

Consumer credit authorisation

Guidance for housing associations

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Introduction

This guidance is an update of the 2014 version produced by the National Housing Federation. It has been revised primarily to take account of the effect that the Mortgage Credit Directive Order 2015 (which transposes the EU's Mortgage Credit Directive into UK law) has on secured lending by housing associations and to reflect current Financial Conduct Authority (FCA) requirements.

The aim of this guidance is to assist housing associations both in applying the legislation to their businesses and in understanding how and when to get authorised for their consumer credit/FCA regulated activities, where appropriate. To achieve this it clearly outlines when and what type of authorisation is required, and gives practical advice in relation to the application process and ongoing compliance matters.

It is important that each housing association ensures their authorisation covers every activity that is regulated. In order to do this, associations will need to keep the activities that they are engaged in under constant review.

The consumer credit regime has a wider impact on the business carried out by housing associations than many realise. Failure to comply with the relevant legislation is a criminal offence. It is therefore vital that housing associations take their obligations under the legislation seriously and assess compliance on a regular basis. It is up to each association to ensure that they take appropriate advice and, where necessary, seek authorisation from the FCA.

Background information

While large parts of the Consumer Credit Act 1974 remain in force, much of the regulatory regime is now contained in the [FCA handbook's Consumer Credit Sourcebook](#) known as CONC and in secondary legislation, such as the amended Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). This includes activities relating to consumer credit, among which are regulated by the FCA under the Financial Services and Markets Act 2000 (FSMA).

This guidance has been issued by the Federation in consultation with Trowers & Hamblins LLP and Malcolm Waters QC of Radcliffe Chambers. However, you should obtain legal advice on the application of the legislation to the specifics of your business. Housing associations should also consult the [FCA Handbook](#) for further details.

In this guidance we have used the generic term 'housing associations' to mean non-profit registered providers under the Housing and Regeneration Act 2008 and, in Wales, registered social landlords under the Housing Act 1998. There are different rules for profit-making registered providers that are referred to where relevant.

This guidance applies to housing associations in England, Wales, Northern Ireland and Scotland.

When is authorisation required?

Legislation

The original legislation imposing the consumer credit regime is the Consumer Credit Act 1974 as amended by the Consumer Credit Act 2006. Parts of this legislation remain in place, but most of the regulation now sits in FSMA, statutory instruments made under FSMA, and in the CONC section of the FCA Handbook.

Firms are also subject to other parts of the handbook, including the Principles for Business (PRIN), and high-level rules such as the General Provisions (GEN) and Senior Management Arrangements, Systems and Controls (SYSC).

The main purpose of the regime is to protect individuals who enter into credit or hire agreements with persons acting by way of business, and the regime applies to the vast majority of such agreements.

As explained below – although there are some exemptions available – agreements, advice and other activities that housing associations provide to customers, tenants and leaseholders are still potentially affected by the regime and should be reviewed to check if they require authorisation.

Authorisation

Under Section 19 of FSMA, if an organisation is engaging in 'regulated activity' (which includes consumer credit activity) it must be authorised by the FCA to do so unless an exemption applies. Being authorised in this way by the FCA is not the same as being on the FCA register as a Registered Society, Co-operative Society or Community Benefit Society (previously Industrial and Provident Societies).

Being FCA authorised for the purposes of consumer credit means applying for and maintaining a separate FCA authorisation. We explain later in this guidance what needs to be done if FCA authorisation is required.

Credit agreements

The RAO and FCA Handbook defines a credit agreement as an agreement between an individual (A) and any other person (B) under which B provides A with credit. 'Credit' is widely defined to include cash loans, and any other form of financial accommodation. Credit does not include cash sales.

The scope of the regime is, therefore, wide enough to cover all sorts of credit and financial allowances including, for example, loans secured on land and sales under which the buyer receives a discount for cash (but not including statutory discounts).

It does not matter for the purposes of the RAO whether or not the body carrying out the regulated activity does so for profit or not, though the absence of a profit element may be relevant to whether the body is carrying on the activity by way of business.

Generally, therefore, any activity that a housing association carries out that involves the association entering into an agreement for the provision of credit or financial accommodation to an individual is a credit agreement. This does not mean that providing the agreement will always require the housing association to be authorised, because there may be exemptions that apply to the activity. These are considered in the next section of this guidance.

