

Call for Input: Review of retained provisions of the Consumer Credit Act



February 2016

We are asking for responses to this Call for Input by 18 May 2016.

You can send them to us using the form on our website at: www.the-fca.org.uk/call-input-review-retained-provisions-consumer-credit-act-response-form.

Please send any comments or enquiries to:

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Abbreviations used in this paper

BIS	Department for Business, Innovation & Skills
CCA	Consumer Credit Act 1974
CCD	Consumer Credit Directive
FCA	Financial Conduct Authority
FSA	Financial Services Authority
FSMA	Financial Services and Markets Act 2000
OFT	Office of Fair Trading

1. Background

Introduction

- 1.1** The Financial Conduct Authority (FCA) took over responsibility for regulating consumer credit markets in April 2014.
- 1.2** As part of the transfer of regulation, Parliament repealed some provisions of the Consumer Credit Act 1974 (CCA), and some of these were replaced by FCA rules. We are required to undertake a review in relation to the remaining CCA provisions and to report to HM Treasury (the Treasury) by 1 April 2019, this may include recommendations for legislative change.
- 1.3** Our aim in conducting this review is to simplify the regime where possible and ensure an appropriate degree of consumer protection whilst not placing disproportionate burdens on firms. We will consider whether the repeal of CCA provisions would adversely affect the appropriate degree of protection for consumers, and whether they could be replaced by FCA rules or guidance. We will also take into account whether certain provisions remain appropriate in today's market and whether they should be modified or updated.
- 1.4** This is a significant task and we are aware that there may be a wide range of views. We are therefore starting the review by considering issues of scope and timing, and are publishing this Call for Input to seek initial views from stakeholders.

Background to the review

- 1.5** In March 2013, the Treasury and the Department for Business, Innovation and Skills (BIS) jointly consulted on transferring consumer credit regulation from the Office of Fair Trading (OFT) to the FCA.¹ The Financial Services Authority (FSA), the FCA's predecessor, consulted at the same time on high-level proposals for an FCA regime.²
- 1.6** The Treasury/BIS consultation set out the Government's view that the conduct standards set out in the CCA and supported by OFT guidance should continue to form the core of consumer credit regulation but, wherever possible, should be set out in rules rather than statute to allow greater flexibility and coherence. The FSA proposed that, where CCA provisions were repealed, they (and OFT guidance) should be substantially replicated in new FCA rules and guidance.³
- 1.7** However, the Government proposed to carry forward important consumer rights and protections in the CCA where they could not be replicated easily under the Financial Services

¹ *A new approach to financial regulation: transferring consumer credit regulation to the Financial Conduct Authority* (March 2013).

² *High-level proposals for an FCA regime for consumer credit* (FSA CP13/7, March 2013).

³ The FCA consulted on detailed proposals in October 2013 (CP13/10) and published rules in February 2014 (PS14/3) – these have since been modified in some respects, most recently in PS15/23.

and Markets Act (FSMA) because of the different statutory frameworks – for example, where the CCA provided for specific rights for consumers or other non-authorised persons, or for unenforceability as a sanction for non-compliance.

- 1.8** In the longer term the Government set out its intention to require the FCA to review retained CCA conduct requirements and to develop rules-based alternatives where possible and appropriate, subject to considering the implications for consumer protection and burdens on firms. As part of the review, the FCA would be required to consult with stakeholders to ensure that any rules-based alternatives it developed offered strong protection for consumers; they would also need to meet European directive requirements.
- 1.9** The Government's response in June 2013 noted that there was general support for the proposed review of retained provisions by 2019, though there were very mixed views on the likely outcome of the review.⁴
- 1.10** Legislation implementing the transfer of consumer credit regulation from 1 April 2014 repealed 82 sections of the CCA (44 of which related to the OFT's licensing regime) but 167 sections were retained (plus associated regulations), some with amendments.⁵
- 1.11** Subsequent legislation⁶ requires the FCA to report to the Treasury by 1 April 2019 on whether the repeal (in whole or in part) of CCA provisions would adversely affect the appropriate degree of protection for consumers. The review may also cover other relevant or connected matters. In particular, the review must consider:
- which provisions of the CCA could be replaced by FCA rules or guidance
 - the principle that a burden or restriction which is imposed in relation to the carrying on of an activity should be proportionate to the benefits
- 1.12** The report may include recommendations to the Treasury. It must be preceded by at least one interim report on which the FCA has consulted. The Treasury may make recommendations to the FCA (to which it must have regard) on the scope, period and conduct of the review and the making of reports.

