Review of Part 6 of the Retail Banking Market Investigation Order 2017

Provisional decision

12 September 2019

The Competition and Markets Authority has excluded from this published version of the market study report information which it considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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Summary

1. The CMA published its final report from its market investigation into retail banking services in August 2016. This concluded that retail banking competition in the UK was not working well and included a package of reforms to address the competition problems that it identified. These reforms were implemented in large part through the CMA's Retail Banking Market Investigation Order 2017 (the Order) and included requirements, in Part 6 of the Order, on providers of personal current accounts to alert customers by mobile text message, or through a notification in a mobile banking application, to situations where they could take action to avoid charges for the use of an overdraft.

2. The CMA also recommended that the Financial Conduct Authority (FCA) should carry out research into overdraft alerts generally. The FCA has announced that it will be introducing new rules on alerts on 18 December 2019. As a consequence of this work and these new rules, the CMA launched a review of Part 6 of the Order to determine whether the FCA's new rules will duplicate the provisions of Part 6 such that they should be removed.

3. The CMA's review was launched on 1 July 2019, and the launch decision invited comments from stakeholders on the substance of the review. Following consideration of responses to the launch document, this document sets out our provisional decision. We have provisionally decided that the

forthcoming new FCA rules on consumer overdraft alerts constitute a change of circumstance. We have provisionally decided that from the time the FCA rules come into force, Part 6 (and associated provisions) of the Order will no longer be appropriate and that the Order should be varied. We are now consulting on this provisional decision and a draft Variation Order which would give effect to this change.

Introduction

Background

4. On 6 November 2014 the Competition and Markets Authority (CMA) board made a reference for a market investigation into the supply of retail banking services to personal current account customers and to small and medium-sized enterprises (SMEs) in the United Kingdom (the market investigation). On 9 August 2016, the CMA published its report on the market investigation, entitled Retail Banking market investigation: Final report (the Final Report), in which it concluded that:

   (a) there were three separate (and, in certain circumstances, in combination) adverse effects on competition (AECs) in each of Great Britain and Northern Ireland in relation to personal current accounts (PCAs), business current accounts (BCAs) and SME lending;

   (b) the CMA should take action to remedy, mitigate or prevent the AECs and detrimental effects flowing from them;

   (c) in order to address the AECs and resulting customer detriment, an integrated package of remedies should be imposed consisting of:

      (i) three cross-cutting foundation measures that will underpin increased competition in the reference markets which have the object of increasing customer engagement and making it easier for personal and business customers to compare the prices and service quality of different providers and of encouraging the development of new services;

      (ii) additional measures to make current account switching work better, including building on and improving the existing current account switch service;

      (iii) a set of measures aimed at PCA overdraft users, a group of customers who suffer particularly from the competition failures in the PCA market; and

(iv) a set of measures targeted at the specific problems in SME banking, enhancing SME access to information through new comparison tools, requiring banks to offer an indicative price quote and eligibility indicator tool, requiring banks to agree and adopt a core set of standards for SMEs opening a BCA and additional published information thereby reducing the hold that incumbent banks have in the market for BCAs and SME loans.

5. The Order was made as part of the package of remedies to remedy, mitigate or prevent the AECs and any customer detriment which had been identified in the Final Report. The Order implements, among other matters, a programme of overdraft alerts with grace periods for PCA customers. It requires qualifying providers to automatically enrol all their customers into an unarranged overdraft alert; and to offer, and alert customers to the opportunity to benefit from, grace periods during which they can take action to avoid or reduce all charges resulting from unarranged overdraft use. This programme of alerts is set out at Part 6 of the Order.

6. In addition to the Order, the CMA also made a number of recommendations to the FCA including that it:

(a) develops and tests prompts which are designed to encourage consumers to consider their banking arrangements; and

(b) researches, tests and implements measures to increase consumers' engagement with their overdraft use and charges.

7. The FCA completed its research and has proposed a number of changes to rules in relation to overdrafts, as well as implementing rules concerning mobile text and other types of alerts for customers, with these rules being published in December 2018 to come into effect on 18 December 2019. As a result, the CMA decided to launch a review of Part 6 of the Order on 1 July 2019.

Legal framework

8. The CMA has a statutory duty to keep its enforcement orders under review.[1] From time to time, the CMA must consider whether, by reason of any change in circumstance an order is no longer appropriate and needs to be varied or revoked. The CMA is reviewing Part 6 of the Order to decide whether it remains appropriate in the light of the forthcoming new FCA rules.

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[1] Section 162 Enterprise Act 2002

Part 6 of the Order

9. The Order was made following the market investigation. Part 6 of the Order came into force on 2 February 2018, delivering the programme of overdraft alerts with grace periods for PCA customers. It requires qualifying providers automatically to enrol all their customers into an unarranged overdraft alert; and to offer, and alert customers to the opportunity to benefit from, grace periods during which they can take action to avoid or reduce all charges resulting from unarranged overdraft use.

