

Consultation Paper

CP16/2*

Mortgage Credit Directive: Minor changes to our rules and guidance



January 2016

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We are asking for comments on this Consultation Paper by 15 February 2016.

You can send them to us using the form on our website at:
www.the-fca.org.uk/cp16-2-response-form.

Or in writing to:

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We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Abbreviations used in this paper

CBA	Cost Benefit Analysis
CCA	Consumer Credit Act
CONC	Consumer Credit sourcebook
CP	Consultation Paper
EG	Enforcement Guide
ESIS	European Standardised Information Sheet
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act
KFI	Key Facts Illustration
MCOB	Mortgages and Home Finance: Conduct of Business sourcebook
MCD	Mortgage Credit Directive
PERG	Perimeter Guidance Manual
PS	Policy Statement
RAO	Regulated Activities Order
VJ	Voluntary Jurisdiction

1. Overview

Introduction

- 1.1 The Government intends shortly to lay draft legislation which will make amendments to the Regulated Activities Order (RAO) and other relevant legislation, in connection with the implementation of the Mortgage Credit Directive (MCD). These amendments will among other things, clarify the regulatory status of housing association mortgages, and other agreements which were entered into before 1 April 2014 and regulated under the Consumer Credit Act (CCA).
- 1.2 If this legislation is made and comes into force as anticipated, we will need to make changes to our Handbook; in particular to the Perimeter Guidance manual (PERG) and Glossary of terms. We are consulting on these changes now, so that they can be made before 21 March 2016 when the MCD comes into force.
- 1.3 We also propose some minor changes to the Mortgage and Home Finance: Conduct of Business sourcebook (MCOB) to implement the MCD. We propose amendments to MCOB 4.4A on initial disclosure to align more directly with the MCD and also to the MCOB transitional provisions for the 'topped up' Key Facts Illustration (KFI) to ensure the inclusion of the monthly payments figure should interest rates rise to a 20-year high.

Who does this consultation affect?

- 1.4 This consultation will particularly affect housing associations and consumers that have taken out second charge mortgages with housing associations. It will also affect firms and consumers with credit agreements or consumer hire agreements which were entered into before 1 April 2014 and regulated under the CCA but which would not be regulated if a similar agreement were entered into now because of the introduction of an exemption, e.g. a buy-to-let mortgage contract entered into before 31 May 2008.
- 1.5 The changes relating to initial disclosure requirements will particularly affect mortgage lenders and their customers. The changes to the MCOB transitional provisions will affect those firms issuing 'topped up' KFIs.

Is this of interest to consumers?

- 1.6 This consultation will be of interest to consumers who are borrowers or hirers under relevant agreements, particularly those who have taken out a loan from a housing association secured by a second charge mortgage.

- 1.7 The initial disclosure requirement proposals will also be of interest to consumers.

Context

Legislative Changes

- 1.8 We are proposing to make changes to align our Handbook with the legislative framework as amended by HM Treasury's proposals. These legislative proposals will clarify the regulatory treatment of various categories of agreements. In particular, where a credit agreement or consumer hire agreement was regulated under the CCA prior to 1 April 2014, it will remain regulated regardless of whether later legislative amendments have introduced exemptions for new agreements and consumers will continue to have the same rights and protections under the CCA and the FCA's consumer credit regime.
- 1.9 In addition, the proposals will ensure that housing associations' back books of second charge mortgages – unlike other back book second charge mortgages – will not transfer into our new mortgages regime from March 2016 and so will not be subject to MCD-related provisions. Agreements entered into by Welsh and Northern Irish housing associations on or after 1 April 2014 will be exempt from CCA regulation and so will be treated the same as equivalent agreements in England and Scotland going forward.
- 1.10 The legislative amendments will also clarify that various MCD-related provisions do not apply in respect of housing association lending agreements which predate 21 March 2016.
- 1.11 We propose to make changes to our Handbook's Glossary of terms and PERG to reflect the proposed changes to the legislative framework, and with legislation already made by government.
- 1.12 The draft rules and guidance proposed in this Consultation Paper (CP) assume that the legislative amendments will be made in a certain way, based on recent discussions with HM Treasury. However, we may need to review our proposals once the relevant legislative amendments have been made.
- 1.13 The Financial Ombudsman Service (the ombudsman service) plan to mirror certain changes in Annex A for the Voluntary Jurisdiction (VJ). Where relevant, this consultation is issued jointly by the FCA and the ombudsman service.

MCD-related amendments

- 1.14 The proposed changes to MCOB 4.4A relate to initial disclosure requirements. Given the extensive nature of existing UK mortgage regulation, our approach to implementing the MCD has been to rely on our existing rules wherever possible. We have also aimed not to extend any new MCD requirements beyond the scope set out in the Directive.
- 1.15 It has been brought to our attention that the amendments to MCOB 4.4A published in PS 15/9 go further than those required by the MCD, by applying the MCD initial disclosure requirements to all firms regardless of the service they are providing. That was not our intention, and for lenders it unintentionally reintroduced a durable medium disclosure requirement where we have previously concluded that oral disclosure is likely to be more effective.

- 1.16** We are taking this opportunity to rectify the position, by amending the rules to ensure that the MCD initial disclosure rules do not apply more widely than required by the Directive. We are also making consequential changes to the guidance and clarifying when the MCD requires advisers to make their initial disclosure.
- 1.17** We are also proposing an amendment to the MCOB transitional provisions to include a requirement to provide in the 'topped up' KFI the monthly payments figure should interest rates rise to a 20-year high. This requirement was set out in our original MCD consultation paper (CP14/20) but was inadvertently omitted from the rules due to come into force on 21 March 2016.