The retained provisions

- 1.13** A list of the retained CCA provisions and associated regulations is at Annex 2.
- 1.14** A number of provisions were retained in April 2014 because they confer specific rights or obligations on consumers or third parties. For example, in relation to joint and several liability under s.75 CCA, termination of hire-purchase agreements and refunds of credit brokerage fees. Some rights derive from the Consumer Credit Directive (CCD), including the rights of withdrawal, early settlement and termination of open-end agreements.

⁴ *A new approach to financial regulation: transferring consumer credit regulation to the Financial Conduct Authority: summary of responses* (June 2013), paragraph 2.5.

⁵ The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, SI 2013/1881 – Part 5 (Amendments of the Consumer Credit Act 1974 etc).

⁶ The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014, SI 2014/366 – Part 5 (Review of retained provisions of the Consumer Credit Act 1974).

- 1.15** Some retained provisions provide for specified sanctions on the creditor or owner – such as unenforceability without a court order or until the breach is remedied. Examples include where the firm fails to provide the prescribed pre-contractual information, or to provide a compliant statement or arrears notice. In some cases this also means that the creditor is not entitled to interest and default charges in respect of the period of non-compliance.
- 1.16** In some cases contravention is a criminal offence (for example, canvassing cash loans off trade premises), or a breach of statutory duty, while in others it renders provisions void or precludes certain actions. For example, if a valid default notice is not served, the creditor is precluded from taking certain actions to enforce the agreement.
- 1.17** A number of retained provisions provide a role for the courts, including in relation to enforcement orders, unfair relationships and time orders.
- 1.18** The FCA's current rule-making powers do not permit the imposition of rules on consumers or other non-authorized persons, and the range of sanctions under FSMA is fundamentally different. In particular, a breach of FCA rules does not render an agreement unenforceable except in certain limited circumstances. Instead, breach typically gives rise to the possibility of regulatory action under Part 14 of FSMA, and a right of private legal action.

Aims of the review

- 1.19** Our objective in reviewing retained CCA provisions will be the continuing development of an effective and proportionate regulatory regime which ensures appropriate protections for consumers.
- 1.20** We will have regard to the importance of ensuring an appropriate balance of firms' and consumers' responsibilities, recognising that some customers in this market may be vulnerable. Where appropriate, we will look to simplify and modernise the regime and remove unnecessary or disproportionate burdens. In doing so, we will have regard to the differences between the CCA and FSMA regimes and the FCA's rule-making and disciplinary powers.

2. Call for Input

- 2.1** This is a major review, and as a first step we want to seek initial views from stakeholders on a number of key aspects, and in particular:
- whether we should prioritise particular provisions for review
 - timescales for the review, including whether we should consider particular provisions for earlier review
 - the conduct of the review, including engagement with stakeholders

Priorities for the review

- 2.2** We are required to review whether the repeal, in whole or in part, of CCA provisions would adversely affect the appropriate degree of protection for consumers, and which provisions could be replaced by FCA rules or guidance.
- 2.3** We are not expressly required to review all of the retained provisions. We are considering focussing resource on reviewing particular provisions, although we have not yet decided which these should be. We would welcome stakeholders' views.
- 2.4** Reasons for prioritising provisions for review might include that they provide particular benefits for consumers, are particularly burdensome on firms without a commensurate benefit, or are particularly complex. Equally, we might decide not to review substantively provisions which are working well, or where there is limited flexibility (for example, because the provisions implement CCD requirements) or where FCA rules could not adequately replicate the existing provision given our rule-making powers.
- 2.5** The legislation also permits the FCA to extend the review to other matters which are relevant to or connected with retained provisions.
- 2.6** Considering the scale and complexity of the retained provisions, we do not intend to extend the review, other than where there are substantial interactions with provisions selected for review. We will, however, keep this under consideration.