10. Part 6 of the Order applies to providers of PCAs in the UK, but does not apply to providers of PCAs that had fewer than 150,000 Active PCAs,[2] excluding any PCA in which there is no charge or cost for exceeding or attempting to exceed a Pre-agreed credit limit (for example Basic Bank Accounts), in the UK.

The new FCA rules

11. On 13 December 2018 the FCA announced its intention to bring into force new rules on consumer overdraft alerts on 18 December 2019. The new rules will be brought into force through the Personal Current Accounts and Overdrafts (Information and Tools for Customers) Instrument 2018 (Instrument number FCA2018/52) [3] as amended, which will insert an additional section into the FCA handbook, specifically sub-section 'BCOBS 8.4 alerts'[4] (the New FCA Rules).

Stakeholder views

12. The CMA published its launch decision on 1 July 2019 in which it sought views from stakeholders on the substance of the review. We received five responses, four from PCA providers, RBS, Barclays, Lloyds and AIB and one from an industry body, UK Finance.

13. All respondents supported the CMA's review of Part 6 of the Order and some highlighted the following reasons why they considered it would be appropriate to remove it:

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[2] An active PCA is defined in the Order as a PCA that has had at least one customer-generated payment or transfer (including standing orders and direct debits, but excluding charges and interest on the account) coming into, or leaving, the account in the previous 12 months.
[3] Personal Current Accounts and Overdrafts (Information and Tools for Customers) Instrument 2018
[4] FCA Handbook, BCOBS 8.4 alerts

- the introduction of the New FCA Rules represents a change of circumstance which was in fact anticipated at the time that the Order was put in place;[5]

- removal of Part 6 of the Order would eliminate regulatory duplication in this area;

- removal of Part 6 would simplify the obligations of PCA providers and improve the efficiency of compliance reporting;

- in addition to duplicating Part 6 of the Order, the New FCA Rules provide additional benefits to consumers in terms of protection and facilitating cost comparisons; and

- there are benefits resulting from the FCA becoming the single point of regulatory oversight in this area, for example the FCA would be better placed to assess the impact of the benefits of overdraft alerts in any broader review that may take place in the future.

14. UK Finance and Barclays proposed that the scope of this review be widened to include a review of Part 7 of the Order which concerns the Monthly Maximum Charge (MMC) for unarranged overdrafts.[6] These respondents noted that the FCA is proposing to introduce new rules in April 2020 which they considered would duplicate Part 7 of the Order.

15. We have considered the appropriate scope of this review and note that while the CMA may wish to carry out a stand-alone review of Part 7 of the Order in the future, this current review should continue to focus on Part 6 for the following reasons:

- At this stage, and without the investment of additional resource in analysis, it is not clear whether a review of Part 7 would meet the threshold to be launched in terms of there being either a realistic prospect of finding a change of circumstance in this area or whether such a review represents an administrative priority for the CMA. We consider that the provisions of Part 7 and the FCA rules proposed for April 2020 do not represent a clear-cut example of duplication, given there are options for providers in implementing these rules.

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[5] Explanatory Note to the Order, paragraphs 8 – 10.
[6] The MMC requires PCA providers to specify for each PCA product the maximum Relevant Charges that could accrue in relation to that PCA in any month as a result of exceeding or attempting to exceed a pre-agreed credit limit on the PCA. The purpose of this was to allow consumers visibility of the maximum amount each provider would charge, and that consumers would see this as part of a competitive offering and take this into account when choosing a PCA.

- We consider it beneficial to limit the scope of this review in order to ensure that an appropriate outcome is reached before the New FCA Rules come into force. There is a risk that widening the scope to include Part 7 could delay the delivery of a final decision in the review. The desirability of reaching an outcome of a review of Part 7 before the FCA's rules come into force in April 2020 was presented by stakeholders as an argument for including it in the scope of this review, however, we highlight that there are similar arguments about the benefits of avoiding duplication over Part 6 where the New FCA Rules are to come into force on 18 December 2019.

- The impact of the New FCA Rules on providers' policies and behaviour in respect of unarranged overdrafts, and thus the impact on the relevance of the MMC is uncertain. This means there may be benefit from retaining Part 7 for a period so that any implications of the new FCA rules for Part 7 can become clearer.

- The CMA will liaise further with the FCA in the coming months in order to determine whether a further review should be prioritised concerning Part 7 of the Order, and if so, consider the most appropriate timing of any such review.

Change of circumstance

16. We have explored whether the New FCA Rules constitute a change of circumstance for the purposes of s.162 Enterprise Act 2002.

17. We have provisionally concluded that the introduction of the New FCA Rules constitutes a change of circumstance, as these rules are in the same policy area as those in Part 6 of the Order.

