



HM Treasury

Reforming the Consumer Credit Act 1974

Consultation

December 2022

Reforming the Consumer Credit Act 1974

Consultation



© Crown copyright 2022

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at: www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gov.uk

ISBN: 978-1-915596-37-6 PU: 3257

Contents

Executive Summary	6
Consultation and how to respond	9
Chapter 1 Introduction	10
Chapter 2 The Case for Reform	14
Chapter 3 Objectives and principles underpinning CCA reform	22
Chapter 4 Approach to reform of CCA provisions by category	25
Chapter 5 Financial Inclusion and Equality Impact assessment	45
Chapter 6 Responding to this consultation	48
Annex 1 Allocation of provisions to categories	52
Annex 2 List of CCA provisions that give rise to criminal offences	65
Annex 3 List of consultation questions	67

Executive Summary

The UK's £200 billion non-mortgage consumer lending market is one of the largest consumer-facing sectors in UK financial services. Among other products, the sector consists of personal loans and credit cards, which are used by the majority of UK adults. Therefore, given how useful and important credit products are, it has always been paramount that consumers are effectively protected from harms when using these products, and that businesses are provided with optimal conditions to effectively serve their consumers with innovative credit products.

When provided affordably and used responsibly credit is an invaluable financial tool which enables consumers to spread the cost of purchases and facilitates hire of products to which they may not have otherwise had access. Consumer credit can therefore expand consumer choice and enable the UK economy to realise its full potential for growth.

For the last fifty years the Consumer Credit Act 1974 (CCA) has ensured there has been effective regulation for consumer credit, which covers the overwhelming majority of the UK's non-mortgage consumer lending market. The CCA was a landmark piece of legislation, replacing a confusing and disparate framework with a new and comprehensive set of protections for consumers. It is a piece of legislation that has served the UK well for many decades, and today still provides protections and regulates the activities of firms. However, over the last fifty years – perhaps unsurprisingly – the way that consumers interact with credit products has evolved significantly, and many innovative credit products exist today that did not when the regime was designed.

To navigate this, the government has repeatedly transferred parts of the CCA out of legislation and into the more agile regulatory framework of the Financial Conduct Authority (FCA), which oversees business conduct for UK Financial Services. The most notable of these transfers occurred in 2014, when much of the regulation of consumer credit was transferred from the Office of Fair Trading (OFT) to the FCA.

Since this transfer in 2014, many stakeholders, including both industry and consumer groups, have been asking for further reform of the CCA. The existing regulatory landscape, which includes the CCA and the FCA's rules, has become too complex and contains overlap that restricts optimal outcomes for

consumers and business. Additionally, the EU Consumer Credit Directive (CCD) was implemented in the UK through changes to the CCA, which has added to the increasingly fragmented regulatory system.

In June 2022, the government announced its intention to address this by undertaking reform of the CCA, with the ambition of moving the majority of the Act from statute to FCA rules¹. The government is committed to promoting economic growth in all aspects of the UK economy. Reforming the regulatory regime based around the CCA will modernise and simplify consumer credit and consumer hire regulation, facilitating innovation in products and the arrival of new entrants into the market. Providing a wide range of credit products which are appropriate for a broad consumer market is an important part of growing the economy.

This consultation document is the first step of that reform, which due to the scale and complexity the government envisages will take a number of years.

Chapter One of this document provides background on consumer credit and the CCA more generally. Chapter Two sets out the case for CCA reform and Chapter Three outlines our approach to this reform, including the principles and objectives that will underpin this reform and ensure decision making throughout the policy process will be conducive to optimal outcomes for consumers and firms.

Chapter Four categorises the provisions within the CCA, asking consultees for consideration of how they might be replicated in FCA rules. Initial proposals for approach to categories of provisions are provided and stakeholder feedback on these proposals is welcome.

Chapter Five asks further questions of consultees regarding how this reform can help increase access to credit and financial inclusion. This chapter also explores how the consumer credit market can become fairer and take account of inequality.

Finally, Chapter Six provides consultees with information regarding how they can respond to this consultation and their rights in doing so. Consultees should also note Annexes One and Two which depict the allocation of provisions to categories and the provisions that give rise to criminal offences, respectively.

¹ [UK commits to reform of the Consumer Credit Act - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/uk-commits-to-reform-of-the-consumer-credit-act)

Consultation and how to respond

This consultation document has been developed following significant engagement with consumer groups and industry representatives. The purpose of publishing this consultation document is to enable interested stakeholders to make further representations on the scope and form of CCA reform.

Responses are invited by 17 March 2023 and should be sent to consumercreditact@hmtreasury.gov.uk. Responses will be shared with the FCA unless otherwise requested.

Further information about responding to this consultation and the way in which personal data will be processed can be found in Chapter 6.

Chapter 1

Introduction

The regulation of consumer credit

1.1 The Consumer Credit Act 1974 (CCA) is a deeply embedded part of the consumer credit regulatory landscape and the protections it affords consumers are important for the proper functioning of the regime. Unsecured and secured regulated consumer credit agreements and consumer hire agreements are principally regulated under the framework provided by the CCA and the Financial Services and Markets Act 2000 (FSMA).

1.2 A consumer credit agreement is one under which an individual or a partnership of up to three persons or an unincorporated body is granted credit. Credit agreement and consumer hire agreements in scope of FSMA regulation are set out in the FSMA (Regulated Activities) Order 2001² (the RAO). Firms which offer regulated credit agreements and regulated consumer hire agreements must be authorised to do so by the FCA and must comply with relevant FCA rules as well as requirements in the CCA.

1.3 The regulation of consumer credit has key differences to most other regulated financial services products. The UK's framework for financial services regulation is set out in FSMA. Under this framework, Parliament, through primary legislation, sets the overall approach and institutional architecture for financial services regulation, including the regulators' objectives. Parliament establishes the parameters within which HM Treasury sets the 'regulatory perimeter' through secondary legislation, specifying which financial activities should be regulated and the circumstances in which regulation should apply. The operationally independent regulators (the FCA and the Prudential Regulation Authority (PRA)) generally have statutory responsibility for setting the direct regulatory provisions that apply to firms which carry out regulated activities. The regulators are required to maintain arrangements for supervising firms and to monitor and enforce compliance with their rules.

1.4 The FCA and the PRA are already subject to statutory requirements in FSMA which, in general, require them to consult with

² [The Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001 \(legislation.gov.uk\)](#)

the public on rule proposals. As part of these requirements, the regulators must explain why making the proposed rules is compatible with their objectives and consultations must include a cost-benefit analysis (CBA).

1.5 In order to deliver on its objectives, the FCA sets 11 Principles for Businesses³, which set out its fundamental obligations on all regulated firms, including Principle 6 on treating customers fairly. These principles are set by the FCA using its rule making powers and are not enshrined in legislation. The FCA may take disciplinary action against firms that breach the principles, and the forthcoming Consumer Duty (see paragraph 2.20) under a new Principal 12.

1.6 The Financial Services and Markets Bill, currently before Parliament, implements the outcomes of the Future Regulatory Framework Review to establish a comprehensive FSMA model of regulation. The Bill introduces new secondary objectives for the FCA and the PRA requiring them for the first time to act in a way that, subject to aligning with relevant international standards, facilitates the international competitiveness of the UK economy and its growth in the medium to long term. The Bill also introduces a number of enhanced mechanisms for accountability, scrutiny, and oversight of the regulators by Parliament and HM Treasury, and measures to strengthen the regulators' engagement with stakeholders.

1.7 The FCA's rules for firms in relation to specific regulated activities are set out in a number of specialist sourcebooks. For consumer credit, the relevant sourcebook is known as CONC⁴.

1.8 However, for consumer credit this standard framework is supplemented by additional statutory obligations on firms that are set out in legislation made under the CCA, and which give specific rights and protections to consumers separate from those provided by FCA rules.

1.9 The CCA pre-dates most other financial services regulation and consequently reflects an older style of regulatory approach. HM Treasury considers that the time is now right to further align consumer credit regulation with the wider framework for financial services, as set out in Chapter 2. However, in doing so, the government recognises that there are specificities of consumer credit regulation that potentially warrant a different approach, in order to ensure adequate consumer protection. This consultation will inform decisions on the appropriate way to undertake this reform. In carrying out this work the

³ [PRIN 2.1 The Principles - FCA Handbook](#)

⁴ [CONC 1 - FCA Handbook](#)

government will have due regard to the Public Sector Equality Duty⁵, as appropriate to each stage of any reform.

1.10 The CCA is complex and any work to review it requires careful consideration, to ensure that any future approach is fit for purpose. Consequently, the government expects this reform to take several years. This consultation is the first major milestone in this process, and the government hopes to receive responses from consultees by 17 March 2023. Following this and drawing on the feedback, the government will develop more detailed policy proposals which it expects to put to stakeholders through a second stage consultation. The FCA will consult on its approach to any new rules in due course. Implementation of the final approach will likely require primary legislation, which will be brought forward when parliamentary time allows.

What is consumer credit?

1.11 Credit is defined in the CCA⁶ and RAO⁷ as “a cash loan, and any other form of financial accommodation”. For example, “financial accommodation” includes any arrangement where a customer is given time to pay an amount that they would otherwise have had to pay immediately. The type of credit will depend on the particular facts and the contractual terms that apply to the product.

1.12 The regulation of “consumer credit agreements” is the primary preoccupation of the CCA. It includes provisions that apply specifically to consumer credit agreements that are “regulated credit agreements” for the purposes of Chapter 14A of Part 2 of the RAO⁸. The CCA applies to a wide range of credit related products or activities, including-

- Credit agreements and consumer hire agreements entered into for business purposes unless the business purposes exemption criteria in article 60C of the RAO are satisfied⁹
- Ancillary services such as credit broking, debt collection, debt counselling and debt adjusting

⁵ [Public sector equality duty - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/legislation/public-sector-equality-duty)

⁶ Section 9(1) of the CCA 1974

⁷ Article 60L(1) of the RAO

⁸ “Regulated credit agreement” is defined in article 60B(3) of the RAO, and that definition applies in the CCA by virtue of section 8(3) of the CCA. The RAO provides for 10 credit-related regulated activities, which are: entering into a regulated credit agreement as lender, credit broking, operating an electronic system in relation to lending, consumer hire, credit information services, credit references and debt-related consumer credit activities, that is debt adjusting, debt administration, debt-counselling and debt-collecting. The FCA authorises and regulates firms carrying on these regulated activities.

⁹ Whether the business exemption applies to a credit agreement or consumer hire agreement involves a detailed analysis of the individual agreement and the factual circumstances.