Q1: Do you agree that the review should focus on particular retained CCA provisions?

Q2: What should be the main criteria for prioritising provisions for review?

Q3: Are there particular provisions that you would include or exclude from reviewing, and why?

Q4: Do you agree that the review should not extend more broadly, other than where necessary?

Q5: Do you have any further thoughts on the scope of the review?

Timescales

2.7 We are required to report to the Treasury by 1 April 2019, having consulted on at least one interim report and had regard to representations received.

2.8 Subject to the scope and complexity of the review, and the issues raised, we could consider reporting earlier, to enable legislative changes to potentially be made sooner. Or we could report by April 2019 but make earlier recommendations to the Treasury if we consider that particular CCA provisions should be amended or repealed at an earlier stage and, where appropriate, replaced by FCA rules/guidance.

2.9 Reasons for bringing forward elements of the review could include where the benefits of a particular provision may not be proportionate to the burdens on firms or consumers, or where the provision may be having a serious detrimental impact on the development of the market.

2.10 We would welcome views from stakeholders. If we were to recommend earlier changes to the Treasury, we would need persuasive arguments, with a clear explanation of the likely benefits (and the adverse consequences if changes were not made or were delayed). We would also need to consider the potential implications of changing some provisions in isolation from others, and the potential risk to the overall timetable.

Q6: Do you have any views on timescales for the review?

Q7: Are there particular provisions that you believe should be considered for earlier review, and why?

Conduct of the review

2.11 The legislation permits the FCA to conduct the review itself or to appoint one or more persons to do so or to advise the FCA.

2.12 We intend to conduct the review in-house, using FCA resources and expertise, but may consider seeking external help and advice, for example on a consultancy basis.

2.13 We also intend to establish an expert stakeholder consultative group comprising representatives from across consumer credit markets and consumer organisations, to provide additional external input on an ongoing basis.

Q8: Do you have any views on the proposed conduct of the review and engagement with stakeholders?

3. Next steps

- 3.1** Over the next few months, we will:
- consider all responses to this Call for Input
 - finalise the scope of the review
 - establish a consultative stakeholder group
 - publish an update on progress by Q4 2016

Sending us your input

- 3.2** Please provide your response by 18 May 2016 using this [online form](#). If you are unable to use the form, either email CCAreview@fca.org.uk or write to the address below.

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Annex 1

List of questions

- Q1:** Do you agree that the review should focus on particular retained CCA provisions?
- Q2:** What should be the main criteria for prioritising provisions for review?
- Q3:** Are there particular provisions that you would include or exclude from reviewing, and why?
- Q4:** Do you agree that the review should not extend more broadly, other than where necessary?
- Q5:** Do you have any further thoughts on the scope of the review?
- Q6:** Do you have any views on timescales for the review?
- Q7:** Are there particular provisions that you believe should be considered for earlier review, and why?
- Q8:** Do you have any views on the proposed conduct of the review and engagement with stakeholders?

Annex 2

List of CCA retained provisions

A: SECTIONS OF CCA

Part 2: Credit agreements, hire agreements and linked transactions

- 8 Consumer credit agreements
- 9 Meaning of credit
- 10 Running-account credit and fixed-sum credit
- 11 Restricted-use credit and unrestricted-use credit
- 12 Debtor-creditor-supplier agreements
- 13 Debtor-creditor agreements
- 14 Credit-token agreements
- 15 Consumer hire agreements
- 17 Small agreements
- 18 Multiple agreements
- 19 Linked transactions
- 20 Total charge for credit

Part 4: Seeking business

- 48 Definition of canvassing off trade premises (regulated agreements)
- 49 Prohibition of canvassing debtor-creditor agreements off trade premises
- 50 Circulars to minors