Appropriateness of Part 6 of the Order

18. Given this change in circumstance, we consider the extent to which retaining the requirements of Part 6 would remain appropriate in the light of the New FCA Rules. Annexe One to this provisional decision provides a comparison of the individual obligations in Part 6 with the equivalent in the New FCA Rules. In summary, while the New FCA Rules broadly duplicate those of Part 6, there are the following differences:

    - The New FCA Rules do not include separate reporting and compliance mechanisms comparable to that provided for by Article 50 of the Order. Banks and building societies are authorised by the Prudential Regulatory Authority (PRA) and regulated by both the PRA and the FCA. The FCA

regulates their business conduct, and as such has an ongoing relationship with these organisations, and receives information regarding their ongoing businesses. This is delivered in two main ways; first through Principle 11 of the FCA's Handbook, which states that "A firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice." Secondly, unlike the CMA, the FCA has routine supervisory contact with the major banks and expects to explore with them any intelligence around breaches. This means, unlike for the CMA when it established Part 6, it is not necessary for the FCA to establish a separate reporting and compliance mechanism for its new rules on alerts, as these can be reported on effectively as part of the existing reporting and compliance regime referred to above. We have explored and understood the nature of the broader reporting and compliance regime that the FCA has in place and consider this to be appropriate for the effective enforcement of the New FCA Rules.

- There are some areas where Part 6 provides for alerts to be sent in more limited circumstances than those in the New FCA Rules, with these having fewer exemptions for providers and types of customer. To the extent that this leads to alerts being sent to a broader range of customers, we consider that this may be beneficial in allowing them to avoid relevant charges.

- The New FCA Rules offer a slightly more limited ability to obtain telephone details than those provided for in Part 6. However, the FCA already allows providers to obtain telephone details through bank account opening, and existing customers will have benefitted from the broader provisions of Part 6 to date. Consequently we do not consider this difference to be material in affecting significantly the ability of providers to obtain relevant telephone details from customers to provide them with alerts.

19. We have found that the differences between Part 6 and the New FCA Rules are not material, such that the New FCA Rules will duplicate Part 6 in terms of the substantive obligations and the likely effects on providers and customers. Consequently, we conclude provisionally that the New FCA Rules mean that the Order in its current form, and specifically Part 6 of the Order will be no longer be appropriate when they come into force.

20. In addition to considering this change of circumstance, the CMA notes the efficiency and broader benefits of regulatory oversight and policy regarding retail banking being overseen by a single organisation in the long term, the

FCA, rather than having such responsibilities split between the CMA and the FCA.

Proposed variation to the Order

Substantive provisions

21. Having found a relevant change of circumstance in the New FCA Rules, and found that the Order will no longer be appropriate in its current form, we have considered the action which it is appropriate for the CMA to take. Given the duplication with the New FCA Rules is limited to Part 6, we consider it appropriate to vary the Order to remove the duplicated Part 6. Further, relevant compliance and reporting obligations in other parts of the Order should also be varied to avoid duplication and to remove obligations that are no longer required.

22. The proposed changes would be implemented through a Variation Order which we describe below, and we are consulting on a draft of this alongside this provisional decision.

23. We also consider it desirable that any transfer of responsibility for the provision of alerts in this sector takes place seamlessly and without any regulatory gaps, either in the substantive obligations on providers or in relation to compliance and enforcement of those obligations. In terms of the substantive provisions of Part 6, we consider that the Variation Order would:

- remove Part 6 of the Order which would cease to have effect when the New FCA Rules come into force;
- describe the event (the coming into effect of the New FCA Rules) which needs to occur before this change will take effect;
- describe the compliance requirements in relation to breaches of Part 6 of the Order which will continue following the coming into force of the New FCA Rules in order that providers undertake a final compliance reporting exercise in relation to Part 6 of the Order; and
- clarify that providers are under an obligation to report to the CMA any breaches of Part 6 of the Order which may be discovered after the New FCA Rules have come into force.

Monitoring, compliance and enforcement

24. In relation to compliance and enforcement, we note that a number of providers have breached Part 6 of this Order, and notified the CMA of these breaches after the breach itself. Consequently, any CMA enforcement action can take place a number of months after the breach has occurred. In these circumstances, we do not consider it appropriate for the compliance and reporting regime covering Part 6 of the Order to cease to have effect on the date the substantive provisions of Part 6 cease to have effect. We note that the Order accounts for the possibility of a breach being discovered after a provision has been varied and sets out at Article 7 that the variation of a provision will not affect the validity or enforceability of any rights or obligations that arose prior to such variation.

25. Our current monitoring and compliance regime includes:

- obtaining annual compliance reports from providers, described in Article 50 of Part 12 of the Order;
- an obligation on providers under Article 56 of the Order to report breaches within 14 days of becoming aware of such a breach; and
- seeking information on breaches from providers, which may provided on a voluntary basis or involve the use of information gathering powers, either in Part 14 of the Order, or through the statutory powers from Section 174 of the Enterprise Act 2002.