- Additional credit products and activities, including:
 - Pawnbroking
 - Certain aspects of mortgages¹⁰
 - Hire-purchase agreements
 - Conditional sale agreements
- Credit Reference Agencies

1.13 The scope of this consultation extends to all of the above and as such HM Treasury welcomes comment on all of these aspects in consultation responses.

1.14 Around 36,000 firms are authorised by the FCA with credit permissions, the bulk of which are credit brokers. There are about 6,000 individual firms that have permissions to enter into consumer credit or consumer hire agreements.

Law of Scotland and Northern Ireland

1.15 The government acknowledges that there are sections of the CCA which are specific to Scotland and there are sections which are specific to Northern Ireland. This stage of the reform has not considered this level of detail and therefore the existence of difference in the law of Scotland and/or Northern Ireland should not be detrimental or a barrier to responding.

¹⁰ Mortgages are primarily regulated by the Financial Services and Markets Act 2000 and FCA rules on mortgages and Home Finance: Conduct of Business sourcebook (MCOB). However, certain aspects of mortgages are also subject to CCA regulation. These include section 126 on the Enforcement of Land Mortgages and section 129 on Time Orders. Additionally, some CCA provisions continue to apply to second-charge mortgages entered into before March 2016, even though the loans are now regulated mortgage contracts.

Chapter 2

The Case for Reform

2.1 On 16 June 2022 the government set out the intention to reform the regulatory regime based around the Consumer Credit Act 1974¹¹ (CCA). In this announcement, HM Treasury set out an intention to move much of the existing legislation to sit within rules to be made and enforced by the Financial Conduct Authority (FCA). This consultation seeks views on the objectives, principles and overall direction of this proposed reform.

2.2 This chapter sets out the key reasons why now is the right time for the government to be pursuing wholesale CCA reform. As the CCA was introduced almost fifty years ago, the market in which it operates has greatly changed and the way financial services are regulated in the UK has developed. This is demonstrated by the introduction of a new Consumer Duty by the FCA, for example. These factors and the UK's departure from the EU all contribute to a strong case for reform.

The evolution of the CCA

2.3 There have been a number of legislative amendments which have changed the CCA, since its original enactment in 1974. These various changes, both to the CCA and to the wider regulatory landscape around the CCA, have contributed to the need for reform.

2.4 Since 1974, over thirty pieces of subordinate legislation have amended the CCA. These have been a result of a mix of EU directives and domestic amendments. This includes the 2004 statutory instruments which were made for advertising, pre-contractual information, agreements, early settlement and electronic communications¹². This also includes the Consumer Credit Directive (CCD) which was implemented in the UK primarily by the Consumer Credit (EU Directive) Regulations 2010¹³. This has left a fairly cumbersome and disjointed regime which the government considers does not fit with the overall, modern approach taken in FSMA.

¹¹ [UK commits to reform of the Consumer Credit Act - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/uk-commits-to-reform-of-the-consumer-credit-act)

¹² [The Consumer Credit \(Disclosure of Information\) Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2004/1013/made); [The Consumer Credit \(Early Settlement\) Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2004/1014/made); [The Consumer Credit Act 1974 \(Electronic Communications\) Order 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1974/39/section-18); [The Consumer Credit \(Advertisements\) Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2004/1015/made)

¹³ [The Consumer Credit \(EU Directive\) Regulations 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2010/1013/made)

2.5 In 2013, the Treasury and the (then) Department for Business, Innovation and Skills (BIS) published a joint consultation¹⁴ on transferring consumer credit regulation from the Office of Fair Trading (OFT) to the FCA. The FCA's predecessor, the Financial Services Authority (FSA), consulted at the same time on high level proposals for an FCA regime¹⁵.

2.6 A conclusion was made that, wherever possible, consumer credit regulation should be set out in rules rather than legislation to allow for greater flexibility and regulatory coherence. Where regulation could not easily be replicated under Financial Services and Markets Act 2000 (FSMA), these were retained in the CCA.

2.7 Given the limited extent of the 2014 transfer, a statutory duty¹⁶ was then put on the FCA to review the parts of the CCA which remained in legislation and to submit a report on its findings to HM Treasury by 1 April 2019. This report is known as the Retained Provisions Report (RPR)¹⁷.

Supervision and oversight of consumer credit

2.8 The regulatory system has changed since the CCA was first introduced. The CCA originally gave the OFT general duties in relation to consumer credit, such that it was responsible for ensuring consumers were adequately protected when accessing credit related activities, including hire. The OFT did not have a power to make rules to regulate firms.

2.9 Given these limited powers, the CCA was designed as a self-policing regime with sanctions for breaches of the Act that would deter non-compliance and poor practices in the consumer credit market and, at times, provide redress through the courts for consumers that had been treated unfairly by firms.

2.10 In April 2014, the OFT was closed and its consumer credit responsibilities were transferred to the FCA. This new regulatory system could efficiently tackle the consumer detriment and malpractice that had taken place under the previous regime with stronger powers and resources to protect consumers and promote effective competition in the consumer credit market.

¹⁴ [A new approach to financial regulation: transferring consumer credit regulation to the Financial Conduct Authority - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

¹⁵ [FSA CP13/7: Consumer credit regulation - our proposed regime | FCA](#)

¹⁶ Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014, SI 2014/366 – Part 5 (Review of retained provisions of the Consumer Credit Act 1974).

¹⁷ [Review of retained provisions of the Consumer Credit Act: Final report \(fca.org.uk\)](#)

2.11 As the FCA had more active enforcement powers than the OFT, over time this led to a degree of overlap between FCA powers and the self-policing CCA approach. The result of this is increasingly complex and incoherent regulation that is costly for firms and difficult for consumers to understand. Industry have argued that this inefficient regulation has then had negative knock-on effects for consumers in the form of higher prices and interest rates for credit products.

The Retained Provisions Report

2.12 The objective of the RPR was to present FCA views on whether the repeal (in whole or in part) of the remaining CCA provisions would adversely affect the appropriate degree of protection for consumers. It also required the FCA to consider:

- which CCA provisions could be replaced by FCA rules or guidance under FSMA
- the principle that a burden or restriction which is imposed in relation to the carrying on of an activity should be proportionate to the benefits.

Importantly, the RPR did not consider:

- the impacts of other forms of consumer protection¹⁸ that have come about since the transfer took place, such as the forthcoming Consumer Duty
- the opportunities made available by leaving the European Union, and therefore no longer being bound by the Consumer Credit Directive
- amendments to the FCA's rule-making powers.

2.13 The RPR thematically categorised the remaining CCA provisions as (1) information requirements; (2) rights and protections; and (3) sanctions. The same categorisation is adopted in this document and is set out in Annex 1.

2.14 The RPR advised that most of the information requirements could, in principle, be replaced by FCA rules, a small number of rights and protections could be moved, and that there might be scope to amend FCA rule-making powers to enable CCA sanctions to be replicated in FCA rules¹⁹.

2.15 Whilst the RPR has served as a valuable resource for internal government policymaking, the statutory requirement limited the

¹⁸ The RPR did consider the impact of civil remedies available to consumers through other consumer protection legislation in particular the Consumer Rights Act 2015 (see RPR, para 5.15 onwards).

¹⁹ Note the FCA's view in the RPR that the information requirements in sections 76, 78A, 82(1), 87 and 98 could not be replaced by FCA rules without adversely affecting the appropriate degree of consumer protection. But the more detailed information requirements in secondary regulation could be replaced by FCA rules.

scope of the report. That is, the report concerned itself with whether provisions could be moved to FCA rules, under pre-existing FCA rule-making powers, whilst maintaining the same level of consumer protection. This consultation will consider whether the expansion of FCA rule-making powers is possible or desirable to enable the transfer of provisions out of the CCA.

2.16 Following the publication of the RPR in 2019, consideration was given to the analysis and evidence from the report until government resources were diverted towards the Covid-19 pandemic response, meaning limited progress in the policy response was made immediately following its publication. However, as the short-term demands of the pandemic response receded, the government has resumed work to consider what should happen to the remaining provisions in the CCA. This consultation is the culmination of that work to date.

Future Regulatory Framework Review

2.17 The Future Regulatory Framework (FRF) Review²⁰ provided a once-in-a-generation opportunity to ensure that, having left the EU, the UK establishes a coherent, agile, and internationally respected approach to financial services regulation that is right for the UK. Since the RPR was commissioned, the government has committed to the approach set out in the FRF and CCA reform will be aligned with this approach.

2.18 The Financial Services and Markets Bill implements the outcomes of the FRF Review. This includes repealing financial services retained EU law in order to establish a comprehensive FSMA model of regulation where the financial services regulators will take responsibility for setting many of the direct regulatory requirements which are currently set out in retained EU law, acting within a framework set by government and Parliament. The government has been clear that more responsibility for the regulators should be balanced with clear accountability, appropriate democratic input, and transparent oversight.

2.19 Therefore, the Bill also introduces new secondary growth and competitiveness objectives for the PRA and the FCA, a number of enhanced mechanisms for accountability, scrutiny, and oversight of the regulators by Parliament and HM Treasury, and measures to strengthen the regulators' engagement with stakeholders.

²⁰ <https://www.gov.uk/government/consultations/future-regulatory-framework-frf-review-proposals-for-reform#full-publication-update-history>

Consumer Duty

2.20 The FCA has made rules and guidance to introduce a new Consumer Duty²¹, which will come into force in July 2023 for new and existing products and services and July 2024 for closed products and services. The Consumer Duty clarifies and raises expectations for the standard of care that all financial services firms must provide to consumers. Under it, firms must act to deliver good outcomes for retail customers.

2.21 The Duty requires firms to:

- act in good faith toward retail customers
- avoid causing foreseeable harm to retail customers, and
- enable and support retail customers to pursue their financial objectives

The FCA believes the Duty should mean:

- products and services are designed to meet the needs, characteristics and objectives of an intended target market, are not sold outside that target market, and are monitored to check they work as expected and any harms are addressed appropriately
- products and services provide fair value, with a reasonable relationship between the price consumers pay for a product and the benefit they receive
- communications from firms equip consumers to make effective, timely and properly informed decisions, and
- firms provide support that meets consumers' needs and expectations throughout the life of the product or service

2.22 It is the FCA's aim that the Consumer Duty reduces the extent to which consumers suffer harm, with firms doing more to consider consumer needs and to take action to guard against problems. This includes avoiding consumer harms such as the exploitation of consumers' behavioural biases, so-called 'sludge' practices (where firms can make it harder for consumers to act – e.g. by putting in extra steps before they can switch or complain) and non-deliberate exploitations arising from a consumers' weaker bargaining position in credit agreements.

