectiveness measures, such as the percentage of accounts receiving an Alert for which charges were not subsequently applied.

iii. Article 50.3 is omitted and replaced with the following:

“50.3 For the avoidance of doubt, the information required pursuant to Article 50.1 is in relation to the Part 6 Final Report Period only.”

g) At Article 56 (Additional compliance report requirements) insert the following

“56.2.1 for the avoidance of doubt, the reporting requirement in Article 56.2 also includes circumstances where a Provider becomes aware after the FCA Overdraft alert regime commencement date of a breach of Part 6 of the Order which occurred prior to that date.”

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Chair of the Group

Competition and Markets Authority

## Explanatory Note

### (This Note is not part of the Order)

1. The purpose of the Retail Banking Market Investigation Order 2017 Variation Order 2019 is to vary the Retail Banking Market Investigation Order 2017 (the Order).
2. On 12 September 2019, the CMA published its provisional decision that the coming into force in the UK of the Personal Current Accounts and Overdrafts (Information and Tools for Customers) Instrument 2018 (Instrument number FCA2018/52) as amended, which inserts additional section into the FCA handbook, specifically sub-section 'BCOBS 8.4 alerts, constitutes a relevant change of circumstances such that it is appropriate to vary the Retail Banking Market Investigation Order 2017. The provisional decision was accompanied by a Notice of Intention to vary the Order.
3. The variation applies to Part 6 of the Order and associated provisions only. For the avoidance of doubt, all the provisions which are not subject to this variation order continue to be in force as set out in the Order. The variation was made to reflect updated regulation. Under Article 7 of the Order the variation of the Order by the Retail Banking Market Investigation Order 2017 Variation Order 2019 does not affect the validity or enforceability of any rights or obligations that arose prior to the variation of the Order.
4. Section 167 of the Enterprise Act 2002 (the Act) places a duty on any person to whom this order applies to comply with it. Subject to the defences in the section, any person who suffers loss or damage due to a breach of this duty may bring an action. Section 167 of the Act also provides that the CMA can seek to enforce this order by civil proceedings for an injunction or for any other appropriate relief of remedy.
5. The CMA has a general duty to monitor the operation of a Competition Commission enforcement order under section 162 of the Act. This includes the duty to consider, from time to time, whether an enforcement order should be varied or revoked in the light of a change of circumstances.
6. Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and the provisions of the Order, the Order shall prevail.