26. Given our provisional decision is to vary the Order to remove Part 6, if we take no action in relation to monitoring and compliance, the CMA would not receive a compliance report covering the last almost 12 months during which Part 6 of the Order was in force. We consider that this could damage the ability of the CMA to monitor and enforce Part 6 for the full period in which it was in force and this would constitute a regulatory gap in the transfer of responsibility from the CMA to the FCA. Consequently, we consider there is a need to retain existing reporting requirements on providers to ensure the CMA retains its ability to enforce Part 6 for the entire period Part 6 is in force. This is particularly important where compliance with Part 6 is reported by providers and is often only determined on an ex-post basis.

27. We consider that the most effective and proportionate approach to this would involve ensuring providers submit to the CMA one further Part 6 Compliance Report early in 2020, and retaining an ongoing obligation to ensure that they report to the CMA any cases where they have breached Part 6 of the Order while it was in force. We are aware that this will mean that providers will

continue to incur some compliance costs. However, we consider this to be necessary to prevent a regulatory gap and is proportionate on suppliers: there is only one additional report to provide; and the scale of the work on reporting breaches depends on the provider's own level of investment in its compliance with Part 6 of the Order.

28. We consider that this could be achieved through the following changes to Part 12 of the Order:

- varying Article 50 of Part 12 to require providers to submit to the CMA one further compliance report in February 2020 concerning Part 6. Specifically by deleting Article 50.1 which sets out the initial reporting requirements and annual reporting requirement for part 6 and and replacing it with a provision where parties that were subject to Part 6 on the day the New FCA Rules come into force will be required to submit a compliance report to the CMA in February 2020;

- deleting the current Articles 50.2 and 50.3 which no longer make a meaningful reference to the provisions of Article 50.1;

- amalgamating the list of information required for the annual compliance report which is currently spread across Articles 50.2 and 50.3 into a single article setting out what information is required for the compliance report in February 2020; and

- varying Article 56 of Part 12 to clarify that we are retaining its reporting obligation to cases where relevant providers become aware of a breach after the removal of the provisions of Part 6.

Provisional conclusion

29. We have provisionally concluded that the introduction of the New FCA Rules represents a change of circumstance relevant to the Order. In the absence of a review of the Order, the introduction of the New FCA Rules would result in a firms facing duplication in the regulatory requirements on them. This could result in confusion among providers and would impose unnecessary costs of compliance with two potentially conflicting regulatory regimes, and may cause confusion among consumers. Consequently, our provisional conclusion is that it is appropriate to vary the Order to avoid such duplication by removing Part 6 of the Order.

30. In giving effect to this variation, we have also considered how to ensure there are no regulatory gaps in the monitoring and compliance with Part 6 of the Order. Given that most of the breaches of the Order are uncovered ex-post,

we consider it necessary for the compliance and enforcement of Part 6 to extend beyond the removal of the substantive obligation. We consider it proportionate for providers to send the CMA one final compliance report in 2020, and for us to retain the obligation on providers to report to the CMA any breaches of Part 6 that come to light subsequent to its removal.

Provisional decision and notice of intention to vary the Order

31. We have reached a provisional decision that the New FCA Rules coming into force represents a change of circumstances, such that, from the time that the New FCA Rules come into force, the Order will be no longer appropriate and that Part 6 of the Order should be removed. We have also decided to vary Part 12 of the Order to ensure that we retain the ability to monitor compliance with the Order during the transition to the FCA and that providers are required to report to the CMA any breaches of Part 6 that they subsequently uncover.

32. Consequently, we hereby give notice of our intention to vary the Order in the manner set out above. A Notice of Intention to Vary the Order is published alongside this provisional decision.

Consultation on the CMA's provisional decision

33. The CMA is now consulting on its provisional decision, its intention to vary the Order as set out above and on a draft Variation Order which is published alongside this provisional decision.[7]

34. Responses to this consultation, including supporting evidence where appropriate, should be sent to the following address and should arrive at the CMA by **5pm on 15 October 2019 2019**. Following this consultation, the CMA will consider the responses received and assess the evidence and views presented before reaching and then publishing its final decision.

    Email: remedies.reviews@cma.gov.uk

    Retail Banking Remedy Review Team (RBFA)
    Competition and Markets Authority
    The Cabot, 25 Cabot Square
    London
    E14 4QA

[7] Paragraph 7(2) of Schedule 10 of the Enterprise Act 2002, in conjunction with paragraph 3.33 of CMA guidance document CMA11, provides that the CMA should allow a 30-day consultation period in cases where the CMA intends to make changes to an order.