Equality and diversity considerations

- 1.18** We are required by the Equality Act 2010 to consider whether our proposals could have a potentially discriminatory impact on groups with protected characteristics (age, sex, disability, race or ethnicity, marriage and civil partnership, pregnancy and maternity, religion, sexual orientation and gender reassignment). We are also required to consider the need to eliminate discrimination and advance equality of opportunity when carrying out our activities.
- 1.19** We do not consider that our proposals will have any impact on protected groups. However we will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim we would welcome any feedback to this consultation.

Next steps

What do you need to do next?

- 1.20** The consultation will close one month after the publication of this paper because of the need to ensure our Handbook is aligned with the legislative framework as of 21 March. Please respond to our questions by 15 February.
- 1.21** Firms should also consider how the proposed legislation will apply to their business including with regard to authorisation. Housing associations in particular will need to assess whether they hold, or should hold, permission for the regulated activity of exercising or having the right to exercise the lender's rights and duties under a regulated credit agreement in relation to their back book of second charge mortgage loans entered into before 1 April 2014.

What will we do?

- 1.22** We will consider your feedback and aim to make our rules before 21 March 2016. We will publish a summary of the consultation feedback we receive together with our response in the March Handbook Notice.

2. Amendments to the Glossary and PERG

- 2.1** We are proposing to make amendments to our Handbook in line with existing legislation and planned legislative amendments by HM Treasury as explained in Chapter 1. These amendments are set out in Appendix 1.

Glossary of terms

- 2.2** In Paragraphs 1.8 to 1.13 of this CP we explain the context of our changes to the Handbook's Glossary of terms. Proposed legislation will amend the definition of 'housing authority' in article 60E of the RAO, with implications for the regulatory treatment of loans by certain housing associations. This is reflected in the RAO definitions of 'regulated credit agreement' and 'regulated mortgage contract', and we are proposing parallel changes to our Glossary definitions of these terms.
- 2.3** In addition, we propose amending other Glossary definitions dependent on the proposed legislative changes. These include:
- 'advising on regulated credit agreements for the acquisition of land'
 - 'regulated consumer hire agreement'
 - 'residential renovation agreement'
- 2.4** The ombudsman service proposes to make parallel changes to definitions in its rules, and this is reflected in the draft instrument at Appendix 1. This consultation is, to that extent, a joint one with the ombudsman service.

Q1: Do you agree with our proposed changes to the Glossary of terms?

Q2: Do you agree with the ombudsman service mirroring these proposed changes to the Glossary for the Voluntary Jurisdiction (VJ)?

PERG

- 2.5** The proposed PERG amendments are also largely dependent on the proposed legislative changes. These relate to:
- PERG 2.7.16F (advising on regulated credit agreements for the acquisition of land)

- PERG 2.7.19B (exempt agreements)
- PERG 2.7.19C (exemptions relating to the nature of the agreement)
- PERG 2.7.19FB (exemptions relating to the nature of the lender)
- PERG 2.7.19I (exemptions relating to the total charge for credit)
- PERG 2.7.19J (high net worth exemption)
- PERG 2.9.24 (local authorities)
- PERG 4.4 (what is a regulated mortgage contract?)
- PERG 4.4A (transitional issues - mortgage contracts entered into before 21 March 2016)
- PERG 4.10.10 (local authorities)
- PERG 4.13 (other exemptions).

2.6 We are also updating PERG 4.4A (transitional issues, which we are renaming to 'Mortgage contracts entered into before 21 March 2016') so that it correctly reflects the regulatory treatment of loans entered into before 21 March 2016.

Q3: Do you agree with our proposed changes to PERG?

3. MCD-related amendments

Initial disclosure requirements

- 3.1** We are proposing to amend our Handbook to limit the changes being made to the initial disclosure requirements to those which are required by MCD. Article 15 and 22 of the MCD impose certain initial disclosure requirements on credit intermediaries and in relation to advisory services. We published revisions to our existing rules in PS 15/9 in March 2015. It has been brought to our attention that those revisions go beyond the changes required by the MCD. That was not our policy intention and we are taking this opportunity to correct the rules.
- 3.2** The effect of the proposed changes is to remove, in certain circumstances, the obligation on lenders to provide information in a durable medium to customers on any limitations in the range of products it offers and the basis on which it will be remunerated; the changes will not remove the obligation to provide the information, merely the obligation to provide it in a durable medium. Mortgage lenders will therefore remain subject to the initial disclosure requirements that exist at present, which we judge to provide appropriate consumer protection, except where they are acting as an MCD mortgage adviser or an MCD mortgage credit intermediary, when the requirement to provide initial disclosure in a durable medium will apply. We are also amending the related guidance to ensure that it reflects the amended rules, and taking the opportunity to clarify when the MCD requires advisers to make their initial disclosure. These amendments are set out in Appendix 1.

Q4: Do you agree with our proposed changes to the initial disclosure requirements?

'Topping up' the KFI

- 3.3** In CP14/20 we stated that firms choosing to provide a 'topped up' version of the KFI disclosure document instead of the European Standardised Information Sheet (ESIS) would need to provide, amongst other additional items, information for consumers on the potential impact of interest rate changes, describing both the APRC and monthly payments should interest rates rise to the highest level seen in the past 20 years.
- 3.4** However the transitional provision (MCOB TP1.1 46R), which is due to come into force on 21 March 2016, inadvertently omitted the requirement for the monthly payment amount. As we stated in CP14/20¹ that both the additional APRC and monthly payment illustration for a 20-year high interest rate should be included, we are proposing to amend the transitional provision to accurately reflect this intention.

Q5: Do you agree with our proposed change to the MCOB transitional provision?

¹ See paragraph 2.7 of [CP14/20](#): Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages (September 2014).