2.23 A firm's governing body is responsible for ensuring that the Consumer Duty is properly embedded within their firm, and when firms cause customers harm, the Consumer Duty requires them to be

²¹ [PS22/9: A new Consumer Duty | FCA](#)

proactive and take action to rectify the situation, including providing redress where appropriate.

2.24 Whilst the Consumer Duty changes the wider framework of consumer protections, is it not designed to replicate the effect of CCA protections (as set out in paragraph 4.26). For instance, the Consumer Duty does not apply to unregulated individuals or products in the same way as the CCA. It also does not facilitate redress for consumers through the courts or replicate the unenforceability sanctions found in the CCA. Whilst it is therefore the case that the Consumer Duty does not fully replicate all aspects of consumer protection found in the CCA, it does mean that the context in which the CCA protections were originally written has changed. For example, the requirements under the Consumer Duty's consumer understanding outcome, relating to firm communications with consumers, may go some way to substitute the need for excess prescription on some CCA information requirements. Similarly, the requirements in the Duty for firms to provide appropriate levels of consumer support may allow a fresh consideration of the appropriateness of the current CCA rights and protections. By reviewing the consumer protections in the CCA in the context of the additional protections offered by the Consumer Duty, the government can simplify the behavioural framework which firms must abide by to ensure optimal outcomes for consumers.

Consumer Credit Directive derived regulation and rules

2.25 The Consumer Credit Directive 2008 (CCD) aimed to establish a harmonised EU framework for consumer credit and provide higher levels of consumer protection. The CCA was transposed into UK law through the Consumer Credit EU Directive regulations in 2010²².

2.26 The United Kingdom's exit from the European Union provides the government with opportunities to pave a new way for consumer credit regulation, that is tailored for a domestic consumer base. Some provisions of the CCA are the result of the CCD, which is a maximum harmonisation EU directive. This reduced the scope for the UK to introduce domestic legislation/regulation that diverged from the CCD. So, for example, some precontractual information requirements, previously mandated in the Standard European Consumer Credit Information²³ (SECCI), can now be modernised and updated.

2.27 A number of FCA rules regarding consumer credit are also CCD-derived. For example, within the scope of the CCD are the rules governing the content of representative examples in advertising. The government is aware of concerns raised by stakeholders regarding

²² [The Consumer Credit \(EU Directive\) Regulations 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

²³ [The Consumer Credit \(Disclosure of Information\) Regulations 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

certain FCA rules in this area. This reform will serve as an opportunity for the FCA to consider the legacy of the CCD and work to consider whether the rules remain appropriate and effective.

Woolard Review

2.28 The Woolard Review²⁴ – a review of change and innovation in the unsecured credit market - was published by the FCA in 2021 and sets out how regulation can better support a healthy market for unsecured lending. Among other recommendations, the review suggested that the FCA and the Treasury prioritise work on CCA reform to create a more outcomes focused regulatory regime – based on the FCA’s 2019 Retained Provisions Report.

2.29 The Woolard Review also highlights the possibilities that have become available following the UK’s exit from the EU – something that was not considered within the Retained Provisions Report.

Buy-Now Pay-Later

2.30 Currently, a credit agreement is exempt from regulation if it meets the following conditions set out in article 60F(2) RAO:

- it is a borrower-lender-supplier agreement for fixed-sum credit
- the number of payments to be made by the borrower is not more than 12
- those payments are required to be made within a period of 12 months or less
- the credit is provided without interest or other charges.

2.31 This means that many Buy-Now Pay-Later (BNPL) products are not regulated under the CCA. As a result, lenders do not need to be authorised by the FCA and agreements do not generally need to comply with the requirements of the CCA or FCA rules.

2.32 The government recognises that certain CCA requirements, for example on pre and post-contractual information, particularly the timing of when this information must be sent, may need to be tailored for BNPL agreements given their sometimes very short-term nature. Given the rapid increase in the usage of exempt BNPL products over the last few years, and the potential risk of consumer detriment crystallising, the government decided to bring BNPL into regulation ahead of wider CCA reform.

²⁴ [The Woolard Review - A review of change and innovation in the unsecured credit market \(fca.org.uk\)](https://www.fca.org.uk/publications/consultations/2021/20210624-woolard-review)

Chapter 3

Objectives and principles underpinning CCA reform

Reform objectives

3.1 The overall objective for this reform is to modernise and streamline regulation to the benefit of consumers and business. In practice, this will mean creating a simpler, more focused regulatory regime for consumer credit and modernising consumer credit regulation so that it follows more closely the approaches in other areas of financial services regulation. It is the government's intention that this will result in increased access to new and innovative credit products for consumers and cost savings for UK firms. Consequently, this reform will expand consumer choice and support the UK economy to realise its full potential for growth.

3.2 The government does not envision provisions being purely replicated in FCA rules, but recast – potentially not mirroring their current composition. This means that rules, guidance and principles in the FCA Handbook will provide effective and high levels of consumer protections that achieve similar ends to existing legislation. There may be some provisions that it will not be desirable or possible to move to FCA rules and if this is the case they will stay in legislation, subject to any modifications or refinements considered appropriate. As part of the reform all provisions will be reviewed and updated where necessary.

3.3 As discussed in Chapter 5, this reform will also aim to increase equality and fairness in the credit market, by improving accessibility and access to credit products for a range of consumers to make the consumer journey as inclusive as possible. The government is aware that this reform provides an opportunity to make the consumer credit regulatory regime more inclusive (see paragraphs 5.2 and 5.3) for a wide range of consumers, including those with mental health concerns and low levels of financial literacy.

3.4 The government also intends that businesses will benefit from this reform. Currently consumer credit and consumer hire are regulated by a complex set of legislation and FCA rules, which can make it difficult to navigate the regulatory regime. This can hamper innovation in the sector and can deter firms from entering the market.

The reform will also place a greater focus on consumer outcomes and will enable firms to provide consumers with a better experience throughout the consumer credit product life cycle.

Principles for reform

3.5 The government has developed five principles which will underpin this reform. Given the scale of this reform, these principles will be used throughout the reform process to ensure that the government delivers on our objectives. That is, policy decisions will be taken within this framework to ensure the government can test and assure the consistency of decisions across the breadth of the CCA. The principles and a brief description of each are as follows:

Proportionate - The reform will ensure that levels of consumer protection will be appropriate, whilst balancing the need to ensure that the reform places proportionate burdens on business. Some customers in this market may be vulnerable and due care will be given to ensure that high levels of consumer protection are maintained where appropriate.

Aligned – The reform will be aligned with the implementation of the Future Regulatory Framework (FRF), will complement and support the Consumer Duty requirements, and will ensure consumer credit regulation broadly aligns with the style and substance of current financial services regulation whilst recognising that due to the nature of consumer credit a tailored approach may be required in specific areas. The reform will also align with wider duties and obligations, such the Public Sector Equality Duty.

Forward-looking – The reform will be mindful that changes made now to the consumer credit and consumer hire regulatory landscape should be adaptable to future ways of delivering credit and consumer hire to consumers and to the needs of consumers and businesses as they may change in the future.

Deliverable – The reform will be designed to be deliverable for the financial services regulators and industry. The government are conscious that significant change may be required to internal processes and will ensure that adequate time is given for changes to take effect.

Simplified - The creation of a regulatory regime that simplifies and modernises ambiguous technical terms used in the CCA 1974 to make it clear to consumers what protections they have and to make it easier for firms to communication these protections and comply with requirements placed on them.

Question 1: Do you agree with these proposed principles, and do you have views about tensions between them or relative prioritisation?

Net zero

3.6 Lenders want to offer new and innovative credit products for consumer goods that did not exist when the CCA was introduced. This includes products such as electric vehicles (and their accompanying chargers and charging points) and green homes appliances such as solar panels and air source heat pumps. The government has noted concerns that some finance providers have regarding the compatibility of the CCA with the provision of credit for certain products which may help the UK to reach its net zero target. This reform will seek to address these concerns and ensure that consumer credit regulation will be forward-looking and enable finance products for new products to be easily incorporated into the regulatory structure.

Question 2: Noting the governments' Net-Zero targets, how can CCA reform remove barriers that may otherwise prevent lenders from being able to offer financing for renewable energy solutions, such as electric vehicles and green home improvements?

Chapter 4

Approach to reform of CCA provisions by category

4.1 This chapter explores CCA provisions and categories of provisions to understand specific issues and set out the government's proposed approach to reform. Stakeholder input on the below topics is welcomed:

- Definitions within the CCA
- Scope of the CCA
- Information requirements
- Rights and protections
- Sanctions
- Consumer Hire
- Small Agreements

Definitions

4.2 There are a number of definitions in the CCA, some of which have been updated since 1974. However, the government is also aware that there are some concepts which are now used frequently in relation to consumer credit, and have been carried across to the FCA handbook, such as, the meaning of 'credit' or the division between fixed sum and running account credit which have become uncertain or blurred with product innovation as well as other terms, such as 'enforceable', which are not defined and has required case law to clarify. For example, in the McGuffick case²⁵, the court recognised "enforcement" can mean different things in the context of different CCA provisions. In order to create a modern and simpler regulatory regime, this reform may need to consider whether certain key terms should be defined or have their existing definitions clarified.

Question 3: Are there any existing definitions or concepts in the CCA which should be updated and clarified when moved to FCA rules?

²⁵ Phillip McGuffik v The Royal Bank of Scotland PLC 2009

Question 4: Are there concepts in the CCA which are not currently defined but which should be?

Scope

4.3 The CCA covers consumer credit and consumer hire regulation to businesses in certain circumstances. For example, sole traders are protected under the CCA as 'individuals'. This encompasses only a small proportion of business lending as the CCA does not apply to:

- Limited companies
- Limited liability partnerships
- Lending or hire for over £25,000 for business purposes²⁶

4.4 Because business lending over £25,000 is generally not subject to CCA regulation, some stakeholders report that lending to businesses under £25,000 is often avoided. However, this is one of many drivers behind lenders' decisions to lend to SMEs.

Question 5: Do you believe the business lending scope of the CCA should be changed?

Information Requirements

4.5 The CCA information requirement provisions require firms to provide consumers with specific information before and after a consumer credit agreement is entered. The FCA has also made rules that impose further information requirements on firms, these can be found in the FCA's Consumer Credit Sourcebook (CONC).