Part 5: Entry into credit or hire agreements

- 55 Disclosure of information
- 55C Copy of draft consumer credit agreement
- 56 Antecedent negotiations
- 57 Withdrawal from prospective agreement
- 58 Opportunity for withdrawal from prospective land mortgage
- 59 Agreement to enter future agreement void
- 60 Form and content of agreements
- 61 Signing of agreement
- 61A Duty to supply copy of executed consumer credit agreement
- 61B Duty to supply copy of overdraft agreement
- 62 Duty to supply copy of unexecuted agreement: excluded agreements
- 63 Duty to supply copy of executed agreement: excluded agreements
- 64 Duty to give notice of cancellation rights
- 65 Consequences of improper execution
- 66 Acceptance of credit-tokens
- 66A Withdrawal from consumer credit agreement
- 67 Cancellable agreements
- 68 Cooling-off period
- 69 Notice of cancellation
- 70 Cancellation: recovery of money paid by debtor or hirer
- 71 Cancellation: repayment of credit
- 72 Cancellation: return of goods
- 73 Cancellation: goods given in part-exchange
- 74 Exclusion of certain agreements from Part 5

Part 6: Matters arising during currency of credit or hire agreement

- 75 Liability of creditor for breaches by supplier
- 75A Further provision for liability of creditor for breaches by supplier
- 76 Duty to give notice before taking certain action
- 77 Duty to give information to debtor under fixed-sum credit agreement
- 77A Statements to be provided in relation to fixed-sum credit agreements
- 77B Fixed-sum credit agreement: statement of account to be provided on request
- 78 Duty to give information to debtor under running-account credit agreement
- 78A Duty to give information to debtor on change of rate of interest
- 79 Duty to give hirer information
- 80 Debtor or hirer to give information about goods
- 82 Variation of agreements
- 83 Liability for misuse of credit facilities
- 84 Misuse of credit-tokens
- 85 Duty on issue of new credit-tokens
- 86 Death of debtor or hirer
- 86A FCA to prepare information sheets on arrears and default
- 86B Notice of sums in arrears under fixed-sum credit agreements etc
- 86C Notice of sums in arrears under running-account credit agreements
- 86D Failure to give notice of sums in arrears
- 86E Notice of default sums
- 86F Interest on default sums

Part 7: Default and termination

- 87 Need for default notice
- 88 Contents and effect of default notice
- 89 Compliance with default notice
- 90 Retaking of protected hire-purchase etc goods
- 91 Consequences of breach of s. 90
- 92 Recovery of possession of goods or land
- 93 Interest not to be increased on default
- 93A Summary diligence not competent in Scotland
- 94 Right to complete payments ahead of time
- 95 Rebate on early settlement
- 95A Compensatory amount
- 95B Compensatory amount: green deal finance
- 96 Effect on linked transactions
- 97 Duty to give information
- 97A Duty to give information on partial repayment
- 98 Duty to give notice of termination (non-default cases)
- 98A Termination etc of open-end consumer credit agreements
- 99 Right to terminate hire-purchase etc agreements
- 100 Liability of debtor on termination of hire-purchase etc agreements
- 101 Right to terminate hire agreements
- 102 Agency for receiving notice of rescission
- 103 Termination statements
- 104 Goods not to be treated as subject to landlord's hypothec in Scotland

Part 8: Security

- 105 Form and content of securities
- 106 Ineffective securities
- 107 Duty to give information to surety under fixed-sum credit agreement
- 108 Duty to give information to surety under running-account credit agreement
- 109 Duty to give information to surety under consumer hire agreement
- 110 Duty to give information to debtor or hirer
- 111 Duty to give surety copy of default etc notice
- 113 Act not to be evaded by use of security
- 114 Pawn-receipts
- 116 Redemption period
- 117 Redemption procedure
- 118 Loss etc of pawn-receipt
- 119 Unreasonable refusal to deliver pawn
- 120 Consequence of failure to redeem
- 121 Realisation of pawn
- 122 Order in Scotland to deliver pawn
- 123 Restrictions on taking and negotiating instruments
- 124 Consequences of breach of s. 123
- 125 Holders in due course
- 126 Enforcement of land mortgages

Part 9: Judicial control

- 127 Enforcement orders in cases of infringement
- 128 Enforcement orders on death of debtor or hirer
- 129 Time orders
- 129A Debtor or hirer to give notice of intent etc to creditor or owner