Annexe One: Comparison of the key features of Part 6 and the New FCA Rules

Order Part 6	CMA provision	FCA BCOBS	FCA provision	CMA assessment
3.13	Applies Part 6 requirements to all providers of PCAs in GB and NI subject to de minimis exception	1.1.1	This sourcebook applies to a firm with respect to the activity of accepting deposits from banking customers carried on from an establishment maintained by it in the United Kingdom and activities connected with that activity.	FCA rules broader than Part 6, so no regulatory gap.
4.7	De minimis exception – Part 6 does not apply to providers with fewer than 150,000 active PCAs (excluding those such as basic bank accounts) in GB and NI combined	8.4.1(1)	this section applies to a firm in relation to personal current accounts held with the firm under a trading name if 70,000 or more personal current accounts are held with the firm under that trading name.	FCA rules broader than Part 6, so no regulatory gap.
5.1	Part 6 does not apply to PCAs available exclusively to employees of the provider; their families or dependents; individuals holding assets of not less than £250,000	N/A	No equivalent exemptions, but FCA does have a private bank exemption (BCOBS 8.1.4R(3)).	FCA rules broader than Part 6, so no regulatory gap.
23.1	Automatic enrolment requirement - At the start of the Alerts programme, all existing PCA customers must be enrolled into the Alert programme. Enrolment is on an account level rather than customer level. Whether a customer can opt out for alerts for some accounts but not for others is a matter for the Provider.	8.4.3(1)	Except as otherwise provided for in BCOBS 8.4.5R a firm must ensure that in relation to each personal current account held by a banking customer, the banking customer is enrolled to receive each of the FCA's alerts.	Enrolment is on a customer rather than individual account basis, however this is not material and these provisions are equivalent.
23.1	Automatic enrolment requirement - All new customers must be enrolled into the Alert programme within 3 working days	8.4.3(4)(b)	A firm must comply with (1) [enrolment requirement] not later than whichever is the latest of: … (b) three working days after the agreement for the personal current account is concluded;	These provisions are equivalent.
23.1	Once enrolled, PCA customers remain enrolled until they request not to be	8.4.3(2)	The FCA has no explicit provision, as enrolement is an ongoing status rather than an event. (2) A banking customer is enrolled to receive alerts in relation to a personal current account when:	These provisions are equivalent.

		8.4.2	(a) the firm has put in place arrangements that enable it to comply with this section; and (b) those arrangements are operational in respect of that personal current account. Where a firm has notified a banking customer in accordance with BCOBS 8.4.6R that they will receive alerts under this section in respect of a personal current account, this section continues to apply to the firm in respect of that personal current account, even if it would not apply to the firm under BCOBS 8.4.1R, until: (1) the firm has notified the banking customer in writing that they will no longer receive the alerts they were previously notified of; and (2) 28 days have elapsed since the firm sent the notification.	
23.2.1	Automatic enrolment exception - Accounts which do not have charges for exceeding or attempting to exceed a pre-agreed credit limit are excluded	8.4.1(2)	The FCA defines an excluded account as a personal current account that is offered on terms that: (a) an agreement which provides authorisation in advance for the banking customer to overdraw on the account cannot arise; and (b) either: (i) the account cannot become overdrawn without prior arrangement; or (ii) no charge is payable (by way of interest or otherwise) if the account becomes overdrawn without prior arrangement; and (c) no charge is payable where the firm refuses a payment due to lack of funds.] The FCA noted that Alerts to not apply to such accounts.	These provisions are equivalent.
23.2.2	Automatic enrolment exception - Accounts where the customer has requested not to be enrolled in the programme of Alerts are excluded.	8.4.10(1)	(1) A firm must put in place arrangements that allow a banking customer to choose not to receive the alerts required by BCOBS 8.4.12R and BCOBS 8.4.13R.	These provisions are equivalent.
23.2.3	Automatic enrolment exception - Accounts where the customers has requested not to be enrolled in an alternative programme of Alerts that are equivalent to the Part 6 programme are excluded.	8.4.5	A firm is not required to enrol a banking customer to receive a particular alert in respect of a personal current account if that banking customer has previously requested not to receive an alert or alerts that perform at least an equivalent function.	These provisions are equivalent.