Annex 1

List of questions

- Q1:** Do you agree with our proposed changes to the Glossary of terms?
- Q2:** Do you agree with the ombudsman service mirroring these proposed changes to the Glossary of terms for the Voluntary Jurisdiction (VJ)?
- Q3:** Do you agree with our proposed changes to PERG?
- Q4:** Do you agree with our proposed changes to the initial disclosure requirements?
- Q5:** Do you agree with our proposed change to the MCOB transitional provision?

Annex 2

Cost benefit analysis

1. Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) unless, in accordance with section 138L, we believe that there will be no increase in costs or that the increase will be of minimal significance. Section 138I also requires us to publish an estimate of costs and benefits unless these cannot be reasonably estimated or it is not reasonably practicable to estimate them.
2. Our change to the MCOB transitional provisions provides the additional information in the 'topped up' KFI that we believe will be necessary to make this disclosure equivalent to the ESIS. As this change is part of our implementation of MCD the costs and benefits were included in the CBA figures for CP14/20.²
3. We are satisfied that our other proposed amendments either do not increase costs to firms or consumers, or that any increase will be of minimal significance.

Impact on mutual societies

4. Section 138K(2) FSMA requires us to prepare a statement setting out our opinion on whether proposed rules will have an impact on mutual societies which is significantly different from the impact on other authorised persons.
5. We are satisfied that the proposed amendments do not impact on mutual societies more than on other authorised firms.

² See paragraphs 176 –180 of Annex 1, Section 4 of CP14/20: www.fca.org.uk/your-fca/documents/consultation-papers/cp14-20.

Annex 3

Compatibility statement

Compatibility with the FCA's General Duties

1. This annex explains how we satisfy the requirements set out in section 138I(2)(d) of FSMA. When consulting on new rules, we are required by FSMA to include an explanation of why we believe making the proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B of FSMA. We are also required by section 138K(2) of FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
2. This annex also sets out our view of how the proposed rules are compatible with the duty on us to carry out our general functions (which include rule making) in a way that promotes effective competition in the interests of consumers (section 1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.
3. This annex must be read in conjunction with the rest of the consultation paper and the cost benefit analysis (in Annex 1) in demonstrating that we meet our statutory duties and objectives.

Compatibility with our statutory objectives

4. The policy proposals and draft rules in this CP primarily advance our operational objective of 'securing an appropriate degree of protection for consumers' and our competition objective.
5. We consider these proposals to be compatible with our strategic objectives of ensuring that the relevant markets³ function well.

Consumer protection

6. The Government has decided to make legislative changes to clarify that second charge mortgages entered into by housing associations before 1 April 2014 will remain regulated under the CCA and CONC rather than under MCOB. We propose to amend our Handbook to reflect the updated legislation, ensuring that it is clear to industry and consumers which regulatory protections are available to which consumers in respect of which agreements.

³ 'Relevant markets' are defined by s.1F FSMA.

7. Our proposed service disclosure changes will mean that unless required by the MCD, lenders do not have to use a durable medium to disclose information on the service they offer and the cost, where there is spoken interaction. This will ensure a consumer remains appropriately protected.
8. Our amendment on the MCOB transitional provisions provides the additional information in the 'topped up' KFI that we believe will be necessary to make this disclosure equivalent to the ESIS as part of our implementation of the MCD. The effect of the MCD (including this change) upon consumer protection is discussed in the compatibility statement included with CP14/20.⁴

Promoting effective competition in the interests of consumers

9. In preparing the proposals as set out in this consultation paper, we consider we have met our duty under section 1B(4) FSMA, which provides that we must, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, carry out our general functions in a way that promotes effective competition in the interests of consumers.
10. We believe that our proposals will promote competition as they will clarify the regulatory status of certain types of secured lending where a lack of clarity could lead to additional burdens on industry. Our service disclosure obligation may also assist competition by removing a business burden in certain circumstances.
11. The proposals relating to initial disclosure requirements promote effective competition in so far as they limit the amendments to our existing rules to those required by the MCD.
12. The proposed change to the MCOB transitional provision forms part of our implementation of the MCD, and as such the effect of this change and other MCD-related changes upon competition is discussed in CP14/20.⁵
13. This statement should be read together with the cost benefit analysis.

Compatibility with the principles of good regulation

14. In preparing the proposals set out in this consultation paper, we have had regard to the regulatory principles set out in s.3B FSMA. We set out below how our proposals demonstrate such regard for each of the regulatory principles.

The need to use our resources in the most efficient and economical way

15. Our proposals should lead to efficiencies in the supervision on firms by ensuring that our Handbook provisions match the legislative framework.

The principle that a burden or restriction which is imposed should be proportionate to the benefits

16. The proportionality of our approach is addressed in the CBA at Annex 1.

⁴ See Paragraph 6 of Annex 2 to CP14/20: www.fca.org.uk/your-fca/documents/consultation-papers/cp14-20.

⁵ See Paragraphs 8-12 of Annex 2 to CP14/20: www.fca.org.uk/your-fca/documents/consultation-papers/cp14-20.

- The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term**
17. We do not expect the proposals to have a material impact on growth in the UK.
- The general principle that consumers should take responsibility for their decisions**
18. Our proposals are founded in the principle that consumers should take responsibility for their decisions, although our proposals primarily relate to post-sales matters.
- The responsibilities of the senior management of persons subject to requirements imposed by or under FSMA, including those affecting customers in relation to compliance with those requirements**
19. We do not anticipate any impact on senior management requirements as a result of our proposals.
- The desirability, where appropriate, of the FCA exercising its functions in a way which recognises differences in the nature and objectives of the business it regulates**
20. Our proposals, when taken in combination with HM Treasury's legislation, recognise the different nature of secured lending by housing associations compared with other forms of secured lending.
- The desirability of publishing information relating to persons**
21. We have the power to publish information relating to investigations into firms and individuals. However, as set out in the Enforcement Guide⁶ (EG), we will not normally make public our investigations, findings or conclusions public except in exceptional circumstances.
- The principle that we should exercise our functions as transparently as possible**
22. We are an open and transparent regulator. When we developed our proposals on implementing the MCD we engaged with industry and consumer groups to explain our approach. We believe the proposed changes reflect our intended approach.
- Legislative and Regulatory Reform Act 2006 (LRR)**
23. We are required under the LRR to have regard to the principles in the LRR and to the Regulators' Compliance Code when determining general policies and principles and giving general guidance (but this duty does not apply to regulatory functions exercisable through our rules).
24. We have had regard to the principles in the LRR and the Regulators' Compliance Code for the parts of the proposals that consist of general policies, principles or guidance.