4.6 The government believes that there is clear rationale for moving almost all the information requirement provisions from the CCA into the remit of FCA rules. The RPR also reached a similar conclusion regarding the provisions relating to information requirements. The exact rules will be determined by the FCA and in the process of

²⁶ In April 2008, the £25,000 limit was removed from the CCA for all regulated credit and consumer hire agreements. The CCA therefore applies to the provision of credit of 'any amount', unless the business purposes exemption conditions in article 60C RAO are satisfied. This requires the loan to be wholly or predominantly for the borrower's business purposes, and the loan amount must exceed £25,000. With consumer hire agreements there is a similar exemption set out in article 60O RAO where the hirer is required to make payments exceeding £25,000 and the hire agreement is wholly or predominantly for the borrower's business purposes.

making rules, the FCA will consider any changes that need to be made and any opportunities to improve communication to consumers. The government expects the FCA may wish to consider the consumer journey as a whole, and to conduct consumer research and testing. For example, on mode of delivery, timeliness and the form and content of the information requirements to ensure they are appropriate, with the aim of encouraging customer engagement and contributing to informed decision making.

4.7 Moving information requirements from legislation to regulation also means that consumer credit regulation will be more dynamic and futureproof. Having CCA information requirements in the FCA handbook would be simpler to amend in the future, subject to FSMA consultation, a cost benefit analysis and stakeholder engagement. Having the requirements in the FCA Handbook would allow for quicker and more agile responses where amendments or additions are needed. For example, as firms' products and communications channels evolve, new conduct issues are identified, or new consumer protection measures are needed to address emerging risks and harm. This means that the FCA will be able to take a 'test and learn' approach to regulation. This will also mean that future innovative consumer credit products can be more easily brought into the regulatory system. This is contrasted with the rigid legislative processes involved with changing legislation, which are time and resource intensive. Moving information requirements from legislation to FCA rules will also give HM Treasury and the regulators the opportunity to review the substance of information requirements where appropriate to ensure optimal performance.

4.8 There is a separate question around whether there is a need to keep information requirements and the associated sanctions for non-compliance in the same place (see below on sanctions from paragraph 4.32). The RPR recommended that the associated sanctions remain in legislation, however this may create a cumbersome regulatory framework. The FCA's RPR explores options for extending unenforceability powers, which may facilitate the transfer of some CCA sanctions to FCA rules – without affecting the degree of consumer protection.

Question 6: Do you support the conclusion of the Retained Provisions Report that most Information Requirements could be replaced by FCA rules without adversely affecting the appropriate degree of consumer protection, and that it is desirable to do so? Are there any additional factors the government should consider given the context changes since the report's publication in 2019?

Form and content of information

4.9 Generally, the detailed rules around the form and content of information requirements are set out in regulations made under the CCA. In some cases, firms must include prescribed information in customer communications, depending on the individual circumstances of the consumer.

4.10 Whilst this can be effective in ensuring firms provide all the necessary information to consumers, some of the prescribed requirements might not always be appropriate based on customers circumstances and would benefit from some tailoring by firms. Information requirements found in legislation are also more difficult to amend than those in FCA rules.

4.11 There are examples where there is more flexibility given to firms in terms of the form and content of the information that they provide consumers. For example, the FCA confers obligations on firms in its pre-contractual explanation requirements, found in CONC. CONC 4.6.2 refers to the disclosure of continuous payment authorities, stating that firms must provide the terms of these payment authorities in “plain and intelligible language”. Firms can tailor their communications based on the individual circumstance of the customer and the product at hand. This could be conducive to enhanced consumer understanding and improved customer outcomes.

4.12 At times, the CCA includes strict time limits for firms to provide post contract information to customers. The timings and triggers differ, and so for arrears notices these depend on whether the agreements are for running-account credit or for fixed-sum credit (or hire). For example, under Section 86B, a firm is required to provide the arrears notice for fixed-sum credit or hire agreement within 14 days of the conditions being met. However, under Section 86C a firm is required to provide the arrears notice for running-account credit agreements by the end of the next statement period. The triggers for the arrears notice being required also differ between Section 86B and 86C. This difference in approach for different types of credit can be confusing to customers and onerous on businesses, especially as more innovative credit products enter the market that are hybrid in nature, thus blurring the lines between fixed-sum and running-account credit.

4.13 There are risks to allowing firms flexibility on the form, content and timing of pre-contractual information, as without a level of prescription not all firms can be relied upon to provide the appropriate information to their customers at the appropriate time. The government also knows that customers find information such as arrears notices and default sum notices useful (including the signposting to forms of advice and support) and any delays in

customers receiving this information may have an adverse effect on their ability to get back on track with their payments. In this reform, the government is seeking to find the correct balance between flexibility and prescription for information requirements, so that customers are reliably provided with appropriate information which is also tailored to their needs and allows more informed choices.

4.14 As discussed in paragraph 2.21 under the Consumer Duty firms must act to deliver good outcomes for retail customers, including a requirement to ensure consumers receive communication they can understand and firms provide the support consumers need. The Consumer Duty demonstrates that the FCA is placing the onus on firms to think about their consumers and how they can best serve them. The Consumer Duty is focused on outcomes rather than prescription, and whilst the government recognises that prescription is sometimes beneficial, there is an increasing role for firms to play in knowing and understanding their customers.

Question 7: In what circumstances is it important that the form, content and timing of pre-contractual and post-contractual information provided to consumers is mandated and prescribed? What are the risks to providing lenders more flexibility in this area?

Question 8: The Consumer Understanding outcome in the Consumer Duty posits that consumers should be given the information they need, at the right time, and presented in a way they can understand it. Does the implementation of this section, and the Consumer Duty more broadly, go some way to substitute the need for prescription in CCA information requirements?

4.15 In 2004 the CCA was amended to allow the electronic conclusion of agreements, and more than 50% of new credit card agreements are now arranged online, with an increasing number agreed on a mobile device. Many consumers also keep informed about existing credit products via smartphones and other mobile devices. Engaging with information on a mobile device is a different experience to reading information on paper or on a large screen and in line with the principles for this reform, the government wants to ensure that the consumer credit regulatory regime is forward-looking for further technological developments and innovation such that consumers can engage with credit products in whichever way is most suitable.

Question 9: Given the increasing using of smartphones and other mobile devices to take out credit products how can consumer information be delivered on devices in a way that sufficiently engages consumers whilst ensuring they receive all necessary information?

4.16 Below are two illustrative examples which demonstrate how repealing or amending provisions could lead to better outcomes for both firms and consumers. For areas that are showing as being moved to FCA rules, the FCA will need to consult on these and come to their own decisions as to the approach. These examples are only demonstrations of a potential approach and are not binding on the future regulatory strategy.

Example 1:

The following example looks at the provision of pre-contractual information, which is currently mandated in legislation, and explores how consumers could be better served, should the legislation be repealed and replaced with FCA rules. However, this is a decision for the regulators and not HM Treasury. The following example is illustrative and does not represent a predetermined policy position.

Example 1:	Current Scenario	Potential approach if moved to FCA rules
Creditor/Debtor Interaction	A customer is presented with two sets of pre-contractual information disclosures: (1) the pre-contractual adequate explanations in accordance with FCA rules and (2) the pre-contract information in accordance with legislation (Disclosure Regulations 2004 and 2010) - which details terms and costs in a prescribed format.	A customer is presented with simplified documentation that details the key terms of the agreement and the cost of credit, there is a minimum amount of information firms must display to ensure adequate explanation of terms as well as an explanation of the key risks.
Form and content of information	FCA rules provide flexibilities to firms over the wording they use for adequate explanations, but firms are also bound by the Disclosure Regulations to disclose the pre-contract information in a standard format. That is, they must use prescribed form, statutory references, legalistic words and prescribed statements which limit firms' ability to tailor information for varying customer circumstance.	Firms can provide information that meets customer's needs and is timely, having regard to their circumstances including any characteristics of vulnerability.
Consumer Outcome	Consumers may struggle to navigate information and determine what is important in their individual circumstances. Consequently, engagement levels are lower.	Consumers are better served by higher quality and tailored communications, resulting in higher customer engagement and better decision-making.
Risks	Consumers do not engage with the terms of their agreement and thus do not fully understand their obligations. This could have an impact on customer adherence to the terms of a credit agreement.	Lack of prescriptive requirements could mean that businesses are uncertain how to comply and breach the rules. They could also do more than is necessary under the rules without further demonstrable benefit to the consumer.

Example 2:

The following example highlights some issues currently associated with the dissemination of Notice's of Sums in Arrears (NOSIA's) under s.86B of the CCA. It explores how these could be navigated, should they be moved to FCA rules. The FCA will be consulting on the form of arrears information and may move to a more outcomes focused expectation for firms to deliver relevant information to customers in difficulties, in line with the consumer duty. This

decision is for the FCA, hence the following is purely illustrative and not a confirmed policy position.

Example 2:	Current Scenario	Potential approach if moved to FCA rules
Creditor/Debtor Interaction	A consumer is delivered a Notice of Sums in Arrears (NOSIA) at prescribed times under the CCA when they are falling behind with their payments.	A consumer is notified that they are falling behind with their payments in a form containing the information necessary for them to understand their circumstances
Form and content of information	The NOSIA is posted to the consumer even if the consumer has previously agreed a deferred payment plan or payment holiday with the lender, given the CCA necessitates this and carries the associated sanction of unenforceability and disentitlement to interest and default sums during the period of non-compliance. The NOSIA wording is set in law.	The consumer is notified through means that are suitable or previously agreed with the provider, only if the consumer has not already agreed a plan or break with the lender.
Consumer Outcome	Consumers are left confused and unsure about whether they need to make a payment or have an agreed payment plan in place.	Consumers that are behind on payments will be better informed of their contractual rights and responsibilities and will better understand their situation.
Risks	Consumers experience additional stress at a time of financial difficulty which can be particularly dangerous for consumers with characteristics of vulnerability.	Since firms are afforded flexibility in the content, some firms may not adhere to FCA information requirements when sending these communications. Firms may also do more than required without necessarily further benefitting the consumer.

Rights and Protections

4.17 The CCA provides consumers with important rights and protections which protect consumers at both the pre-contractual and post-contractual stages of an agreement. As the RPR found, in most cases, the FCA's current FSMA rule-making powers would not enable the FCA to replicate these rights and protections in its rulebook.

4.18 The government believes that there is a good case for amending the FCA's rule making power under FSMA or exploring whether

another mechanism could be used to enable FCA rules to replicate the regulatory outcome of the current CCA rights and protections.