Other regulated activities

It is important for housing associations to be aware that the consumer credit regime does not just apply to loans and other forms of financial accommodation. The scope of other activities requiring authorisation is much wider than most associations may expect.

Other activities that are subject to consumer credit regulation include:

- credit broking
- debt adjusting
- debt counselling
- debt collecting
- debt administration
- regulated consumer hire agreements
- credit information services.

Further information on examples of activities that will require authorisation are set out in the next section of this guidance.

Exemptions

There are some exemptions to the application of the consumer credit regime. Many are considered in the relevant sections in this guidance but housing associations may need to take legal advice, as the application of such exemptions will depend on the specific circumstances and the legislation governing exemptions is subject to change.

Penalties

It is a criminal offence for a person to engage in any activity for which FCA authorisation is required when they have no authorisation from the FCA. As applicants are only authorised to carry out the specific activities they have applied to engage in (when they obtain FCA authorisation), it is also worth remembering that it is still an offence for an authorised person to carry on any other credit-related activities without permission that covers those activities.

Penalties can include fines and prison sentences. It is, therefore, very important that housing associations audit their business activities carefully to establish whether authorisation is required and, if it is, obtain the correct form of authorisation covering all the relevant activities.

It is also worth noting that any agreement that is made in the course of carrying on a regulated activity without the appropriate authorisation is potentially unenforceable. This puts housing associations at risk of losing the ability to recover monies owed to them under agreements entered into in such circumstances.

Separately from that, regulated agreements that are not correctly processed and documented in accordance with the Consumer Credit Act may also be unenforceable without a court order.

Second charge lending

Now that the EU Mortgage Credit Directive has been enshrined in UK law, second charges – including equity mortgages – are subject to regulation under the FCA's Mortgage Code of Business (MCOB) unless an exemption applies.

Housing associations should obtain legal advice on any equity mortgage or secured lending schemes and keep the second charge lending arrangements under review.

Activities requiring authorisation

There are a number of different activities that are regulated under the FCA consumer credit regime. Housing associations should carefully consider the type of business they are engaged in and the nature of that business.

This section summarises the usual types of activity associations may be involved in. There is a [table of activities set out at the end of this section for ease of reference](#). When applying for authorisation you will need to ensure that you apply for permission to carry on the correct activities.

Housing associations must be aware that this guidance does not contain a definitive list of regulated activities. In particular, there are specialist financial models such as collective investment schemes and insurance-related activities that are potentially regulated and are outside the scope of this guidance. The guidance does not cover other regulated activities such as regulated mortgage contracts. You will therefore need to obtain specialist advice on any first charge mortgages of a borrower's home as entering into such mortgages is a different kind of regulated activity.

Only each association will know the detail of the type of activities engaged in and you must ensure that the nature of your business is looked at very carefully. If you are uncertain about whether a particular activity is regulated or not you should obtain legal advice.

The regulation references in this section are to the RAO as amended and are listed as the relevant 'articles' against each heading. The [FCA Perimeter Guidance](#) (PERG) also provides further guidance. Specific sections of PERG are referred to in the following paragraphs.

The 'by way of business' test

It is important to bear in mind that there are two conditions that must be satisfied before a particular activity will be regulated for these purposes.

The first is that the activity is of a kind specified in the RAO. If it is, then the second condition is that the association must be carrying on the activity 'by way of business'.

The FCA has given guidance on the 'by way of business' test in PERG 2.3, and housing associations may find it helpful to refer to PERG 2.3.3G in this context (with PERG 2.3.2(3A)G also being relevant to associations carrying on the activities of debt adjusting, debt counselling or providing credit information services).

However, the application of the 'by way of business' test is wide and involves a large element of subjective judgment, and housing associations are recommended to seek advice on the application of the test to the activities that they are involved in.

Entering into a regulated credit agreement as lender (Article 60B(1))

This activity covers lending money and offering credit, and in some circumstances giving extra time to pay.

Examples include lending and the giving of other forms of financial accommodation, such as discounts that have to be later repaid (other than as a result of a breach as in, for example, social homebuy leases), service charge loans and/or employee car loans.

Note that authorisation is not required for giving the Right to Buy discount on sale as this is a statutory right. It is also worth noting that informal arrangements with tenants to pay off rent arrears with no additional interest or charges are unlikely to constitute a 'credit agreement'.