⁶ EG 6: www.handbook.fca.org.uk/handbook/document/EG_Full_20141212.pdf.

Appendix 1

Draft Handbook text

MORTGAGE CREDIT (AMENDMENT) INSTRUMENT 2016

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes and amends the voluntary jurisdiction rules and fixes and varies the standard terms for voluntary jurisdiction participants as set out in Annex A to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (3) paragraph 22 (Consultation) of Schedule 17.
- B. The making and amendment of the voluntary jurisdiction rules and the fixing and variation of the standard terms by the Financial Ombudsman Service Limited, as set out in Annex A, is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under the following sections of the Act:
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 226 (Compulsory jurisdiction); and
 - (5) paragraph 13 (The FCA’s procedural rules) of Schedule 17 (The Ombudsman Scheme).
- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority approves the voluntary jurisdiction rules made and amended and the standard terms fixed and varied by the Financial Ombudsman Service Limited in this instrument.

Commencement

- F. Part 1 of Annex A to this instrument comes into force on 20 March 2016.
- G. Part 2 of Annex A, Annex B and Annex C to this instrument come into force on 21 March 2016 immediately after the Mortgage Credit Directive (Amendment No 3) Instrument 2016 comes into force.

Amendments to the Handbook

- H. The Glossary of definitions is amended in accordance with Annex A to this instrument.

- I. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with Annex B to this instrument.

Amendments to material outside the Handbook

- J. The Perimeter Guidance manual (PERG) is amended in accordance with Annex C to this instrument.

Notes

- K. In Annex B to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- L. This instrument may be cited as the Mortgage Credit (Amendment) Instrument 2016.

By order of the Board of the Financial Conduct Authority
[date 2016]

By order of the Board of the Financial Ombudsman Service Limited
[date 2016]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

Part 1: Comes into force on 20 March 2016

- regulated consumer hire agreement* in accordance with article 60N of the *Regulated Activities Order*;
- (a) in the case of an agreement entered into before 1 April 2014, a consumer hire agreement:
- (i) which was a regulated agreement within the meaning of section 189(1) of the CCA when the agreement was entered into; or
- (ii) which was such a regulated agreement after being varied or supplemented by another agreement before 1 April 2014; or
- (b) in the case of an agreement entered into on or after 1 April 2014, a consumer hire agreement which is not an exempt agreement under articles 60O to 60Q of the *Regulated Activities Order*.
- regulated credit agreement* in accordance with article 60B of the *Regulated Activities Order*, ~~a credit agreement~~;
- (a) in the case of an agreement entered into before 1 April 2014, a credit agreement:
- (i) which was a regulated agreement within the meaning of section 189(1) of the CCA when the agreement was entered into; or
- (ii) which was such a regulated agreement after being varied or supplemented by another agreement before 1 April 2014;
- and which would not be an exempt agreement pursuant to article 60C(2) of the *Regulated Activities Order* if it had been entered into on 21 March 2016;
or
- (b) in the case of an agreement entered into on or after 1 April 2014, a credit agreement which is not an exempt agreement under articles 60C to 60H of the *Regulated Activities Order*.

Part 2: Comes into force on 21 March 2016

<i>advising on regulated credit agreements for the acquisition of land</i>	<p>the <i>regulated activity</i>, specified in article 53DA of the <i>Regulated Activities Order</i> which is, in summary, advising a <i>person</i> if the advice:</p> <p>(a) <u>the advice</u> is given to the <i>person</i> in his capacity as a recipient, or potential recipient, of <i>credit</i> under a <i>regulated credit agreement</i>;</p> <p>(b) ...; and</p> <p>(c) the advice consists of the provision of personal recommendations to the <i>person</i> in respect of one or more transactions relating to <i>regulated credit agreements</i> <u>entered into, or to be entered into, on or after 21 March 2016</u>.</p>
<i>regulated mortgage contract</i>	<p>(a) (in relation to a contract) a contract which:</p> <p>(i) ...</p> <p>(ii) is not a <i>home purchase plan</i>, a limited payment second charge bridging loan, a second charge business loan, an investment property loan, an exempt consumer buy-to-let mortgage contract, an exempt equitable mortgage bridging loan, <u>an exempt housing authority loan</u> or a limited interest second charge credit union loan within the meaning of article 61A(1) or (2) of the <i>Regulated Activities Order</i>.</p>
<i>residential renovation agreement</i>	<p>an unsecured <i>credit agreement</i> <u>entered into on or after 21 March 2016</u> the purpose of which is the renovation of residential property, as described in paragraph 2a of article 2 of the <i>Consumer Credit Directive</i>.</p>

Annex B

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4.4A Initial disclosure requirements

...