4.19 There are certain rights and protections in the CCA which are valued and often utilised by consumers. Such provisions may need to be retained in the new regulatory regime or their effect closely replicated in FCA rules. These include:

- **Section 75: Connected lender liability** – This provision makes providers of certain types of regulated credit (for example, a regulated credit card or point of sale loan) jointly and severally liable with a supplier for a misrepresentation or breach of contract in relation to goods or services financed by the credit agreement. The consumer may, therefore, choose to pursue a claim against either the supplier, or the creditor, or both, provided that certain requirements are met. The creditor cannot insist as a pre-condition of its liability under section 75 that the consumer should first claim against the supplier.
- **Section 56: Deemed agency** – This protection deems certain negotiations with a customer that are conducted by a credit broker or lender before a regulated agreement is entered into, to have been conducted in the capacity of agent of the creditor or owner as well as in its own capacity. This ensures that there is accountability placed on the lender for the actions of the broker. This is important in the event that the credit broker for example provides misleading representations in relation to goods which influences the customer's decision to enter into the agreement.
- **Section 94: The right to complete payments ahead of time** – This is a right that allows consumers the flexibility to pay off debts ahead of schedule, should their financial situations allow it. This is an important right as it increases financial autonomy and a consumer's ability to effectively manage their finances. Related to this provision is Section 95: The entitlement to a rebate on early settlement, where the government notes there may be a case for reviewing the early settlement provisions set out in the regulations.
- **Section 93: Interest not to be increased on default** – This protection prevents a creditor from increasing interest on any sum in arrears following the customer's default. Default interest must not be charged at a rate which exceeds the rate of interest (or the rate of the total charge for credit) provided for in the original agreement. This ensures that a consumer is not subject to a higher rate of interest following a default which may be unaffordable.

4.20 There are a large number of rights and protections in the CCA regulatory regime. Similarly there are a number of other consumer focused protections that have been brought in separately to the CCA. In some cases, these non-CCA consumer focussed protections might duplicate some of the rights and protections provided in the CCA. Non-CCA consumer focussed protections include:

- seeking redress through the Financial Ombudsman Service
- challenging unfair contract terms under the Consumer Rights Act 2015 (noting that the Consumer Rights Act 2015 does not apply to business customers, so business lending covered by the CCA is excluded from its scope)
- seeking redress through the courts under the Consumer Protection from Unfair Trading Regulations 2008
- taking a private right of action against a firm under section 138D FSMA
- once implementation is complete, the government expects the Consumer Duty to also provide valuable protections to consumers

4.21 A private right of action will usually exist for a breach of FCA rules. However, the government notes that, in responses to the RPR, consumer groups argued that the FSMA private right of action would not provide adequate recourse to redress, given that a consumer would need substantial funds to engage in litigation. Additionally, the measure of damages for loss in a private right of action claim brought under section 138D FSMA is unlikely to be comparable to that which could be provided by a court under section 127 of the CCA. For example, the CCA includes the power for a court to reduce the customer's liability (section 127(2)), make a time order rescheduling payment (section 129), or otherwise alter the terms of the agreement (section 136) which are more extensive powers than under FSMA.

Question 10: Are there any areas where, in your view, consumer protection legislation, rules and/or guidance, outside of the CCA, makes for appropriate levels of consumer protections and mirrors or replicates the effects of the provisions in the CCA?

Question 11: If other consumer protection legislation, rules and/or guidance, outside of the CCA, falls short of replicating the effect of the provisions in the CCA, where do these gaps exist and how significant are they?

Question 12: The FCA's Consumer Duty mandates a consumer support outcome. Do you have any views on how the Consumer

Duty interacts with the rights and protections provided to consumers in the specific consumer credit regulatory regime, which currently consists of the CCA and FCA rules?

Moving some rights and protections provisions to FCA rules

4.22 Under FSMA, the FCA are awarded broad rule-making powers. FCA rules impose binding regulatory requirements on authorised persons, including principal firms. These powers would allow the FCA to replicate some of the rights and protections found in the CCA, such as section 155 (right to recover brokerage fees). This would be possible because the provision relates only to authorised firms, meaning the FCA could create an obligation on firms to provide a refund in the same circumstances as are set out in section 155 of the CCA (note that the FCA will be conducting their own stakeholder engagement on rules changes which occur as a result of this reform).

4.23 However, there are many rights and protections that could not be replicated using the FCA's current rule-making power, such as Section 75. The FCA could not use their general rule-making power under FSMA to make a rule that replicates the meaning and effect of this provision, and it is not certain that would be possible, even with amendments to FSMA. In this instance it is likely that Section 75 would remain in legislation, so that consumers are still afforded this protection. It may also be undesirable to move some provisions, such as section 75, to FCA rules, in part because the associated case law could lose its status as binding precedent. However, as part of the review, the scope of Section 75 may be reconsidered or clarified, in which case the existing case law may no longer be relevant. Furthermore the current operation of Section 75 means that this protection might not apply when the supplier uses a third-party payment processor which can break the required debtor-creditor-supplier link. This can create confusion for consumers over whether they are protected by the provision or not and the government believes there is merit in clarifying how this provision should operate.

4.24 The CCA (as an Act of Parliament) does many other things that the FCA cannot under its current rule-making powers. As set out in the RPR²⁷, these include:

- directly giving consumers specific rights and entitlements in their contractual relationships with firms, and making any contract terms inconsistent with these void

²⁷ [Review of retained provisions of the Consumer Credit Act: Final report \(fca.org.uk\)](#), page 32, paragraph 5.13

- imposing obligations on consumers or non-authorised persons, including in relation to non-financial linked transactions
- making a firm's exercise of private contractual rights invalid where CCA standards are not met
- governing the passing of title in goods in certain circumstances
- creating a statutory joint and several liability for misrepresentations or breaches of contract in certain circumstances
- providing for judicial control and powers in relation to agreements and for the onus of proof in certain court proceedings.

4.25 If a decision were to be made to move many of the rights and protections to FCA rules, the FCA's rulemaking powers would have to be extended to allow the regulator the ability to do the above.

Question 13: If it is possible to amend the FCA's FSMA rule-making power to enable FCA rules to replicate the effect of rights and protections currently in the CCA, what is your view on the risks and benefits of doing this?

Question 14: Are there any rights and protections provisions which you feel should not be moved to FCA rules and should remain in legislation? Please provide an explanation of why you hold these views.

Three specific rights and protections provisions

4.26 Three specific areas of rights and protections under the CCA have been identified as warranting more detailed questions as part of this consultation. They are: time orders (sections 129 - 130) the right to voluntary terminations (Sections 99 and 100) and unfair relationships provisions (sections 140A - 140C). These areas have been selected as they are well known rights and protections which stakeholders have raised differing perspectives about. These questions are designed so that HM Treasury can understand stakeholder views on specific provisions within the CCA. The focus on these particular areas reflects an appreciation of differing stakeholder views, and is an attempt to deepen understanding, rather than being indicative of a preferred policy approach at this stage.

4.27 Time orders allow a court to amend a credit agreement which has fallen into arrears to alter the amount of time required to pay back the loan. The court can also amend the agreement in consequence of making a time order, such as reducing the rate of interest. Time orders in the CCA cover some regulated mortgage contracts and other unsecured lending products. In most cases time orders are made in response to an application by a lender to enforce an agreement through the court rather than the borrower bringing a stand-alone action. Time orders require complex applications to the court, and the government are not aware that time orders are commonly applied for. Firms are also required to comply with the FCA's rules around the fair treatment of customers in arrears (CONC 7) and the Tailored Support Guidance (TSG)²⁸.

Question 15: Given this, to what extent do time orders provide additional protections to these rules and guidance? What evidence are you aware of that the existence of this right changes firm behaviour and improves consumer outcomes?

4.28 The right to voluntary termination (Sections 99 and 100) is an important protection for hire-purchase and conditional sale agreements. This right provides customers that have a hire-purchase or conditional sale agreement to terminate the agreement before the final payment is due, though they remain liable for 50% of the total price as well as any arrears due at the time they exercise such rights. However, the motor finance market, where voluntary termination is most prominent, has changed since the inception of these provisions and there may be instances where customers use the right to voluntary termination to move from one agreement to another. This contrasts with the original intention of the provisions which was to help consumers in financial difficulty, or to address the economic imbalance that might arise between the value and depreciation of goods and the sums the customer had to pay. Some industry stakeholders argue that its increasing use, including in cases where customers are not in financial difficulty, affects the prices and rates provided to consumers. The government will consider whether the right to voluntary termination should be limited to those cases where there is an existing or potential situation of financial difficulty if the agreement were to continue and whether the protection it affords is appropriate or should be refined.

²⁸ [Consumer credit and Coronavirus: Tailored Support Guidance \(fca.org.uk\)](https://www.fca.org.uk/consumer-credit-and-coronavirus-tailored-support-guidance)

Question 16: What is your view on the usefulness of the right to voluntary termination and its role in protecting consumers? Are there improvements that could be made to the functioning of this right?

4.29 The unfair relationships provisions (sections 140A-140 CCA) provide the court with extensive powers if it finds that the relationship between the creditor and the consumer arising out of a credit agreement (including any “related agreement”) is unfair to the consumer.. A “related agreement” includes a linked transaction in relation to the main credit agreement, or a credit agreement consolidated by the main agreement. Given the FSMA regime and availability of FOS protection, some stakeholders believe that these provisions are not necessary. However, the government knows that these provisions are valued and that the court has played an important role in arbitrating on unfair relationships over many years. Section 140A (2) is very broad in terms of what the court can take into account in deciding whether to make a determination. The court may have regard to all matters it thinks relevant which is something FOS cannot do. The court may also treat acts or omissions of any associate or former associate of the creditor as if they were acts or omissions of the creditor.

4.30 The court has wide powers under s140B to make an order where it finds an unfair relationship. For example, it can require the creditor to repay sums to the customer or reduce or discharge any amount owed by the customer or set aside any duty imposed on the customer. The court can also alter the terms of the agreement, or a related agreement, and can require the creditor (and any associate or former associate) to do or not do anything the court sees fit in connection with the agreement. The court is entitled to exercise its powers even if the relationship between the creditor and the customer has come to an end. In addition, the court can look at any aspect of the acts and omissions of the creditor, either before or after the making of the agreement.

4.31 Although the FOS has wide powers to award compensation for financial loss, or other loss or damages, it cannot provide the same level of redress that the courts can under s140B. Furthermore, whilst FOS can deal with unfairness issues with authorised firms, the consumer need for a remedy is often time sensitive, potentially at a time when an agreement is being enforced and so there are limitations on FOS' efficacy in these scenarios since FOS can take time to reach a decision on remedies. A further distinction is that these provisions extend to unregulated credit agreements and unauthorised firms thus providing further protections for consumers.

Question 17: To what extent do the FSMA and FOS regimes make the unfair relationship provisions unnecessary? If these provisions are to be kept in legislation, with other rights and protections moving to FCA rules, does this create more complexity and confusion for lenders and borrowers and what will the effect on innovation in the sector be?