23.2.4	Automatic enrolment exception - Accounts where the customer has declined text alerts in favour of an equivalent or better programme of Alerts which are delivered by e-mail or other medium are excluded	8.4.8	A reference in this section to an alert being sent in respect of a personal current account is to the firm completing all steps necessary to initiate the sending of an alert: (1) by SMS text message to the banking customer's mobile telephone number; (2) by push notification from a mobile banking application; or (3) by an alternative method if: (a) that method provides for secure and reliable receipt by the banking customer in a comparable timeframe from the point when the firm sends the alert to the methods provided for in (1) or (2); and (b) the banking customer has expressly and freely opted to receive alerts by way of such delivery method instead of the methods provided for in (1) or (2).	These provisions are equivalent, while the FCA allows for a wider range of methods of sending alerts.
23.2.5	Automatic enrolment exception - Accounts where no valid mobile phone number has been provided are excluded	8.4.3(4) 8.4.4	(4) A firm must comply with (1) [the obligation to enrol in alerts] not later than whichever is the latest of: … (c) where BCOBS 8.4.4R(1) applies, ten working days after: (i) the firm obtains a mobile telephone number from the banking customer; or (ii) if the firm provides alerts by push notification from a mobile banking application, the banking customer is able to receive alerts in this way; and Note that the FCA imposes an additional obligation on firms to seek to obtain mobile contact details. (1) Where a firm is required to enrol a banking customer in alerts under this section but the firm: (a) does not hold a mobile telephone number for the banking customer; or (b) has reasonable grounds to believe that the mobile telephone number held in respect of the banking customer is no longer used by the banking customer; the firm must take reasonable steps to obtain a mobile telephone number to which alerts may be sent to that banking customer within a reasonable time.	These provisions are equivalent.
24.1	Alerts must be sent following an Alert Trigger. There are several Alert Triggers	8.4.3(1)(b) and (c)	Except as otherwise provided for in BCOBS 8.4.5R, a firm must ensure that in relation to each personal current account held by a banking customer, the banking customer is, by the date specified in (2), enrolled to receive: … (b) unarranged overdraft alerts in accordance with BCOBS 8.4.13R;	These provisions are equivalent.

			(c) attempt to overdraw without prior arrangement alerts in accordance with BCOBS 8.4.15R; and	
24.2.1	Alert Trigger Definition: An Alert Trigger is where a Pre-agreed credit limit has been exceeded; Note, the Order is concerned with the Pre-agreed limit being breached not any penalty free buffer for the overdraft.	8.4.13(1)(a)	(1) A firm must send an alert to a banking customer if the firm: (a) knows based on information available to it that the banking customer's personal current account has entered unarranged overdraft; Note the definition in BCOBS 8.1.2 that: An "unarranged overdraft" is a regulated credit agreement that arises as a result of: (a) a personal current account becoming overdrawn in the absence of an arranged overdraft; or (b) the firm making available to the banking customer funds which exceed the limit of an arranged overdraft.	These provisions are equivalent.
24.2.2	Alert Trigger Definition: An Alert Trigger is where the customer attempts to exceed a Pre-agreed credit limit and will be charged;	8.4.15(1)(a)	A firm must send an alert to a banking customer if the firm: knows based on information available to it that the banking customer has incurred a charge for attempting to enter unarranged overdraft but has not entered unarranged overdraft because the firm declined to process the transaction.	These provisions are equivalent.
24.2.3	Alert Trigger Definition: An Alert Trigger is where a provider can reasonably determine that a customer will either exceed or attempt to exceed a Pre-agreed credit limit. This does not include a circumstance where it is likely that a Pre-agreed limit will be exceeded but the provider is unaware of any future transaction that would do so, if an alert was sent at this time it would be considered a "Near Alert" We highlight that Part 6 does not require the sending of near alerts.	8.4.13(1)(a) and 8.4.15(1)(b)	(1) A firm must send an alert to a banking customer if the firm: (b) is reasonably able to determine that, taking into account information it has access to on transactions due to be settled, the banking customer's personal current account will enter unarranged overdraft in the absence of: (i) action by the banking customer; or (ii) a transaction other than those the firm is aware of. (1) A firm must send an alert to a banking customer if the firm: (b) is reasonably able to determine that, taking into account information it has access to on transactions due to be settled, a situation described in (a) will occur that day in the absence of: (i) action by the banking customer; or (ii) a transaction other than those the firm is aware of. The FCA rules do not require the sending of near alerts.	These provisions are equivalent.
24.3.1	An Alert does not need to be sent if a customer has chosen to receive equivalent Alerts under another programme	8.4.5(3)	(3) A firm is not required to enrol a banking customer to receive a particular type of alert in respect of a personal current account if that banking customer already receives an alert or alerts that perform at least an equivalent function.	These provisions are equivalent.

			A firm's alerts must comply with the rules as to content even if sent by another method.	
24.3.2	An Alert does not need to be sent if a customer has already been sent an Alert that day and nothing relevant has changed with regard to the customer's overdraft position since such an alert was sent	8.4.17	Where a firm has sent an alert under BCOBS 8.4.12R to 8.4.16R it is not required to send a further alert in respect of the same personal current account under the same rule unless since the last alert under that rule was sent: that is one of the specified relevant changes has occurred.	These provisions are equivalent.
24.3.3	An Alert does not need to be sent if an Alert was sent and the customer moves into a position where they have exceeded the Pre-agreed credit limit and remains in such a position	8.4.17(3) and (4)	Where a firm has sent an alert under BCOBS 8.4.12R to 8.4.15R it is not required to send a further alert in respect of the same personal current account under the same rule unless, since the last alert under that rule was sent: (3) in respect of alerts sent under BCOBS 8.4.13R(1)(a) [account actually in unarranged overdraft], any unarranged overdrawing has been repaid; (4) in respect of alerts sent under BCOBS 8.4.13R(1)(b)[account predicted to enter unarranged overdraft], either: (a) the personal current account did not enter unarranged overdraft on the day the alert was sent; or (b) the personal current account entered unarranged overdraft but any unarranged overdrawing has been repaid; or	These provisions are equivalent.
24.3.4	An Alert does not need to be sent if the customer has received a Near limit alert and nothing relevant has changed with regard to the customer's overdraft position		As FCA rules do not require 'near limit' alerts as described above, there is no direct equivalent, but note the provision where account is expected to enter unarranged overdraft referred to above – no further alert is required to be sent if the account actually enters unarranged overdraft.	These provisions are equivalent, as the CMA and FCA both do not require the sending of near limit alerts.
24.4	The Provider shall use reasonable endeavours to ensure the Alert is capable of being received as soon as possible after the Alert Trigger but for the avoidance of doubt this may mean that in certain circumstances the Alert is sent on the day after the Alert Trigger (For example where the customer's phone is switched off or there is a network failure. The Provider is only required to remove delays which they can	8.4.18	A firm must send an alert required by this section as soon as practicable after the circumstances giving rise to the obligation to send the alert arise.	These provisions are equivalent.