Activities requiring authorisation

There are a number of exemptions that may apply to housing associations offering these sorts of loans, including:

- An exemption that applies to loans offered on an interest-free basis for a term of 12 months or less where the number of repayments totals 12 or less.
- An exemption that will apply to loans that are only offered to a particular class of individual (rather than to the public generally). For this exemption to apply the loan must be either secured or offered to an employee of the lender. Furthermore, the only charge for credit must be interest not exceeding a maximum of 1% above the base rate of certain banks named in the legislation as at the date falling 28 days before the interest is charged.

Other loans that do not fall within these or other available exemptions, and are made by way of business, will trigger a requirement for the relevant housing association to be authorised. Legal advice will need to be sought to ensure that the housing association has correctly interpreted the exemptions as they will need to be applied to each specific loan. One area housing associations frequently engage in potentially regulated lending is in dealing with service charge arrears and payment plans for leaseholders.

The most common form of secured lending provided by housing associations is shared equity second charge mortgages. Until recently, this type of lending when carried out by a registered provider benefited from a specific exemption from consumer credit regulation.

However, since the Mortgage Credit Directive Order 2015 (MCD) came into force, second charge loan agreements entered into after 20 March 2016 have been treated as Regulated Mortgage Contracts and, unless an exemption applies, are regulated by MCOB rather than the consumer credit regime. MCOB's level of regulation and reporting requirements resemble those of high street banks and are considerably more rigorous than their consumer credit equivalents.

The exemptions that may apply are limited. One exemption is for loans under which no interest is payable, but the principal exemption to consider is the 'restricted public loan' exemption. Under this, a loan offered by a housing association will be exempt from MCOB regulation if:

- it is offered to a particular class of borrower and not offered to the public generally (housing associations can usually meet this requirement as the affordability criteria usually applied means that the loan is not offered to the public generally)
- it is provided on terms that are more favourable to the borrower than those prevailing on the market – because it is either interest free, the interest is lower than the market rate, or the terms of the loan are otherwise more favourable (again, housing associations are usually able to satisfy this requirement)
- it is offered under an enactment with a general interest purpose.

The term 'general interest purpose' is transposed directly from the wording of the MCD, which offers no guidance as to what it means. The reference to an 'enactment' clearly requires that there be a statutory basis for the lending and that enactment must have a general interest purpose.

Housing associations are recommended to seek specialist advice in relation to any plans for future second charge lending in order to consider the availability of any exemptions and the regulatory consequence of providing Regulated Mortgage Contracts.

Activities requiring authorisation

To summarise in relation to second charge lending:

- secured loans entered into before 1 April 2014 are regulated under the consumer credit regime, and in order to administer these loans housing associations require FCA authorisation to exercise lender's rights under a regulated credit agreement
- secured loans entered into after 31 March 2014 but before 21 March 2016 are exempt from regulation under both consumer credit and MCOB
- secured loans entered into after 20 March 2016 are subject to MCOB, unless an exemption applies.

Consumer hire business (Article 60N)

This activity includes hiring out, leasing or renting goods under transactions that are capable of lasting more than three months.

Please note that hire purchase agreements are not part of this activity, but will be covered by regulation 60B(1) entering into a regulated credit agreement as lender, as set out above, because they provide for the ownership of the goods to pass ultimately to the hirer.

The regime does not regulate leases or tenancies of properties so a furnished property can be hired out without triggering a requirement to be authorised. However, hiring out furniture separately from a tenancy agreement or hiring out alarm equipment for the elderly is consumer hire activity and will potentially require authorisation.

Credit broking (Article 36A)

This activity is defined as effecting the introduction of an individual looking for credit to an organisation that provides credit, or to another organisation that will introduce the individual to a provider of credit.

Housing associations cannot assume that, if the credit being provided is exempt from regulation, the brokering of that credit is also exempt, because this activity may include brokering an exempt credit agreement. Housing associations should review the sorts of credit broking being carried out and consider taking legal advice on whether it is an activity requiring authorisation.

Passive advertising of other people's credit or hire facilities would not constitute credit broking. However, it is common practice of many housing associations to give individuals either lists of banks and building societies that provide first charge mortgages against shared ownership leases/equity mortgage products, or lists of mortgage advisers. Such activity could constitute credit broking, as could website advertising that includes links to providers of credit.