Sanctions

4.32 Sanctions are an important part of the enforcement mechanism for consumer credit. However, when the CCA was introduced, there was no financial services regulator equivalent to the current FCA. The FCA has its own supervisory and enforcement powers today which complement the sanctions within the CCA. Our initial view is that this reform presents an opportunity to concentrate some of the remedies afforded to consumers in the FCA toolkit. This will make for a simpler and more modernised regime, aligned with other areas of financial services.

4.33 However, the government recognises that the market for consumer credit is in many ways unique among financial services products due to the large numbers of firms with a variety of different business models and products presenting varying risks across different consumer segments.

4.34 The CCA includes strict sanctions for non-compliance with the duties it imposes on creditors. These sanctions often fall into at least one of the following categories:

- Unenforceability sanctions
- Criminal offences
- Disentitlement to interest and default sums sanctions
- Breach of statutory duty

4.35 Many CCA sanctions have an unenforceability element, of which there are two types: Unenforceability without a court order and unenforceability during breach. The first type of unenforceability provisions give rise to the automatic sanction of unenforceability, unless a firm successfully obtains a court enforcement order. For example, this could occur where an agreement is improperly executed because it fails to comply with form and content requirements. Examples of provisions where this sanction applies include pre contract disclosure (section 55) and provision of copy documents or notice of cancellation rights (sections 61A-64).

4.36 The second type of unenforceability provisions give rise to the automatic sanction of unenforceability during the period of the breach, whereby a firm is prevented from enforcing an agreement until it has remedied the breach. Examples of provisions that operate

in this way include the requirement to issue annual statements for fixed-sum credit agreements (section 77A) and notices of sums in arrears for fixed-sum and running-account credit (sections 86B-86D).

4.37 In addition to unenforceability, there are sanctions known as disentitlement sanctions, these result in no liability for consumers to pay interest or default charges that accrue during the period of non-compliance breach. Examples of disentitlement sanctions are section 77A (annual statements) and sections 86B-86C (arrears notices).

4.38 The sanctions of unenforceability and disentitlement (without a court order or during breach) are 'self-policing' in nature and apply automatically without the FCA or the consumer needing to take specific action. This regulatory approach takes account of the number and nature of firms in the consumer credit market. The FCA has finite resources and cannot closely supervise all firms in the market and take action every time an issue is identified. The FCA has to prioritise use of its resources on the basis of risk and taking account of the decision-making framework set out in its Strategy²⁹.

4.39 The process of reforming the CCA will likely see HM Treasury amending the FCA's rule-making powers under FSMA, specifically in relation to consumer credit and consumer hire. The government is minded for this to include exploration of the option of amending FSMA rule-making powers to enable the FCA to apply unenforceability as a sanction for breach of FCA rules in a wider set of circumstances than currently provided under FSMA.

4.40 One example of how the FCA's rulemaking powers could be extended is by amending FSMA to allow the FCA to apply unenforceability as a sanction for a breach of FCA rules. Sections 26-30 of FSMA currently state when an agreement is unenforceable and then give the FCA and the courts power to allow enforcement if it appears just and equitable. This reform will consider whether provisions such as these could be extended or supplemented to provide for unenforceability in a similar manner as under the CCA. Similarly, section 138E of FSMA provides that a breach of an FCA rule cannot make a transaction void or unenforceable. However, there are exceptions to this in sections 137C, 137D and 137FBB³⁰. The government could explore extending these exemptions to facilitate a replication of

²⁹ [Our Strategy 2022 to 2025 \(fca.org.uk\)](https://www.fca.org.uk/publications/our-strategy-2022-to-2025)

³⁰ For example, section 137C states that in relation to the cost of credit and duration of credit agreements, in the event that an agreement is entered into or an obligation imposed in contravention to the rules, the rules may:

- (a) provide for the agreement or obligation to be unenforceable against any person or specified person;
- (b) provide for the recovery of any money or other property paid or transferred under the agreement or other obligation by any person or specified person;
- (c) provide for the payment of compensation for any loss sustained by any person or specified person as a result of paying or transferring any money or other property under the agreement or obligation.'

the unenforceability, and thus consumer protections, found in the CCA, however it would be for the FCA to consult on this issue and to decide when such sanctions were appropriate.

Question 18: Would you be supportive of HM Treasury exploring the option of amending FSMA rule-making powers in such a way to enable unenforceability to apply to breaches of FCA rules in a similar manner to how unenforceability applies under the CCA, noting there would not be a role for court action in this scenario?

Proportionality of Sanctions

4.41 The original policy intention for sanctions in the CCA was that they should 'bite' where consumers have been harmed. The debates on the Consumer Credit Bill 2006 on the new sanctions introduced made it clear that the sanctions were intended to be penal and act as a deterrent - they were not linked to harm. However, there have been instances of unenforceability and disentitlement where breaches of information requirements have only been minor and there has been no evidence of consumer harm.

Question 19: Do you agree that the government should consider the proportionality of sanctions and ensure that they are relative to the consumer harm caused/potentially caused?

Question 20: What types of breaches of CCA rules do you think that sanctions should attach themselves to and why? For example, should the disentitlement sanction be limited to the small sub-set of cases giving rise to unenforceability, where there is the greatest risk of harm?

Criminal Offences

4.42 Some CCA provisions give rise to a criminal offence. Key provisions include prohibitions on canvassing off trade premises (sections 49 and 154) and circulars to minors (section 50). The government is not aware of any prosecutions under these provisions; however they may provide strong deterrents and therefore be beneficial to the regime in this way. In the RPR the FCA set out that they could not, under their current rule-making powers, reproduce criminal offences in FCA rules. However, the FCA view is that, in general, the criminal offences in the CCA are no longer needed given the FSMA regulatory toolkit. The FCA have a range of disciplinary powers, including powers to require remediation or impose fines, that the government can use for authorised firms. In addition, where a person is acting in breach of the general prohibition under FSMA, this is itself a criminal offence.

4.43 However, the FCA recognised in the RPR that the arguments may be more finely balanced for the offences of canvassing off trade premises (sections 49 and 154) and circulars to minors (section 50). These apply to individuals (not firms) regardless of whether the person is engaged in regulated activity by way of business. The FCA stated in the RPR that there was merit in considering the issues further in these areas. The FCA also made it clear that if the criminal offence is removed, in whole or in part, it will be important to make clear that this in no way reflects a view on the importance of the provisions and of compliance with them.

Question 21: How valuable are the CCA provisions that give rise to a criminal offence? (See Annex 2 for list of CCA provisions that give rise to criminal offences)

Question 22: Are there are any provisions that are outdated because the practices they pertain to are not used anymore, or would removing some CCA provisions lead to the return of these practices?

Consumer Hire

4.44 Despite both being covered by the CCA, the approach to regulation, in particular rights and protections, for consumer credit and consumer hire is different, with the latter being subject to lower standards under both the CCA and FCA rules. For example, the statutory right to terminate a consumer hire agreement under section 101 of the CCA does not apply until 18 months following entry into the agreement (for agreements where annual repayments do not exceed £1,500, above this amount this is no statutory right to terminate), whereas for hire purchase agreement there is no such time-in-agreement requirement. Another example is that the FCA's creditworthiness rules do not apply to consumer hire.

4.45 Some household goods are provided under consumer hire agreements that are very similar to rent to own (RTO) agreements, however they are outside the FCA's RTO price cap and other protections usually given for credit agreements. These financing products are often targeted towards lower income consumers. The recent increased growth of the consumer hire market may merit the removal or reduction of the time requirement for the right to terminate an agreement.

4.46 In the motor finance market, two popular financing options are Personal Contract Purchase (PCP) - a consumer credit agreement - and Personal Contract Hire (PCH) – a consumer hire agreement. PCH based contracts are a growing market and there may be merit in

ensuring that the standards for both consumer credit and consumer hire are comparable.

Question 23: What is your view on the merits in increasing the standards of conduct for consumer hire agreements to make them comparable to those for consumer credit?

Small agreements

4.47 Some parts of the CCA do not apply to 'small agreements'. A small agreement is defined in Section 17 of the CCA as a regulated consumer credit agreement for credit not exceeding £50, other than a hire-purchase or conditional sale agreement.

4.48 Some of the elements of the CCA and CONC which do not apply to small agreements include, but are not limited to:

- Part V of the CCA, which includes provisions relating to pre-contractual negotiations made by or on behalf of a lender, and the form and content of agreements;
- section 77A on the provision of statements in relation to fixed-sum credit agreements,
- provisions relating to sums in arrears and default sums in sections 86B, 86C and 86E;
- CONC 4.2.5 on pre-contractual adequate explanations;
- CONC 5.2A on creditworthiness assessments.

4.49 The issue of small agreements was considered in the BNPL consultation response, where it was decided that to ensure consistency in consumer protection across current exempt BNPL agreements captured by the scope of regulation, the government intends to disapply section 17 of the CCA for these agreements when they are brought into regulation. The government considered that this was necessary because BNPL is frequently used for agreements below £50. However, the result of this would mean that lenders offering agreements for interest-bearing credit not exceeding £50 would not be subject to, for example, CCA requirements relating to the form and content of agreements or FCA rules on creditworthiness assessments in relation to those small agreements, while lenders offering BNPL agreements would be subject to these requirements. Given this inconsistency, it is right that the government considers whether the small agreements provision in section 17 should be reviewed across all regulated agreements.

Question 24: Should the section 17 provisions which enable exemptions from specific elements of the CCA and CONC continue to exist? What would be the impact of these provisions not applying?

Chapter 5

Financial Inclusion and Equality Impact assessment

5.1 The government is committed to ensuring that people, regardless of their background or income, have access to useful and affordable financial products and services. This includes accessing credit in a fair and affordable manner. The government is aware that this reform provides an opportunity to make the consumer credit regulatory regime more inclusive. Policy decisions are yet to be made on this reform, meaning the extent of these improvements are not yet measurable. However, the government expects equalities and fairness to be improved across some of the following areas.

Financial Literacy and Numeracy

5.2 The reform provides HM Treasury with an opportunity to ensure that overly complex language is simplified and written in a clear way to maximise consumer comprehension. This should mean that consumers with differing levels of financial literacy and numeracy are able to understand the consumer credit products available to them and make informed decisions.

Question 25: How can this reform ensure that firms provide information to consumers which is accessible for a wide range of financial literacy and numeracy levels?

Financial Inclusion and Mental Health

5.3 Concerns about financial vulnerability and debt can have a serious impact on mental health. The action taken by the government during the Covid-19 pandemic to, among other things, amend default notices demonstrates how important the language used around debt and credit can be. The FCA recently published guidance for firms on the fair treatment of vulnerable customers³¹, but there may be more that can be done.