	reasonably control or influence)			
24.5	Where the Alert Trigger is brought about by a Scheduled Payment the Alert must be sent by 10am on the day of the Alert trigger	8.4.18(2)	(2) Where the obligation to send an alert or alerts is brought about by one or more scheduled payments, the firm must: where the alert is required under BCOBS 8.4.13R [unarranged alerts] or BCOBS 8.4.15R [unpaid item alerts], send an alert no later than 10:00 am on the day when the obligation to send the alert arises.	These provisions are equivalent.
24.6	Providers are not restricted to sending alerts by the Order and may send additional alerts where beneficial to the customer	8.4.11 (3) Guidance	(3) Nothing in this section prohibits a firm from offering alerts additional to those required by this section, such as alerts sent when: (a) the balance of the personal current account is low; (b) the personal current account approaches the applicable overdraft limit; or (c) there are insufficient funds to process a transaction at a particular time but the firm will attempt to process the transaction again.	These provisions are equivalent.
25.1	The wording of the Alert should explain what has caused the Alert Trigger, and that the customer could incur charges	8.4.13(2)(a) and (b) and 8.4.13(2)(a) and (b)	Both these provisions provide that: (2) The alert must communicate to the banking customer in plain simple language: (a) the reason why the alert has been sent; (b) that the banking customer will or may incur charges if they enter or remain in unarranged overdraft, if this is the case	These provisions are equivalent.
25.1.2	The wording of the Alert should explain that the customer has a period of time to act to avoid or reduce charges and the time when the customer should act by to avoid/reduce charges	8.4.13(2)(c)	(2) The alert must communicate to the banking customer in plain simple language: (c) that the banking customer has a period of time during which they have an opportunity to take action to avoid or reduce charges, and specify: (i) the actions which may be taken; and (ii) the time by which the customer must take such action to reduce or avoid the charge or charges.	These provisions are equivalent.
25.4	The text of Alerts must be fair, clear and not misleading and compatible with providers terms and conditions and any legal or regulatory requirements	8.4.18(5)	Nothing in this section requires a firm to send an alert where doing so would be a breach of another regulatory requirement applicable to the firm. There are also requirements above for alerts to be in plain simple language. Firms are also required under wider FCA rules to take reasonable steps to ensure that any communication with its customer is fair, clear and not misleading– see BCOBS 2.2 1R.	These provisions are equivalent.
25.5	Customers should have as good an opportunity as possible to take	8.4.14(1)	(1) The period communicated under BCOBS 8.2.13R(2)(c) should give the banking	These provisions are equivalent.

	action to avoid or reduce charges, but due to the time of the Alert Trigger, this time may be limited		customer as good an opportunity to take action to avoid or reduce charges as possible, having regard to: (a) the time when the alert is required to be sent; (b) the terms and conditions applicable to the personal current account; and (c) the firm's obligations under: (i) the Payment Services Regulations; and (ii) BCOBS 5.1.1R.	
26.1	Providers shall use reasonable endeavours to collect customer's mobile phone number, at a minimum at the time of account opening for new customers and in each instance when a PCA customer updates his contact details	8.4.4	Before opening a new personal current account, a firm must: take reasonable steps to obtain the banking customer's mobile telephone number for the purposes of enrolling them in alerts relating to that personal current account; or where the firm already holds a mobile telephone number for the banking customer, seek the banking customer's confirmation that the mobile telephone number held by the firm is the banking customer's preferred mobile telephone number for the purposes of receiving alerts relating to that personal current account.	Some differences in the collection of information. However since Part 6 has been in place in advance of the FCA regime since February 2018, in effect equivalent.
26.1.1	Where there's no doubt about the validity of a mobile phone number already held, the provider doesn't need to collect it again		There is a requirement referred to above, when opening a new account, to confirm a mobile number is correct, and obligation in BCOBS 8.4.4 R to take reasonable steps to obtain a number to which alerts may be sent if a firm has reasonable grounds to believe that the mobile telephone number held is no longer in use by the customer.	No direct replacement, so some repeat contacting is possible, but not a substantive issue.
26.1.2	Where the customer doesn't want to or cannot provide a mobile phone number the provider doesn't need to collect it	8.4.4	Where a banking customer declines to provide or confirm a mobile telephone number when requested to do so under (1) or (2) the firm must warn the banking customer that they will not be able to receive alerts about their overdraft use and as a result may incur avoidable charges We note that where this applies, there is an exception from auto enrolment.	These provisions are equivalent.
26.1.3	Where the customer is enrolled in a programme of Alerts without the provider requiring a mobile phone number the provider doesn't need to collect it	8.4.4(4)	(4) This rule which requires obtaining a mobile number where one is not already held, does not apply if: (a) the firm provides alerts by push notification from a mobile banking application and the banking customer is able to receive alerts in this way; or (b) the banking customer has elected to receive alerts in respect of that personal current account by an	These provisions are equivalent.