Method of providing initial disclosure in all cases

- 4.4A.9 R The information required by *MCOB 4.4A.1R*, *MCOB 4.4A.2R*, *MCOB 4.4A.4R(1)*, *MCOB 4.4A.8R* and *MCOB 4.4A.8AR* must be communicated clearly and prominently, and in doing so:
- (1) an MCD mortgage adviser, or any other firm that is an MCD mortgage lender or an ~~MCD mortgage credit intermediary~~ MCD mortgage arranger that provides advisory services within the meaning of article 4(21) of the MCD, must provide the following information in *MCOB 4.4A.1R(1)* and (2) and *MCOB 4.4A.8R(1)(a)* and (2)(e) in a durable medium;
 - (a) ~~for an MCD mortgage lender, the information in *MCOB 4.4A.1R(1)* and *MCOB 4.4A.1R(2)* and *MCOB 4.4A.8R(1)(a)* and (2)(e); [deleted]~~
 - (b) ~~for an MCD mortgage credit intermediary, the information in *MCOB 4.4A.1R(1)* and *MCOB 4.4A.1R(2)*, *MCOB 4.4A.4R(1)(a)* and *MCOB 4.4A.4R(3)*, and *MCOB 4.4A.8R(1)(a)*, (e), (d) and (2); and [deleted]~~
 - (1A) an MCD mortgage credit arranger who is not also an MCD mortgage lender carrying out direct sales only must provide the information in *MCOB 4.4A.1R(1)* and (2), *MCOB 4.4A.4R(1)(a)* and (3), and *MCOB 4.4A.8R(1)(a)*, (c), (d) and (2) in a durable medium; and
 - (2) in all other cases:
 - (a) if the *initial contact* includes spoken interaction, the information must be communicated orally; and
 - (b) if the *initial contact* does not include spoken interaction, the messages must appear separately from other messages in the communication.

If the *initial contact* is made by electronic means, the *firm* must ensure that the *customer* cannot progress to the next stage of the sale unless the

information has been communicated to the *customer*.

[Note: article 15(1) and article 22(2) of the MCD]

- 4.4A.10 G (1) ~~In order to comply with MCOB 4.4A.9R for an internet sale, a *firm* should display the required information on a screen which the *customer* must access as part of the sales process. It would not be sufficient for the information to be accessible only by giving the *customer* the option to click on a link or download a document. The messages could be displayed clearly on one of the initial pages which the *customer* accesses MCOB 4.4A.9R(1) and (1A), the required information must be provided in a *durable medium* for all sales.~~
- (1A) In order to comply with MCOB 4.4A.9R(2):
- (a) for an internet sale, a *firm* should display the required information on a screen which the *customer* must access as part of the sales process. It would not be sufficient for the information to be accessible only by giving the *customer* the option to click on a link or download a document. The messages could be displayed clearly on one of the initial pages which the *customer* accesses;
 - (b) in a postal sale, a *firm* may comply by setting out the information in a clear covering letter;
 - (c) where the *initial contact* is by email, SMS or instant messaging, the information could be displayed clearly and prominently early on in the body of the email, SMS or instant messaging; and
 - (d) for face-to-face and telephone contact, a *firm* should comply by building the information into the initial oral discussion with the *customer*.
- (2) ~~In a postal sale, a *firm* may comply by setting out the messages in a clear covering letter. [deleted]~~
- (3) ~~Where the *initial contact* is by email, SMS or instant messaging, the messages could be displayed clearly and prominently early on in the body of the email, SMS or instant messaging. [deleted]~~
- (4) ~~For face to face and telephone contact, a *firm* should comply by building the messages into the initial oral discussion with the *customer*. [deleted]~~
- 4.4A.11 G A *firm* may demonstrate compliance with MCOB 4.4A.9R(4) by, for example, undertaking one or more of the following: building a requirement for oral communication of the relevant information into its training of staff as evidenced by its training and compliance manuals; inserting appropriate

prompts into paper-based or automated sales systems; and having procedures in place to monitor compliance by staff with that *rule*. What is required in each case will depend on all the circumstances.

Timing of initial disclosure in all cases

4.4A.12 R The information required by *MCOB* 4.4A.1R, *MCOB* 4.4A.2R, *MCOB* 4.4A.4R(1) and (3), *MCOB* 4.4A.8R and *MCOB* 4.4A.8AR must be provided:

(1) ...

(1A) in the case of information required by *MCOB* 4.4A.1R(1) and (2) and *MCOB* 4.4A.8R(1)(a) and (2)(e), where the *firm* is an *MCD mortgage adviser*, or any other *firm* that is an *MCD mortgage lender* or an *MCD mortgage arranger* that provides advisory services within the meaning of article 4(21) of the *MCD*, before the provision of such advisory services or, where applicable, the conclusion of a contract for the provision of such advisory services; and

(2) ...

[Note: article 15(1) and article 22(2) of the *MCD*]

...

TP1 MCD Transitional provisions

TP1.1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provisions: dates in force	(6) Handbook provisions: coming into force						
...											
46	<i>MCOB</i> 5A, <i>MCOB</i> 6A and <i>MCOB</i> 7B	R	<p>A firm that applies TP 45 must also provide the information in (1), (2) and either (3)(a) or (3)(b) below:</p> <table border="1" data-bbox="512 1742 970 2004"> <tr> <td data-bbox="512 1742 608 1809">...</td> <td data-bbox="608 1742 970 1809"></td> </tr> <tr> <td data-bbox="512 1809 608 1921">(3)</td> <td data-bbox="608 1809 970 1921">where the <i>borrowing rate</i> is variable:</td> </tr> <tr> <td data-bbox="512 1921 608 2004"></td> <td data-bbox="608 1921 970 2004">(a) the warning and the additional</td> </tr> </table>	...		(3)	where the <i>borrowing rate</i> is variable:		(a) the warning and the additional	From 21 March 2016 until 21 March 2019	21 March 2016
...											
(3)	where the <i>borrowing rate</i> is variable:										
	(a) the warning and the additional										

				<p><i>APRC</i> required by section 4 of <u>MCOB</u> <u>MCOB</u> 5A Annex 1<u>R</u> and <u>MCOB</u> 5A Annex 2, 6.2R to 6.8R, and the <u>maximum instalment illustration</u> required by section 6 of <u>MCOB</u> 5A Annex 1<u>R</u> and <u>MCOB</u> 5A Annex 2, <u>8.5R</u>; or</p>	
			...		
...					