³¹ [Guidance for firms on the fair treatment of vulnerable customers | FCA](#)

Question 26: In what ways should this reform ensure that consumers' mental health and wellbeing is supported throughout the consumer credit product lifecycle?

Islamic Finance

5.4 Islamic finance is a term that attaches to a wide range of financial products and services. It is a way to manage money that keeps within the moral principles of Islam. It includes activities such as saving, investing, and borrowing to buy a home. Islamic financial services may be described as 'Islamic finance' or 'Sharia-compliant finance' and is based on a belief that money is a medium of exchange and should not have any value in itself.

5.5 Linked to this way of thinking about money, is the idea that you should not make money from money. This means that wherever possible, getting involved in interest by either paying or receiving it should be avoided. Therefore, the inclusion of an interest rate (APR) in a credit agreement and the statutory right to a rebate in Sections 94-95A CCA may be seen as wholly incompatible with the provision of Islamic finance.

5.6 Currently, Islamic finance providers experience difficulties in reconciling the differences in terminology required in a Sharia compliant credit agreement with some of the prescribed requirements for credit agreements and pre-contractual information set out in the CCA regulations. This has resulted in some Islamic finance providers removing their Sharia compliant personal loans from the market to avoid the sanctions of unenforceability applying to their loan books. Consequently, it is desirable that the reform of the CCA will, to the extent this is possible, ensure that Sharia compliant credit agreements can be accommodated within the new regime.

Question 27: What are the key considerations that the government need to take into account when reforming the CCA to ensure that Sharia compliant loans and credit cards can be expressly accommodated? Which areas of the CCA are not currently compatible with Islamic finance, and how could they be amended to accommodate Sharia compliant loans and credit cards?

Question 28: If interest rates are prohibited for Islamic Finance products, precluding the use of APRs, how should the government ensure that Islamic finance and non-Islamic finance products can be easily compared?

Public Sector Equality Duty

5.7 When formulating a policy proposal, the government is required to comply with the Public Sector Equality Duty (PSED) in the Equality Act 2010³².

5.8 In particular, when assessing the impact of a proposed measure on persons likely to be affected by that measure, the government will need to have due regard to the following three aims of the PSED, in respect of the protected characteristics outlined below:

- eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; s 149(1)(a) Equality Act 2010
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it: s 149(1)(b) Equality Act 2010
- foster good relations between persons who share a relevant protected characteristic and those who do not share it: s 149(1)(c) Equality Act 2010.

5.9 The protected characteristics are: age; disability; race; religion/belief; sex; sexual orientation; pregnancy and maternity; and gender reassignment and, in respect of the duty not to discriminate, marriage and civil partnership.

5.10 The government has considered the PSED as appropriate for this high-level stage of the project and concluded that the high-level proposals outlined in this consultation will not in and of themselves lead to the breach of that duty. As the detailed design of a new regime is developed, the government will continue to have regard to the PSED as appropriate to the particular stage of the reform.

Question 29: Are you aware of any implications of our policy approach for CCA reform on people with protected characteristics?

Question 30: Do you have any views on how the government can mitigate any disproportionate impacts on protected characteristics?

Page Break

³² [Equality Act 2010: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/equality-act-2010)

Chapter 6

Responding to this consultation

6.1 This consultation will open on 9 December 2022 for 14 weeks, and close at 11:59pm on 17 March 2023.

6.2 Following the consultation, the government will provide a summary of responses and will set out next steps for CCA reform.

Who should respond?

6.3 A range of groups will be interested in the questions and evidence presented. The government welcomes responses from all stakeholders, including:

- Consumer groups
- Mainstream lenders
- SME lenders
- Other lenders
- Credit brokers
- Pawn brokers
- Credit card providers
- Businesses, such as retailers, which offer credit

When and how to submit responses

6.4 This consultation will remain open for 14 weeks, and close on 17 March 2023. Please submit responses to: consumercreditact@hmtreasury.gov.uk

6.5 Alternatively, responses can be submitted to: Consumer Credit Act Reform Consultation, Personal Finances and Funds Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ

HM Treasury Consultation: Reforming the Consumer Credit Act (1974) - Processing of Personal Data

6.6 This notice sets out how HM Treasury will use your personal data for the purposes of consultation on Consumer Credit Act reform and explains your rights under the UK General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

Your data (Data Subject Categories)

6.7 The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

The data we collect (Data Categories)

6.8 Information may include your name, address, email address, job title, and employer of the correspondent, as well as your opinions. It is possible that you will volunteer additional identifying information about themselves or third parties.

Legal basis of processing

6.9 The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good effective government policies.

Purpose

6.10 The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Who we share your responses with

6.11 As part of our policy development, the Treasury may share full responses including any personal data provided such as your name and email address to this consultation with the Financial Conduct Authority (FCA).

6.12 Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

6.13 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

6.14 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic

confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

6.15 Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

6.16 Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: <https://www.gov.uk/government/organisations>.

6.17 As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (Retention)

6.18 Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

6.19 Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Your Rights

- You have the right to request information about how your personal data are processed and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted.
- You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.
- You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

How to submit a Data Subject Access Request (DSAR)

6.20 To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit
G11 Orange
1 Horse Guards Road
London
SW1A 2HQ
dsar@hmtreasury.gov.uk

Complaints

6.21 If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk.

6.22 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

6.23 Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Annex 1

Allocation of Provisions to Categories

As detailed in the RPR³³, the allocation of provisions within the CCA to categories is as follows. Where no box is marked this provision cannot be categorised as one of the three categories, this is usually because it is a defining a term. Where multiple category boxes have been marked this is because that provision is relevant to more than one category.

Provision	Description	Rights and Protections	Information Requirements	Sanctions
Part 2: Credit agreements, hire agreements and linked transactions				
8	Consumer credit agreements			
9	Meaning of credit			
10	Running-account credit and fixed-sum credit			
11	Restricted-use credit and unrestricted-use credit			
12	Debtor-creditor-supplier agreements			
13	Debtor-creditor agreements			
14	Credit-token agreements			
15	Consumer hire agreements			
17	Small agreements			
18	Multiple agreements	X	X	

³³ [Review of retained provisions of the Consumer Credit Act: Final report \(fca.org.uk\)](#), page 80

19	Linked transactions			
20	Total charge for credit			
Part 4: Seeking business				
48	Definition of canvassing off trade premises (regulated agreements) Definition of canvassing off trade premises (regulated agreements)	X		X
49	Prohibition of canvassing debtor creditor agreements off trade premises	X		X
50	Circulars to minors	X		X
Part 5: Entry into credit or hire agreements				
55	Disclosure of information		X	X
55C	Copy of draft consumer credit agreement	X	X	X
56	Antecedent negotiations	X		
57	Withdrawal from prospective agreement	X		
58	Opportunity for withdrawal from prospective land mortgage	X		X
59	Agreement to enter future agreement void	X		
60	Form and content of agreements		X	X
61	Signing of agreement	X	X	X

61A	Duty to supply copy of executed consumer credit agreement		X	X
61B	Duty to supply copy of overdraft agreement		X	X
62	Duty to supply copy of unexecuted agreement: excluded agreements		X	X
63	Duty to supply copy of executed agreement: excluded agreements		X	X
64	Duty to give notice of cancellation rights		X	X
65	Consequences of improper execution			X
66	Acceptance of credit-tokens	X		
66A	Withdrawal from consumer credit agreement	X		
67	Cancellable agreements	X		
68	Cooling-off period	X		
69	Notice of cancellation	X		
70	Cancellation: recovery of money paid by debtor or hirer	X		
71	Cancellation: repayment of credit	X		
72	Cancellation: return of goods	X		X

73	Cancellation: goods given in part exchange	X		
74	Exclusion of certain agreements from Part 5			
Part 6: Matters arising during currency of credit or hire agreement				
75	Liability of creditor for breaches by supplier	X		
75A	Further provision for liability of creditor for breaches by supplier	X		
76	Duty to give notice before taking certain action	X	X	X
77	Duty to give information to debtor under fixed-sum credit agreement	X	X	X
77A	Statements to be provided in relation to fixed- sum credit agreements		X	X
77B	Fixed-sum credit agreement: statement of account to be provided on request	X	X	X
78	Duty to give information to debtor under running-account credit agreement	X	X	X
78A	Duty to give information to	X	X	

	debtor on change of rate of interest			
79	Duty to give hirer information	X	X	X
80	Debtor or hirer to give information about goods			X
82	Variation of agreements	X	X	
83	Liability for misuse of credit facilities	X		
84	Misuse of credit-tokens	X		
85	Duty on issue of new credit-tokens		X	X
86	Death of debtor or hirer	X		
86A	FCA to prepare information sheets on arrears and default		X	
86B	Notice of sums in arrears under fixed sum credit agreements etc		X	X
86C	Notice of sums in arrears under running-account credit agreements		X	X
86D	Failure to give notice of sums in arrears			X
86E	Notice of default sums	X	X	X
86F	Interest on default sums	X		
Part 7: Default and termination				
87	Need for default notice	X	X	X

88	Contents and effect of default notice	X	X	X
89	Compliance with default notice	X		
90	Retaking of protected hire-purchase etc goods	X		X
91	Consequences of breach of s.90	X		X
92	Recovery of possession of goods or land	X		X
93	Interest not to be increased on default	X		
93A	Summary diligence not competent in Scotland	X		
94	Right to complete payments ahead of time	X		
95	Rebate on early settlement	X		
95A	Compensatory amount	X		
95B	Compensatory amount: green deal finance	X		
96	Effect on linked transactions	X		
97	Duty to give information	X	X	X
97A	Duty to give information on partial repayment	X	X	
98	Duty to give notice of termination (non-default cases)	X	X	X

98A	Termination etc of open-end consumer credit agreements	X		
99	Right to terminate hire-purchase etc agreements	X		
100	Liability of debtor on termination of hire-purchase etc agreement	X		
101	Right to terminate hire agreement	X		
102	Agency for receiving notice of rescission	X		
103	Termination statements	X		X
104	Goods not to be treated as subject to landlord's hypothec in Scotland	X		
Part 8: Security				
105	Form and content of securities		X	X
106	Ineffective securities	X		
107	Duty to give information to surety under fixed-sum credit agreement	X	X	X
108	Duty to give information to surety under running-account credit agreement	X	X	X
109	Duty to give information to surety under	X	X	X

	consumer hire agreement			
110	Duty to give information to debtor or hirer	X	X	X
111	Duty to give surety copy of default etc notice	X	X	X
113	Act not be evaded by use of security	X		
114	Pawn-receipts	X		X
116	Redemption period	X		
117	Redemption procedure	X		
118	Loss etc of pawn-receipt	X		
119	Unreasonable refusal to deliver pawn	X		X
120	Consequence of failure to redeem	X		
121	Realisation of pawn	X		
122	Order in Scotland to deliver pawn	X		
123	Restrictions on taking and negotiating instruments	X		X
124	Consequences of breach of s.123	X		X
125	Holder in due course			X
126	Enforcement of land mortgages	X		X
Part 9: Judicial control				
127	Enforcement orders in cases of infringement	X		X
128	Enforcement orders on death of debtor or hirer	X		