- 130 Supplemental provisions about time orders
- 130A Interest payable on judgment debts etc
- 131 Protection orders
- 132 Financial relief for hirer
- 133 Hire-purchase etc agreements: special powers of court
- 134 Evidence of adverse detention in hire-purchase etc cases
- 135 Power to impose conditions, or suspend operation of order
- 136 Power to vary agreements and securities
- 140A Unfair relationships between creditors and debtors
- 140B Powers of court in relation to unfair relationships
- 140C Interpretation of ss. 140A and 140B
- 141 Jurisdiction and parties
- 142 Power to declare rights of parties
- 143 Jurisdiction of county court in Northern Ireland
- 144 Appeal from county court in Northern Ireland

Part 10: Ancillary credit businesses

- 145 Types of ancillary credit business
- 153 Definition of canvassing off trade premises (agreements for ancillary credit services)
- 154 Prohibition of canvassing certain ancillary credit services off trade premises
- 155 Right to recover brokerage fees
- 157 Duty to disclose name etc of agency
- 158 Duty of agency to disclose filed information
- 159 Correction of wrong information
- 160 Alternative procedure for business consumers

Part 11: Enforcement of Act

- 161 Enforcement authorities
- 162 Powers of entry and inspection
- 163 Compensation for loss
- 164 Power to make test purchases etc
- 165 Obstruction of authorised officers
- 166 Notification of convictions and judgments to FCA
- 167 Penalties
- 168 Defences
- 169 Offences by bodies corporate
- 170 No further sanctions for breach of Act
- 171 Onus of proof in various proceedings
- 172 Statements by creditor or owner to be binding
- 173 Contracting-out forbidden

Part 12: Supplemental

- 174A Powers to require provision of information or documents etc
- 175 Duty of persons deemed to be agents
- 176 Service of documents
- 176A Electronic transmission of documents
- 177 Saving for registered charges
- 178 Local Acts
- 179 Power to prescribe form etc of secondary documents
- 180 Power to prescribe form etc of copies
- 181 Power to alter monetary limits etc
- 182 Regulations and orders
- 183 Determinations etc by FCA

- 184 Associates
- 185 Agreement with more than one debtor or hirer
- 186 Agreement with more than one creditor or owner
- 187 Arrangements between creditor and supplier
- 187A Definition of 'default sum'
- 188 Examples of use of new terminology
- 189 Definitions
- 189B Green deal plans
- 189C Section 189B: supplementary provision
- 190 Financial provisions
- 191 Special provisions as to Northern Ireland
- 192 Transitional and commencement provisions, amendments and repeals
- 193 Short title and extent

B: REGULATIONS MADE UNDER CCA

- Consumer Credit (Agreements) Regulations 2010
- Consumer Credit (Agreements) Regulations 1983
- Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983
- Consumer Credit (Credit Reference Agency) Regulations 2000
- Consumer Credit (Credit-Token Agreements) Regulations 1983
- Consumer Credit (Disclosure of Information) Regulations 2010
- Consumer Credit (Disclosure of Information) Regulations 2004
- Consumer Credit (Early Settlement) Regulations 2004
- Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983
- Consumer Credit (Entry and Inspection) Regulations 1977
- Consumer Credit (Guarantees and Indemnities) Regulations 1983

Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007

Consumer Credit (Linked Transactions) (Exemptions) Regulations 1983

Consumer Credit (Local Acts) Order 1984

Consumer Credit (Loss of Pawn Receipt) Regulations 1983

Consumer Credit (Negotiable Instruments) (Exemption) Order 1984

Consumer Credit (Notice of Cancellation Rights) (Exemptions) Regulations 1983

Consumer Credit (Notice of Variation of Agreements) Regulations 1977

Consumer Credit (Pawn-Receipts) Regulations 1983

Consumer Credit (Payments Arising on Death) Regulations 1983

Consumer Credit (Prescribed Periods for Giving Information) Regulations 1983

Consumer Credit (Realisation of Pawn) Regulations 1983

Consumer Credit (Rebate on Early Settlement) Regulations 1983

Consumer Credit (Repayment of Credit on Cancellation) Regulations 1983

Consumer Credit (Running-Account Credit Information) Regulations 1983

Consumer Credit (Settlement Information) Regulations 1983

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