Under the previous regime, providing details to potential buyers of FCA regulated mortgages for a first charge to purchase a property and/or FCA regulated mortgage advisors was not regulated (unless there was an element of debt consolidation within the mortgage agreement). Discussions with the FCA have indicated that it is their view that these practices are likely to constitute effecting an introduction and therefore would constitute regulated credit broking.

In certain limited situations it is not credit brokerage if the person carrying out the activity does not receive a fee for that activity. However, this only extends to particular forms of credit broking (such as presenting or offering potentially regulated credit agreements) and would not cover some of the more mainstream activities including the making of introductions to lenders or regulated mortgage advisors by housing associations.

Housing associations should be aware that credit broking can take place between group entities, so any broking of credit agreements, such as equity loans, should be carried out in the name of the group entity that will be the ultimate lender or this will potentially trigger a requirement for a credit broking authorisation.

Debt adjusting (Article 39D)

This category covers the taking over of debts or negotiating with the lender on behalf of an individual borrower.

Housing associations do not usually get involved in taking over an individual's debt but they may (and sometimes without realising it) negotiate with an individual's creditors for the discharge of the individual's debts. Any such negotiation will require authorisation, unless the negotiations relate to the discharge of a first charge mortgage over the individual's home, or the discharge of a debt owed to the association itself.

Debt counselling (Article 39E)

This activity applies to the giving of advice to individuals on how to discharge debts that have arisen under a credit agreement or consumer hire arrangement.

This is a regulated activity even if the credit or hire agreement is not a regulated agreement, so this would cover exempt agreements. This activity does not include advice on the discharge of first charge mortgages of the individual's home, nor does it include advice on any debt that is owed to the housing association that is providing the advice.

Some housing associations are finding that they are giving ancillary debt counselling advice to individuals who may be in financial difficulty. The activity may not be caught if the 'by way of business test' is not met as outlined above.

Debt collecting (Article 39F)

This activity covers the collection of debts under credit agreements or consumer hire agreements, whether or not those agreements are subject to consumer credit regulation.

If you are collecting debts that are owed to you, including debts due under tenancies or leases or where the housing association takes over as a landlord of a property, then you do not need to hold appropriate authorisation. You only require authorisation if you are collecting debts on behalf of a third party – for example, collecting debts for another housing association from their borrowers under equity mortgages.

The majority of housing associations do not carry out this sort of activity. If you do then authorisation will be required.

Exercising lender's rights (Article 60B(2))

This activity covers the lender exercising, or another person having the right to exercise, a lender's rights under a regulated credit agreement.

If the agreement under which it is exercising the rights is exempt, then no authorisation is required to exercise the third party lender's rights. Currently this is most commonly seen in the housing sector, where housing associations are exercising lender's rights in relation to an existing loan book of pre-April 2014 secured loans.

Debt administration (Article 39G)

This activity covers performing duties under a credit or consumer hire agreement, or exercising rights under such an agreement on behalf of the lender or owner.

It should be distinguished from 'exercising lender's rights' (60B(2)) as this activity involves acting on behalf of the lender. Again, most housing associations do not get involved with this sort of activity. If they do get involved then authorisation will be required.

Provision of credit information services (Article 89A)

This activity covers the obtaining of information on the financial standing of an individual from a 'credit information agency' (an expression that is widely defined to include, for example, credit brokers and lenders under regulated credit agreements).

This category covers carrying out credit checks. It also covers advising individuals on altering their credit rating, altering those credit ratings on an individual's behalf, and restricting the availability of an individual's credit information.

Authorisation is not required if you are running credit checks for your own purposes, so if the check is carried out to inform an organisation's decision of lending money to an individual, this is not a regulated activity. If, however, following an unsuccessful application for lending an organisation provides advice to an individual on how to improve their credit rating, this would be a regulated activity requiring authorisation.

Provision of credit references (Article 89B)

This activity covers passing on information about the financial standing of individuals, where the person passing on the information has collected it for that purpose.

However, this category only applies where such information is passed on in the course of a business that primarily consists of this kind of activity. If you only give references or collate information based on records of your own dealings with individuals, you will not be a credit reference agency. Similarly, collecting information for the sole purpose of processing an application is not a regulated activity.

Please note that there are specific regulations dealing with credit reference agencies that must be complied with if you require this type of authorisation.

Canvassing

There is no longer a separate category of licence/authorisation for canvassing on the street or cold calling.

Instead, if you are intending to carry out this sort of activity in respect of a regulated activity, you need to explain this in your application for authorisation for the relevant activity. You do not need to be regulated to canvass or cold call in respect of any activity or product that is not regulated. The restrictions contained in the Consumer Credit Act 1974 relating to canvassing off trade premises remain.

Summary of regulated activities

Article reference	Summary of activity
60B(1)	Acting as lender where an exemption does not apply – examples include most unsecured lending and employee loans with a high interest rate.
60N(1)	Consumer hire business – leasing, hiring or renting goods to individuals. This category does not apply to tenancies of furnished properties or to hire purchase arrangements.
36A	Credit broking – the introduction of individuals to organisations that provide credit or to mortgage advisors (including in both cases FCA regulated individuals or organisations).
39D	Debt adjusting – includes the taking over of debts or negotiations on behalf of debtors.
39E	Debt counselling – advice for individuals on how to discharge debts that they have already incurred (excluding first charge mortgages, unless they include some form of debt consolidation).
39F	Debt collecting – the collection of debts under regulated or exempt credit agreements on behalf of a third party.
39G	Debt administration – the performance of duties under a credit or hire agreement on behalf of the lender or owner.
60B(2)	Exercise of the lender's rights either by the lender or another person under a regulated credit agreement – carrying out any activities (other than debt collecting) in relation to that debt.
39G	Debt administration – acting on behalf of a lender or owner in exercising rights under a credit or consumer hire agreement.
89A	Provision of credit information services (including credit repair) – obtaining credit information on individuals, such as credit checks, and providing advice on a commercial basis to individuals on how to improve their rating.
89B	Credit reference agency – the collation of credit information on individuals and passing on to third parties.

Threshold conditions and levels of permission

When assessing an application for authorisation the FCA will look at whether the organisation meets the FCA threshold conditions for authorisation (see FCA Handbook, High Level Standards, Threshold Conditions). This will be assessed in the light of each regulated activity that the authorisation is intended to cover.

The FCA will also consider whether the name under which the organisation wants to be authorised is misleading.

The threshold conditions relate to the organisation's location, capability of being effectively supervised by the FCA, resources, suitability and its business model. The authorisation requires the holder to continue to satisfy the threshold conditions and any breach needs to be notified to the FCA.

In addition, most organisations must have an 'approved person', who is one or more individuals approved by the FCA to perform certain 'controlled functions' on behalf of an authorised organisation. The FCA must be satisfied that this person is 'fit and proper' and will consider that person's honesty, integrity, competence and financial soundness in making this assessment.

Authorisation with limited or full permission?

The FCA will assess risk on an individual basis and each regulated activity will require either limited or full permission accordingly.

The permission regime reflects the Government's view on higher and lower risk activities, with those activities that it regards as being lower risk being classed as limited permission activities, and those it regards as being higher risk classed as full permission activities.

You can apply for limited permission if you carry out the following activities only:

- consumer hire
- credit broking (where broking is a secondary activity to selling goods and non-financial services)
- not-for-profit debt counselling and debt adjusting
- not-for-profit credit information services
- consumer credit lending (where the lender's main business is selling goods and non-financial services, there is no interest or charges on the lending, the arrangement is not under hire purchase or conditional sale agreements and – unless the lender is a not for profit body – the loan is not secured on land).

Threshold conditions and levels of permission

If you do not qualify for an application for limited permission and you carry out regulated activities you will need to apply for a full permission. A full permission application will require you to provide much more detailed information on the type of activity you intend to carry out and how any potential risks will be addressed. Full permission activities include:

- credit broking where introducing customers to lenders is a main business activity
- credit broking where the sale of goods or services takes place in the customer's home (what is known as 'domestic premises supplier')
- debt administration and debt collection
- debt counselling and debt adjusting on a commercial basis
- lending that is not limited permission
- providing credit information services
- providing credit reference agency services.

The FCA may make on-site inspections, with or without notice. The FCA will be looking at whether any regulated agreements are fair to the consumer in terms of whether they fulfil the requirements of the regime, such as the advertising and information requirements, and are within the spirit of the regime.