129	Time orders	X		
129A	Debtor or hirer to give notice of intent etc to creditor or owner	X		
130	Supplemental provisions about time orders	X		
130A	Interest payable on judgement debts etc	X	X	X
131	Protection orders	X		
132	Financial relief for hirer	X		
133	Hire-purchase etc agreements: special powers of court	X		
134	Evidence of adverse detention in hire purchase etc cases	X		
135	Power to impose conditions, or suspend operation of order	X		X
136	Power to vary agreements and securities	X		X
140A	Unfair relationships between creditors and debtors	X		X
140B	Powers of court in relation to unfair relationships	X		X
140C	Interpretation of ss.140A and 140B	X		X

141	Jurisdiction and parties	X		
142	Power to declare rights of parties	X		
143	Jurisdiction of county court in Northern Ireland	X		
144	Appeal from county court in Northern Ireland	X		
Part 10: Ancillary credit businesses				
145	Types of ancillary credit business			
153	Definition of canvassing off trade premises (agreements for ancillary credit services)	X		X
154	Prohibition of canvassing certain ancillary credit services off trade premises	X		X
155	Right to recover brokerage fees	X		
157	Duty to disclose name etc of agency	X	X	X
158	Duty of agency to disclose filed information	X		X
159	Correction of wrong information	X		X
160	Alternative procedure for business consumers	X		X
Part 11: Enforcement of Act				
161	Enforcement authorities			
162	Powers of entry and inspection			

163	Compensation for loss			
164	Power to make test purchases etc			
165	Obstruction of authorised officers			
166	Notification of convictions and judgements to FCA			
167	Penalties			X
168	Defences			X
169	Offences by bodies corporate			X
170	No further sanctions for breach of Act			X
171	Onus of proof in various proceedings	X		
172	Statements by creditor or owner to be binding	X	X	
173	Contracting-out forbidden	X		
Part 12: Supplemental				
174A	Powers to require provision of information or documents etc			
175	Duty of persons deemed to be agents	X		
176	Service of documents	X	X	
176A	Electronic transmission of documents	X	X	
177	Saving for registered charges	X		
178	Local Acts			

179	Power to prescribe form etc of secondary documents			
180	Power to prescribe form etc of copies			
181	Power to alter monetary limits etc			
182	Regulations and orders			
183	Determinations etc by FCA			
184	Associates			
185	Agreement with more than one debtor or hirer			
186	Agreement with more than one creditor or owner			
187	Arrangements between creditor and supplier			
187A	Definition of 'default sum'			
188	Examples of use of new technology			
189	Definitions			
189B	Green deal plans			
189C	Section 189B: supplementary provision			
190	Financial provisions			
191	Special provisions as to Northern Ireland			
192	Transitional and commencement provisions, amendments and repeals			

193	Short title and extent			
-----	------------------------	--	--	--

Annex 2

List of CCA provisions that give rise to criminal offences

1 Section	2 Offence	3 Mode of prosecution	4 Imprisonment or fine
7	...	...	...
39(1)	...	...	...
39(2)	...	...	...
39(3)	...	...	...
45	...	...	...
46	...	...	...
47(1)	...	...	...
49(1)	Canvassing debtor- creditor agreements off trade premises.	(a) Summarily. (b) On indictment.	[The prescribed sum]. 1 year or a fine or both.
49(2)	Soliciting debtor- creditor agreements during visits made in response to previous oral requests.	(a) Summarily. (b) On indictment.	[The prescribed sum]. 1 year or a fine or both.
50(1)	Sending circulars to minors.	(a) Summarily. (b) On indictment.	[The prescribed sum]. 1 year or a fine or both.
51(1)	...	...	...
<u>51A(1)</u>	...	...	...]
77(4)	...	...	...
78(6)	...	...	...
79(3)	...	...	...
80(2)	Failure to tell creditor or owner whereabouts of goods.	Summarily.	[Level 3 on the standard scale.]

85(2)	...	...	<...>
97(3)	...	...	...
103(5)	...	...	...
107(4)	...	...	...
108(4)	...	...	...
109(3)	...	...	...
110(3)	...	...	...
114(2)	Taking pledges from minors.	(a) Summarily. (b) On indictment.	[The prescribed sum]. 1 year or a fine or both.
115	...	...	...
119(1)	Unreasonable refusal to allow pawn to be redeemed.	Summarily.	[Level 4 on the standard scale.]
154	Canvassing ancillary credit services off trade premises.	(a) Summarily. (b) On indictment.	[The prescribed sum]. 1 year or a fine or both.
157(3)	Refusal to give name etc of credit reference agency.	Summarily.	[Level 4 on the standard scale.]
158(4)	Failure of credit reference agency to disclose filed information.	Summarily.	[Level 4 on the standard scale.]
159(6)	Failure of credit reference agency to correct information.	Summarily.	[Level 4 on the standard scale.]
160(6)	Failure of credit reference agency to comply with section 160(3) or (4).	Summarily.	[Level 4 on the standard scale.]
[160A	...	...	...]
162(6)	...	...	...
165(1)	...	...	...
165(2)	...	...	...
167(2)	...	...	...
174(5)	...	... (b) On indictment.	... 2 years or a fine or both.

Annex 3

List of consultation questions

Question 1: Do you agree with these proposed principles, and do you have views about tensions between them or relative prioritisations?

Question 2: Noting the governments' Net-Zero targets, how can CCA reform remove barriers that may otherwise prevent lenders from being able to offer financing for renewable energy solutions, such as electric vehicles and green home improvements?

Question 3: Are there any existing definitions or concepts in the CCA which should be updated and clarified when moved to FCA rules?

Question 4: Are there concepts in the CCA which are not currently defined but which should be?

Question 5: Do you believe the business lending scope of the CCA should be changed?

Question 6: Do you support the conclusion of the Retained Provisions Report that most Information Requirements could be replaced by FCA rules without adversely affecting the appropriate degree of consumer protection, and that it is desirable to do so? Are there any additional factors the government should consider given the context changes since the report's publication in 2019?

Question 7: In what circumstances is it important that the form, content and timing of pre-contractual and post-contractual information provided to consumers is mandated and prescribed? What are the risks to providing lenders more flexibility in this area?

Question 8: The Consumer Understanding outcome in the Consumer Duty posits that consumers should be given the information they need, at the right time, and presented in a way they can understand it. Does the implementation of this section, and the Consumer Duty more broadly, go some way to substitute the need for prescription in CCA information requirements?

Question 9: Given the increasing using of smartphones and other mobile devices to take out credit products how can consumer information be delivered on devices in a way that sufficiently engages consumers whilst ensuring they receive all necessary information?

Question 10: Are there any areas where, in your view, consumer protection legislation, rules and/or guidance, outside of the CCA, makes for appropriate levels of consumer protections and mirrors or replicates the effects of the provisions in the CCA?

Question 11: If other consumer protection legislation, rules and/or guidance, outside of the CCA, falls short of replicating the effect of the provisions in the CCA, where do these gaps exist and how significant are they?

Question 12: The FCA's Consumer Duty mandates a consumer support outcome. How does the Consumer Duty interact with the rights and protections provided to consumers in the specific consumer credit regulatory regime, which currently consists of the CCA and FCA rules?

Question 13: If it is possible to amend the FCA's FSMA rule-making power to enable FCA rules to replicate the effect of rights and protections currently in the CCA, what is your view on the risks and benefits of doing this?

Question 14: Are there any rights and protections provisions which you feel should not be moved to FCA rules and should remain in legislation? Please provide an explanation of why you hold these views.

Question 15: Given this, to what extent do time orders provide additional protections to these rules and guidance? What evidence are you aware of that the existence of this right changes firm behaviour and improves consumer outcomes?

Question 16: What is your view on the usefulness of the right to voluntary termination and its role in protecting consumers? Are there improvements that could be made to the functioning of this right?

Question 17: To what extent do the FSMA and FOS regimes make the unfair relationship provisions unnecessary? If these provisions are to be kept in legislation, with other rights and protections

moving to FCA rules, does this create more complexity and confusion for lenders and borrowers and what will the effect on innovation in the sector be?

Question 18: Would you be supportive of HM Treasury exploring the option of amending FSMA rule-making powers in such a way to enable unenforceability to apply to breaches of FCA rules in a similar manner to how unenforceability applies under the CCA, noting there would not be a role for court action in this scenario?

Question 19: Do you agree that the government should consider the proportionality of sanctions and ensure that they are relative to the consumer harm caused/potentially caused?

Question 20: What types of breaches of CCA rules do you think that sanctions should attach themselves to and why? For example, should the disqualification sanction be limited to the small sub-set of cases giving rise to unenforceability, where there is the greatest risk of harm?

Question 21: How valuable are the CCA provisions that give rise to a criminal offence? (See Annex 2 for list of CCA provisions that give rise to criminal offences)

Question 22: Are there any provisions that are outdated because the practices they pertain to are not used anymore, or would removing some CCA provisions lead to the return of these practices?

Question 23: What is your view on the merits in increasing the standards of conduct for consumer hire agreements to make them comparable to those for consumer credit?

Question 24: Should the section 17 provisions which enable exemptions from specific elements of the CCA and CONC continue to exist? What would be the impact of these provisions not applying?

Question 25: How can this reform ensure that firms provide information to consumers which is accessible for a wide range of financial literacy and numeracy levels?

Question 26: In what ways should this reform ensure that consumers' mental health and wellbeing is supported throughout the consumer credit product lifecycle?

Question 27: What are the key considerations that the government need to take into account when reforming the CCA

to ensure that Sharia compliant loans can be expressly accommodated? Which areas of the CCA are not currently compatible with Islamic Finance, and how could they be amended to accommodate Sharia compliant loans?

Question 28: If interest rates are prohibited for Islamic Finance products, how does the government ensure that Islamic finance and non-Islamic finance products can be easily compared, given that APR values are used for comparative purposes?

Question 29: Are you aware of any implications of our policy approach on people with protected characteristics?

Question 30: Do you have any views on how the government can mitigate any disproportionate impacts on protected characteristics?

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk