

The broker's guide to...

# Consumer Credit Regulation

2014 - Issue 1



# Contents

Introduction	03
Consumer credit activities	04
What is changing?	06
Handover to the FCA	07
Exemptions	08
Burden of regulation	09
What do we need to do now?	10
Action checklist	11

This series of legal supplements is brought to you through a partnership of BIBA, DAC Beachcroft and Zurich. We hope that you find DAC Beachcroft's legal expertise and Zurich's industry knowledge helpful and we welcome any suggestions for future subjects.



# Introduction

Regulatory changes are significant events for all regulated companies, and as such, should be observed closely. This guide aims to assist insurance brokers as the regulation surrounding consumer credit changes. On 1 April 2014, the Financial Conduct Authority (FCA) will assume responsibility for this area of business. Although the changes are relatively minor in terms of scope, it does allow stricter enforcement of the rules by the FCA, in particular its ability to use its full range of enforcement powers against firms who fail to comply.

As with all regulatory changes, it can be seen as another compulsory checkbox that needs completing, but companies should also identify the potential to streamline their business dealings. Within consumer credit regulation, there are a number of exemptions including business lending and some low interest cash loans.

As an insurance broker, it is fundamentally important to be able to offer your customers the best option available to them, and this extends to customers' finance options. It is therefore crucial that insurance brokers are aware of what the regulatory changes will mean for both their company and the customers. This guide provides an overview of what areas will be subject to consumer credit regulation and how businesses can ensure that they are operating within the regulations, come 1 April 2014.

# What are consumer credit activities?



**Mathew Rutter**  
**Partner - Financial**  
**Institutions Group,**  
**DAC Beachcroft LLP**

DAC beachcroft

Consumer credit regulation is changing. Although the scope of regulation will stay broadly the same, the FCA will take over responsibility for the regulation of consumer credit activities from 1 April 2014.

This guide looks at what this will mean for insurance brokers and what you should do in the coming months. It is intended as an introduction to what can be a complex area. You should take further advice if you are unclear about the consumer credit regime.

## What are consumer credit activities?

The main consumer credit activities which might be carried on by an insurance broker are:

- Lending
- Arranging credit

Other activities which may be relevant include debt adjusting and debt collecting.

'Credit' is widely defined to mean any type of agreement where the lender gives the borrower time to make payment. So it does not just include cash loans, but also covers arrangements where payment is deferred.

So if, for example, you allow your customers to pay their debts to you by instalments, you may be carrying on the regulated activity of lending (entering into a regulated credit agreement as lender, article 60B).

If you arrange for credit to be provided by a third party premium finance company and/or insurers, you may be carrying on the regulated activity of arranging credit (credit broking, article 36A).

## What if we only advise businesses?

Lending to or arranging credit for businesses which are incorporated (such as Limited companies, PLCs or LLPs) is not regulated consumer credit activity. However, you may be caught if you carry on those activities for sole traders, clubs, trusts or other unincorporated organisations, or partnerships of two or three individual partners. The word 'consumer' is therefore misleading in this context, as it can include some business-related activities.

## What if we do not charge interest?

The fact that you do not charge interest or apply any charges when clients opt to defer payment does not in itself mean that you are outside the consumer credit regime.

## What if a client is late paying us? Are we providing credit?

Generally, the regime only applies to agreements you make with your clients to defer payment. If your customer is late paying you, you have not agreed to defer payment, so you would not generally be regarded as having provided them with credit.

## What about credit we provide to our employees?

There is no exemption simply because credit is provided to employees. However, arrangements such as the cycle-to-work scheme currently operate under a group licence, and this exemption will be retained in the new regime. Season ticket loans are also usually exempt (see page 8).

# What is changing on 1 April 2014?

## More intrusive regulation

Although the scope of consumer credit regulation is not changing significantly on 1 April, in practice the rules are likely to be enforced much more rigorously than before. The FCA may look at a broker's consumer credit activities in isolation, or more likely as part of a wider regulatory review.

The FCA has also said it plans to carry out further research into the consumer credit market, which may take the form of thematic reviews or market studies.

## Principles as well as rules

Although the regime will continue to be based on detailed and complex rules, the FCA's Principles for Business will now apply to consumer credit activities. Its financial promotions regime will also apply to consumer credit advertisements.

## A new rulebook

There will be a new consumer credit rulebook, referred to as CONC for short. To begin with, this will largely be made up of existing rules and OFT guidance. However, over time it can be expected to grow as the FCA identifies new areas requiring rules and guidance.

## Tougher enforcement powers

Perhaps most significantly, the FCA will be able to bring to bear its full range of enforcement powers against firms which fail to comply with its rules.

## Handover to the FCA

To meet the 1 April deadline, the process of moving to FCA regulation has been simplified. However, it will not happen automatically. If you are currently OFT licensed, you need to register with the FCA for 'interim permission', if you have not done so already.

This 'interim permission' regime will last until 31 March 2016. By that date, if you wish to be authorised to carry on consumer credit activities you will need to have applied to the FCA for full authorisation for those activities. The FCA will provide more information about this process in due course, and applications for full authorisation will be phased over the two years.

A firm which obtains full authorisation for its consumer credit activities will be subject to the FCA's full scope of regulation, including the threshold conditions, the approved persons regime, the controllers regime, periodic reporting and complaints reporting and publication rules. If your consumer credit activities are already carried on by the same company which is FCA authorised for insurance mediation activities, these should all be familiar requirements.



# Are there any exemptions?

## Main exemptions and interim permission

It is worth considering whether your consumer credit activities come within any of the exemptions that would avoid the need to obtain interim permission, or could be adjusted so as to keep you outside the scope of regulation.

Another benefit of staying outside the regime is that there is no need to issue credit agreements complying with the complex rules that apply to regulated agreements.

Some of the main exemptions that might be relevant are:

- Business lending: credit to corporate bodies is always exempt, as is credit to partnerships of more than three partners. In addition, credit of more than £25,000 wholly or mainly for business purposes is exempt.
- Unsecured credit repayable in less than twelve months in four or fewer instalments is exempt provided that no interest or other charges apply.
- Unsecured credit of more than £60,260 provided to high net worth individuals (individuals who have signed a prescribed declaration stating that their net annual income exceeds £150,000 and/or net assets excluding their primary residence exceed £500,000) is exempt.

- Low interest cash loans not offered to the public generally are also exempt – this would usually include season ticket loans made to employees at no charge.

Regulated mortgages fall outside the consumer credit regime, but are already subject to their own FCA regulatory regime.

If a customer is paying monthly for monthly insurance, that may not amount to granting credit. However, the arrangement needs to be looked at closely to ensure the arrangement is truly a rolling monthly arrangement.

## The burden of regulation and the alternatives

If your regulated consumer credit activities are marginal, now may be the time to consider whether you should continue them in their current form.

If you currently extend credit yourself to customers entitled to protection under the consumer credit regime, you need to ensure that:

- The credit documentation issued is fully compliant.
- Advertisements comply with regulatory requirements.
- The required pre-contract information is issued.
- Affordability assessments are carried out.

Also, enforcement notices have to be issued in a particular form in order to be legally effective, and the customer will often have certain rights during the agreement, such as a right to cancel the credit agreement, and a right to repay the credit early in full or in part only.

However, if the credit is provided by a third party, whether that is an insurer or a third party credit provider, much of the compliance burden is shifted to them. While you will probably still need to be licensed to arrange credit, compliant documentation should be supplied by the third party lender.



# What do we need to do now?

## Planning ahead

It would be sensible to assess your current consumer credit activities, to make sure you will have interim permission for all of your credit activities, and also to see whether your current licence may be wider than it needs to be.

Because credit can arise in many different cases, it can be easy to overlook arrangements that might amount to the granting or arranging of credit. If consumer credit activities are not currently managed by your compliance team, it would be worth considering whether this should change given the move to FCA regulation.

In any event, you should record the arrangements that you enter into which amount to consumer credit activities, including any exemptions that are being relied on. This should make it easier in the future both as regulation evolves and as your business develops new products and services.

It will also allow you to assess whether the cost of regulation is justified by these arrangements, or whether, for example, they should be limited so that you can stay within the scope of one or more exemptions.

You should also familiarise yourself with the new rulebook, CONC (until the final rules are made, the likely text can be found in FCA Consultation Paper CP13/10).

It is worth noting that, if your current OFT licence lapses before 1 April 2014, you will need to renew it under the current regime to avoid carrying on consumer credit activities while unlicensed.

## Action checklist

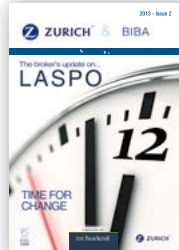
- Identify your current OFT licence categories (the OFT's Register is available at [www2.crw.gov.uk/pr/Default.aspx](http://www2.crw.gov.uk/pr/Default.aspx))
- Check that your licence details are up-to-date, including trading names and names of directors and controllers.
- Are any additional categories of licence required?
- Complete your application for interim variation of permission by no later than 31 March 2014, via the FCA website, if you have not done so already.
- The FCA will be managing the rebate process and will be emailing firms.
- Review your consumer credit compliance arrangements and update compliance manuals and documentation, as well as customer documentation with details of the new regulator.



Other guides in this series are available from the BIBA website – [www.biba.org.uk](http://www.biba.org.uk)



## Employment Law



## LASPO



## Advertising, marketing and branding



## Claims

British Insurance Brokers' Association  
8th Floor  
John Stow House  
18 Bevis Marks  
London  
EC3A 7JB

Find a broker helpline: 0870 950 1790  
Member Helpline: 0844 77 00 266  
Fax: 020 7626 9676  
[enquiries@biba.org.uk](mailto:enquiries@biba.org.uk)  
[www.biba.org.uk](http://www.biba.org.uk)