Housing associations: how and when to apply

As a general point in relation to authorisation applications, these must be in the correct name of the body that is carrying out the regulated activity.

Therefore, if one group body is carrying out a regulated activity, that body must have its own authorisation covering the correct activity. It will not be sufficient that the parent or other group company holds an authorisation.

Interim permissions have lapsed

Many housing associations that held a consumer credit licence under the old OFT regime registered for an interim permission from the FCA before 1 April 2014. This enabled them to continue to engage in regulated activities during the handover of regulation from the Office of Fair Trading (OFT) to the FCA.

If you registered for an interim permission (not all housing associations had to) but did not subsequently make an authorisation application to the FCA, your interim permission will have lapsed and you are no longer authorised to engage in consumer credit regulated activity.

Applying for authorisation

The regulator under the FSMA is now the FCA, so applications for authorisation must be made to the FCA. The applications must be made online through the FCA's **Connect system** with fees payable online when the application is submitted. The online forms can be saved while they are being completed.

It is an offence to knowingly or recklessly provide false or misleading information. For example, failure to provide details of convictions is a criminal offence. Completing the form incorrectly will also result in delays to processing.

Completing the application

The application process has been set up to apply to a wide variety of organisations and sectors so it is not designed specifically housing associations in mind. As a result, the process can seem a bit daunting, and many of the questions it involves may not seem particularly relevant to your business.

Nevertheless, the application must be completed correctly and in full given that, as explained above, completing it incorrectly could be a criminal offence. The application will require details about your business including:

- **Details of the various consumer credit regulated activities you will be participating in.** The application sets out the detail of the activities and the restrictions imposed by only applying for a limited permission. You should review these categories carefully to ensure that they fully cover the activities your organisation is participating in.

■ **Details of the business the applicant intends to carry on**, so as to enable the FCA to assess the scope of the authorisation it will need, the adequacy of its resources and its suitability:

- The applicant is required to confirm that they have a business plan in place that focuses on regulated activities in the context of their wider business. This will be a different form of business plan to the more generalised business plans that the majority of housing associations have in place, and does need to be prepared with the FCA's requirements in mind.
- The applicant needs to confirm that they have considered their key business risks and have mitigation plans in relation to them.
- Applicants are asked to consider the six consumer outcomes focused on by the FCA's commitment to **treating customers fairly** and confirm that they have procedures and management information available to support the requirement.

■ **GABRIEL (Gathering Better Regulatory Information Electronically)** – this is the FCA's reporting system, which is an online portal used to report anything to them. **You can register to use GABRIEL online.** Applicants are requested to confirm as part of the application that they can and will submit required information via GABRIEL, which is a different system to the Connect system which is used to apply for authorisation.

■ **Personnel** – you need to provide an organisational chart that sets out your staffing structure.

■ **Information must be provided which details the various compliance procedures an applicant has in place** to ensure that it is monitoring compliance with its regulatory obligations. This includes having in place a compliance monitoring programme, which is tailored to the regulated part of your business. As part of this you will need to confirm that you have in place procedures to identify and deal with risks arising from financial crime. This should, for most organisations, already be covered by your anti-money laundering policy, provided it is up to date and covers the criteria specified by the FCA.

Additional sections of the application may need completing depending on the activities for which you are applying. If you need to apply for full permission then you will need to take specialist advice on the application. The sorts of things you need to include in your application are:

- full details of the activities you undertake, including evidence of market research undertaken and competitor analysis, details of how the activity will be funded and how the relevant activity will be undertaken
- a board management structure chart
- an organogram setting out the operational functions of the applicant
- evidence that you can comply with the FCA capital resources requirements that sets out minimum capital sums which authorised firms must hold
- details of who will carry out certain controlled functions of the organisation
- copies of internal policies dealing with risk management, compliance, complaints and audit.

At the time of writing, the application fees for limited permission authorisation are £100 for firms with consumer credit income of up to £50,000, and £500 if their consumer credit income is over this amount. Application fees for full permission authorisation vary depending on the amount of consumer credit income the firm will receive and the complexity of the application being made, but start at £600.

Full details of the various fees for full permission applications are **available on the FCA website**. Annual fees are also payable for authorised firms with either limited or full permission. The latest fees are **available on the FCA website**.