			alternative means in accordance with BCOBS 8.4.8R(3).	
27.2	Selected Alerts Providers shall co-operate fully with the FCA in the Alerts research programme including selecting samples of customers; treating samples of customers as control groups; making changes to IT systems to assist with the programme; delivering Alerts as per FCA's requirements; monitoring outcomes; complying with an FCA request; avoiding any action that would interfere with the programme; and providing information to the FCA on other related events		This FCA work has now completed.	N/A
50.1.4	Providers must submit a compliance report annually		No specific reporting requirement is being imposed, firms will be subject to routine supervision.	This separate reporting and compliance regime is not necessary given the FCA's existing supervisory role with these providers.
50.2.1	Compliance reports must include confirmation of the type of alerts and medium of alerts that customers are being automatically enrolled into whether or not they are in the Programme of Alerts, and the template content by medium		See above.	Not necessary.
50.2.2	Compliance reports must include the auto-enrolment policies (and the supporting data collection policies) implemented		See above.	Not necessary.
50.2.3	Compliance reports must include what is communicated to customers about these alerts		See above.	Not necessary.
50.2.4	Compliance reports must include how and		See above.	Not necessary.

	when the alerts are triggered and sent			
50.2.5	Compliance reports must include the messages included in the Alert		See above.	Not necessary.
50.3	Compliance reports must also include the number and percentage of new and existing accounts for which a mobile number is held and/or subscribed to mobile banking. The following information related to the medium of the Alerts must be provided: the number and percentage of new and existing accounts registered for the Alert; the number and percentage of new and existing accounts that had opted out of the Alert; where possible, the number and timing of successful and failed deliveries of these alerts; and effectiveness measures, such as the percentage of accounts receiving an Alert for which charges were not subsequently applied.		See above.	Not necessary.
56.1	A compliance report must include a signed certificate		See above.	Not necessary.
56.2	If a Provider is aware that it is not compliant with Part 6, it must report this non-compliance to the CMA within 14 days of becoming aware that it is not compliant.		While no specific provision is made, firms are subject to an obligation under principle of business 11 to deal with their regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice.	These provisions are equivalent.
57	The CMA may direct a business or a holder in an office within the business to take 'actions', which includes steps to introduce and maintain arrangements, to ensure that any director, employee or agent of a Provider carries out, or secures compliance with, Part 6. Or to refrain from acting		While no specific provision is made, the FCA may impose requirements on a firm's part 4A permission under section 55L of FSMA, by issuing a supervisory notice. The procedure that would be followed is set out in DEPP 2.	These provisions are equivalent.

	so as to be compliant with Part 6.			
58.1	Any person to whom this Order applies is required to provide any information and documents required by the CMA for the purposes of enabling the CMA to monitor Part 6		While no specific provision is made, the FCA has power under s165 of FMSA to require any authorised person to provide to it such information or documents as it reasonably requires for the exercise of its functions, which include supervision of the alerts rules.	These provisions are equivalent.
58.2	Any person to whom this Order applies may be required by the CMA to keep and produce those records specified in writing by the CMA that relate to the operation of any provisions of Part 6		See above.	These provisions are equivalent.
58.3	Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of Part 6 of this Order may be required by the CMA to attend and provide such information in person		The s165 power is limited to authorised persons, which includes formerly authorised persons, and persons connected with them.	These provisions are equivalent.
58.4	The CMA may publish any information or documents that it has received in connection with monitoring or reviewing Part 6		Information received in the course of monitoring or reviewing the alerts requirements may be confidential information, and subject to restrictions on disclosure by the FCA as set out in s348. However the FCA would be able to publish information notwithstanding its confidentiality if such publication was reasonably necessary to enable the discharge by the FCA of its functions.	Both the FCA and CMA provisions have different but suitable processes around publication.