Annex C

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Authorisation and regulated activities

...

2.7 Activities: a broad outline

...

Advising on regulated credit agreements for the acquisition of land

2.7.16F G {text to follow}

2.7.16F G Under article 53DA of the *Regulated Activities Order*, advising a person (“P”) is a *regulated activity* if:

...

- (3) the advice consists of the provision of personal recommendations to P in respect of one or more transactions relating to *regulated credit agreements entered into, or to be entered into, on or after 21 March 2016*.

...

Exempt agreements

2.7.19B G (1) A credit agreement entered into before 1 April 2014 is a regulated credit agreement for the purposes of PERG 2.7.19AG if it was a ‘regulated agreement’ within the meaning of the CCA when it was entered into, or became such a ‘regulated agreement’ by virtue of being varied or supplemented by another agreement before 1 April 2014. But a credit agreement is not a regulated credit agreement for the purposes of PERG 2.7.19AG if it was entered into before 1 April 2014 and, if it had been entered into on 21 March 2016, a person would have been carrying on the regulated activity of entering into a regulated mortgage contract or entering into a home purchase plan by entering into it.

- (2) A credit agreement entered into on or after 1 April 2014 is not a regulated credit agreement for the purposes of PERG 2.7.19AG if it is an exempt agreement. PERG 2.7.19CG to PERG 2.7.19JG describe the categories of exempt agreement. Where part of a credit agreement falls within the exemptions in articles 60C to 60H of the Regulated Activities Order, only that part of the agreement is an

exempt agreement.

Exemptions relating to the nature of the agreement

- 2.7.19C G A *credit agreement* is an exempt agreement in the following cases:
- (1) if it is a ~~regulated mortgage contract or a home purchase plan~~; :
 - (a) by entering into the agreement as lender, a person is or was carrying on the regulated activity of entering into regulated mortgage contracts; or
 - (b) by entering into the agreement as home purchase provider, a person is or was carrying on a regulated activity of the kind specified by article 63F(1) of the Regulated Activities Order (entering into regulated home purchase plans); or
 - (c) by administering the agreement on 21 March 2016, a person is carrying on a regulated activity of the kind specified by article 61(2) of the Regulated Activities Order (administering regulated mortgage contracts);

...

Exemptions relating to the nature of the lender

...

- 2.7.19F G (1) In PERG 2.7.19FG(3), ‘housing authority’ has the same meaning as in article 60E(7) of the Regulated Activities Order. The definition of ‘housing authority’ in article 60E includes housing associations registered under the relevant housing legislation.
- B (2) The effect of the definition of ‘regulated credit agreement’ in the Regulated Activities Order is that credit agreements entered into by housing associations and other housing authorities before 1 April 2014 that were regulated credit agreements when they were entered into are to be regulated credit agreements notwithstanding the introduction of the exemption in article 60E(5) of the Regulated Activities Order. Credit agreements entered into on or after 1 April 2014 and that meet the conditions in PERG 2.7.19F(3) are exempt. See also PERG 4.4.28CG.

...

Exemptions relating to the total charge for credit

- 2.7.19I G A *credit agreement* is also an exempt agreement in the following cases:
- (1) if it is a *borrower-lender agreement*, the lender is a *credit union* and the rate of the *total charge for credit* (see CONC App 1) does not

exceed 42.6 per cent provided that:

- (a) the agreement is not an MCD regulated mortgage contract or an article 3(1)(b) credit agreement; or
 - (b) the agreement is an MCD regulated mortgage contract or an article 3(1)(b) credit agreement but:
 - (i) the agreement is of a kind to which the MCD does not apply by virtue of article 3(2) of the MCD (in other words, it is an agreement listed in PERG 4.10A.5G(1) to (6); or
 - (ii) it is a credit agreement which relates to the deferred payment, free of charge, of an existing debt and is not secured by a legal or equitable mortgage); or
 - (iii) it is a bridging loan described in PERG 4.13.6G; or
 - (iv) it is a restricted public loan described in PERG 4.13.7G; or
 - (c) the agreement was entered into before 21 March 2016;
- (2) if (subject to (5) ~~and~~ (6) and (7)):
- ...
- (3) if (subject to (5) ~~and~~ (6) and (7)):
- ...
- (6) ... to the borrower;
- (7) if the agreement is an MCD regulated mortgage contract or an article 3(1)(b) credit agreement, the agreement is only an exempt agreement if:
- (a) it meets the conditions in (6)(c) and (d);
 - (b) the borrower receives timely information on the main features, risks and costs of the agreement at the pre-contractual stage; and
 - (c) any advertising of the agreement is fair, clear and not misleading.

High net worth exemption

2.7.19J G A credit agreement is an exempt agreement if:

...

- (2) the agreement is either:
- (a) ... ; or
 - (b) for credit which exceeds £60,260 and, if entered into on or after 21 March 2016, is for a purpose other than:
 - (i) the renovation of residential property; or
 - (ii) to acquire or retain property rights in *land* or in an existing or projected building;

...

2.9 Regulated activities: exclusions applicable in certain circumstances

...

Local authorities

...

2.9.24 G ...

- (3) In essence, the *Regulated Activities Order* exempts activity in relation to *credit agreements* carried on by a local authority to the extent permitted by the *Consumer Credit Directive* and the *MCD*. The ~~exclusion~~ exclusions relating to *entering into a regulated credit agreement as lender* and ~~exercising, or having the right to exercise the lender's rights and duties under a regulated credit agreement~~ exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement ~~applies only~~ therefore apply only in relation to an agreement within (3A) or (4).