Applying for variations and to note changes

You must apply for variations where your regulated activities change so that your authorisation remains up to date and covers you for every activity that you undertake. You must also keep the FCA updated with any changes to your governing body, registered address or corporate structure.

Compliance

Changes

It is vital that housing associations have risk management procedures in place to ensure that any changes to the governance of the organisation (such as changes to individuals controlling the organisation and/or name changes) are notified to the FCA so that the authorisation can be updated. Failure to do so is an offence.

It is also vital that there are procedures in place to ensure that those responsible for consumer credit compliance are aware of the types of activity the organisation is carrying out. As mentioned above, each housing association will have different business models and carry out different activities. It is up to each association to ensure that their authorisation covers every activity that is regulated, and in order to do this you will need to keep the activities that you are engaged in under constant review.

Staff on the ground should be aware of the principles of the regime and what it regulates to ensure compliance regarding existing regulated activities, and so that any activity that strays into a new regulated activity can be monitored and the right variations applied for before any activity takes place.

Overriding principles

The overriding principle of the regime is that the consumer is treated fairly. Consumers must be given pre-contract information and an adequate pre-contract explanation (for loans not secured on residential property), and creditworthiness and affordability must be assessed.

There is a right of withdrawal under section 66A of the Consumer Credit Act 1974 (other than in certain limited cases), and a right to repay early in full or part. There are also requirements relating to pre- and post-sale practices, including information and statements, and in relation to default and termination. The consumer can also approach the Financial Ombudsman Service for redress.

Any credit agreements must be fair to the consumer and take into account their weaker bargaining position. In particular:

- Credit agreements must be properly executed and individuals must be given time to read them properly and obtain advice on them. They must be legible and easy to understand. Some credit agreements must have a cooling off period.
- The terms of the agreements themselves must be fair and not contravene anything in the Consumer Rights Act 2015.
- The agreement must give the individual adequate legal redress if you are in breach of any of your obligations. If you are in breach, you must provide a refund if appropriate.
- Lending must be responsible, so you must take care to enquire about the individual's income and financial standing before lending.

Information requirements

Certain information must be included within regulated credit agreements in order to comply with the legislation and the FCA handbook. For example, the borrower must be informed of:

- The payments that they will have to make and when they will have to make them – for example, any monthly interest payments.
- The annual percentage rate of the agreement.
- The total charge to credit, being the total amount of financial obligation the borrower is taking on in entering into the agreement. Note that this is not always possible, for example in the case of equity mortgages.

Any particularly onerous covenants, terms or conditions of the agreement must be specifically highlighted to the individual.

The individual should be advised to obtain independent legal and/or financial advice where appropriate.

Prescribed statement requirements

The legislation and the FCA Handbook contain schedules of prescribed statements that must be included in credit agreements. You will need to make sure that any credit agreement contains the exact wording set out in the appropriate schedule.

We would recommend strongly that legal advice is obtained when drafting credit agreements to ensure the correct statements are included.

Interest statements and notices of sums in arrears

If a regulated consumer credit agreement allows for the payment of interest, then interest statements must be provided to the borrower in a prescribed form not less than every 12 months.

If these statements are not provided, or are not in their correct form, the agreement is unenforceable – payments that would otherwise be due do not have to be made and no payments can be collected until corrective action is taken. It should be noted that statements need to be served every year even if (as is sometimes the case with equity loans) the requirement to pay interest does not begin until the agreement has been in place for a number of years.

Similarly, if a borrower is in arrears under a regulated credit agreement, they must be served with notices of sums in arrears in a defined form and within defined time periods. Again, failure to provide these notices render the agreement unenforceable until corrective action is taken.

Advertising requirements

Any advertising of products that are regulated under the Consumer Credit Act (as amended) must comply with the requirements in CONC.

This broadly means that information given must be clear, transparent and in no way misleading. Any financial information relevant to the product must be set out clearly in the advertisement, such as any example or typical annual percentage rate. Any important information about credit details must be set out clearly and not hidden in small print.

We always recommend that specific advice is obtained on advertising credit agreements, because by their nature each advertisement is different.

The National Housing Federation is the voice of affordable housing in England. We believe that everyone should have the home they need at a price they can afford. That's why we represent the work of housing associations and campaign for better housing.

Our members provide two and a half million homes for more than five million people. And each year they invest in a diverse range of neighbourhood projects that help create strong, vibrant communities.

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