(3A) A credit agreement is within this paragraph if:

- (a) it was entered into before 21 March 2016; or
- (b) it is entered into on or after that date for a purpose other than acquiring or retaining property rights in *land* or in an existing or projected building;

but a *credit agreement* is only within this paragraph in so far as ~~these activities are not carried on for the purpose of acquiring or retaining property rights in land or in an existing or projected building and relate to *credit agreements*~~ the agreement is of a kind to which the *Consumer Credit Directive* does not apply under article 2(2) of that Directive (see (3B)).

(3B) In summary, ~~these kind~~ the kinds of agreements to which the *Consumer Credit Directive* does not apply under article 2(2) of that

Directive include *credit agreements*:

(c)

...

(4) ~~The exclusion relating to entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement for activities that are carried on for the purpose of acquiring or retaining property rights in land or in an existing or projected building apply to local authorities and (in some cases) their subsidiaries only when the relevant credit agreement~~ A credit agreement is within this paragraph if it:

(a) ~~is of a kind to which the Consumer Credit Directive does not apply under article 2(2) of that Directive, and~~ is entered into on or after 21 March 2016; and

(b) meets one of the following conditions:

(i) it is an agreement listed in PERG 4.10A.5G; it is of a kind to which the MCD does not apply by virtue of article 3(2) of the MCD (in other words, it is an agreement listed in PERG 4.10A.5G(1) to (6)); or it is a credit agreement which relates to the deferred payment, free of charge, of an existing debt and is not secured by a legal or equitable mortgage); or

...

4.4 What is a regulated mortgage contract?

...

Type of security

...

4.4.16A G It is possible for more than one mortgage contract to be secured by the same charge.

...

Exclusion for equitable mortgage bridging loans

4.4.28A G A contract is excluded from the definition of regulated mortgage contract if, at the time is entered into, it meets the following conditions:

(1) it is a bridging loan described in PERG 4.13.6G;

(2) it is secured by an equitable mortgage on land; and

(3) it is an exempt agreement within the meaning of article 60B(3) (regulated credit agreements) of the Regulated Activities Order by virtue of article 60E(2): in summary, the lender is a local authority, or the agreement is specified in CONC App 1.3 and the lender is a person or within class of persons specified in CONC App 1.3 (see PERG 2.7.19FG(1) and (2)).

4.4.28B G The Regulated Activities Order refers to such a contract as an ‘exempt equitable mortgage bridging loan’.

Exclusion for housing association and other housing authority loans

4.4.28C G A contract is excluded from the definition of regulated mortgage contract if, at the time is entered into, it meets the following conditions:

(1) it provides for credit to be granted by a ‘housing authority’ within the meaning of article 60E of the Regulated Activities Order. The definition in article 60E includes housing associations registered under the relevant housing legislation (see PERG 2.7.19FAG);

(2) if entered into on or after 21 March 2016:

(a) it is an agreement of a kind to which the MCD does not apply by virtue of article 3(2) of the MCD (in other words, it is an agreement listed in PERG 4.10A.5G(1) to (6); or it is a credit agreement which relates to the deferred payment, free of charge, of an existing debt and is not secured by a legal or equitable mortgage); or

(b) it is a bridging loan described in PERG 4.13.6G; or

(c) it is a restricted public loan described in PERG 4.13.7G.

4.4.28D G The Regulated Activities Order refers to such a contract as an ‘exempt housing authority loan’.

...

4.4A Transitional issues Mortgage contracts entered into before 21 March 2016

~~Regulated mortgage contracts entered into before 2004: variations~~

~~4.4A.1 G There are special provisions for mortgages entered into before 31 October 2004: [deleted]~~

4.4A.1A G Prior to 21 March 2016, the definition of ‘regulated mortgage contract’ in article 61(3)(a) of the Regulated Activities Order was limited to mortgage contracts secured by a first legal mortgage (but not a second charge mortgage or an equitable mortgage) of land in the United Kingdom (rather than land in the EEA), and the regulated activity of administering a regulated mortgage contract was limited to mortgage contracts entered into

on or after 31 October 2004, being the date on which mortgage regulation under the Act began. Accordingly, prior to 21 March 2016 some mortgage contracts were *regulated mortgage contracts* regulated under MCOB; some mortgage contracts were *regulated credit agreements* regulated under the CCA and, from 1 April 2014, CONC; and some mortgage contracts were outside regulation.

4.4A.1B G When the *Regulated Activities Order* was amended to implement the MCD, the limitations mentioned in PERG 4.4A.1AG were removed: the legislative intention was to provide a single regulatory regime for mortgage contracts under MCOB from 21 March 2016, subject to a six month transitional period for first charge mortgages entered into before 31 October 2004. Mortgage contracts that were *regulated mortgage contracts* before that date did not cease to be *regulated mortgage contracts*. But many mortgage contracts that were not *regulated mortgage contracts* immediately before 21 March 2016 became *regulated mortgage contracts* on that date provided that they met the conditions set out in PERG 4.4.1G(1) to (3), even though these conditions did not apply in that form at the time the contract was entered into.

4.4A.1C G (1) Mortgage contracts that potentially became *regulated mortgage contracts* on 21 March 2016 include, for example:

- (a) mortgages entered into before 31 October 2004;
- (b) second charge mortgages; and
- (c) equitable mortgages.

(2) However:

- (a) a mortgage contract entered into before 21 March 2016, which was not already a *regulated mortgage contract* only became a *regulated mortgage contract* if it was a ‘consumer credit back book mortgage contract’ within the meaning of article 2 of the Mortgage Credit Directive Instrument 2015, SI 2015/910 (and see paragraph (a)(iii) of the *Glossary* definition of *regulated mortgage contract*). Briefly, this means a *regulated credit agreement* that would have been a *regulated mortgage contract* if it had been entered into on or after 21 March 2016, with the exception of certain buy-to-let mortgages;
- (b) the exclusions set out in article 61A of the *Regulated Activities Order* and reflected in paragraph (a)(ii) of the *Glossary* definition of *regulated mortgage contract* replicate various consumer credit exemptions, for example equitable mortgage bridging loans; and
- (c) the *regulated activities* of administering a *regulated mortgage contract*, advising on *regulated mortgage contracts*

and arranging (bringing about) regulated mortgage contracts are limited, in their application to mortgage contracts entered into before 21 March 2016, to mortgage contracts which were already regulated mortgage contracts or which are 'consumer credit back book mortgage contracts' within the meaning of article 2 of the Mortgage Credit Directive Instrument 2015, SI 2015/910 (see (a)).

- 4.4A.2 G ~~The effect of the *Regulated Activities Order* is that mortgage contracts which are varied can fall into one of the following categories:~~
- (1) ~~a contract that was entered into before 31 October 2004, and that is subsequently varied on or after that date so that it satisfies the conditions set out in:~~
- (a) ~~PERG 4.4.1G(1) to PERG 4.4.1G(3); or~~
- (b) ~~the old versions of those paragraphs as referred to in PERG 4.4A.5G;~~
- ~~will not be a *regulated mortgage contract* (because it was not a regulated mortgage contract at the time it was entered into);~~
- (2) ~~a contract that was originally entered into before 31 October 2004, but is subsequently changed on or after that date such that a new contract is entered into, will be a *regulated mortgage contract* (provided that it meets the definition in the *Regulated Activities Order*); and~~
- (3) ~~a *regulated mortgage contract* that was originally entered into on or after 31 October 2004 and which is subsequently varied by, for example, making a further advance, will remain a *regulated mortgage contract*. [deleted]~~
- 4.4A.3 G ~~It is possible for more than one mortgage contract to be secured by the same (first) charge. The first contract might be entered into before 31 October 2004 (and, therefore, not be a *regulated mortgage contract*) and a second contract entered into on or after 31 October 2004 (and be a *regulated mortgage contract*). [deleted]~~

Regulated mortgage contracts entered into before 2016

- 4.4A.4 G ~~In some cases (described in this section), the definition applicable to a contract that existed before 21 March 2016 is different from the one in PERG 4.4 (What is a regulated mortgage contract?). [deleted]~~
- 4.4A.5 G ~~The definition in PERG 4.4 applies to a contract which, immediately before 21 March 2016, met the following conditions:~~
- (1) ~~it was a *regulated credit agreement* (under the definition existing at that time); and~~

- (2) ~~it provided for the obligation of the borrower to repay to be secured by a mortgage on land that ranked in priority behind one or more other mortgages affecting the land in question. [deleted]~~
- 4.4A.6 G ~~Except for the contracts mentioned in PERG 4.4A.5G, the definition applicable to pre-2016 contracts is the version in force on 20 March 2016. [deleted]~~
- 4.4A.7 G ~~The old definition referred to in PERG 4.4A.6 G can be found in historical versions of PERG, which can be found on the FCA's website along with the current version. [deleted]~~
- 4.4A.8 G ~~In summary, the old definition of a *regulated mortgage contract* was a contract that, at the time it was entered into, met the following conditions:~~
- (1) ~~the contract was one under which a person (“the lender”) provided credit to an individual or to trustees (“the borrower”);~~
- (2) ~~the contract provided for the obligation of the borrower to repay to be secured by a first legal mortgage on land (other than timeshare accommodation) in the *United Kingdom*;~~
- (3) ~~at least 40% of that land was used, or was intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who was a beneficiary of the trust, or by a *related person*. [deleted]~~
- 4.4A.9 G ~~As is still the case, the old definition excluded regulated home purchase plans. [deleted]~~
- 4.4A.10 G ~~In practice, there may not be many contracts entered into prior to 21 March 2016 that are not *regulated mortgage contracts* but which would be *regulated mortgage contracts* if they had been entered into after 21 March 2016. Examples include:~~
- (1) ~~a loan secured by a first ranking mortgage on land elsewhere in the *EEA*;~~
- (2) ~~a loan secured by first ranking equitable security;~~
- (3) ~~a loan that was not a *regulated credit agreement* and is secured by second ranking security. [deleted]~~

...

4.10 Exclusions relating to more than one regulated activity

...

Exclusion: local authorities

- 4.10.10 G There are exclusions that apply, in relation to each of the *regulated mortgage activities* and to *advising on regulated credit agreements for the acquisition of land*, if the *person* carrying on the activity is a *local authority* or a wholly owned subsidiary of a *local authority*. They can be found in article 72G of the *Regulated Activities Order*, but only apply where:
- (a) the relevant agreement was entered into before 21 March 2016; or
 - (b) the relevant agreement is entered into on or after 21 March 2016 and:
 - (i) the agreement is of a kind to which the *MCD* does not apply by virtue of article 3(2) of the *MCD* (in other words, it is an agreement listed in *PERG* 4.10A.5G(1) to (6); or it is a *credit agreement* which relates to the deferred payment, free of charge, of an existing debt and is not secured by a *legal or equitable mortgage*); or
 - (ii) it is a *bridging loan* described in *PERG* 4.13.6G; or
 - (iii) it is a restricted public loan described in *PERG* 4.13.7G.

...

4.13 Other exemptions

...

- 4.13.4 G The exemption in *PERG* 4.13.3G only applies in relation to *regulated mortgage contracts* entered into before 21 March 2016 and to a limited range of *regulated mortgage contracts* entered into on or after that date. These are set out in the table in *PERG* 4.13.5G.

...

Financial Conduct Authority



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