



# CONSUMER CREDIT REGULATIONS TRANSITIONAL ARRANGEMENTS

## Introduction

The Institutes are Designated Professional Bodies under Part XX of the Financial Services and Markets Act (the Act). Previously those arrangements only dealt with investment business activities. However, following a change of the legal and regulatory arrangements, credit-related regulated activities fall within the scope of the Act from 1 April 2014.

On 1 April 2014 The Institute of Chartered Accountants in England and Wales, The Institute of Chartered Accountants of Scotland and The Institute of Chartered Accountants in Ireland (operating as Chartered Accountants Ireland) will cease to hold group consumer credit licences. For a transitional period from 1 April to 30 September 2014, a firm that fell within the scope of the Institutes' group consumer credit licences will be eligible under the following Consumer Credit (Transitional Arrangements) Regulations to undertake credit-related regulated activities which are incidental to the supply of professional accountancy services, and provided they are conducted in accordance with the transitional regulations.

Any firm which is authorised by the Financial Conduct Authority (FCA) must have the relevant permission from the FCA and cannot be within the transitional regulations.

After 30 September 2014 a firm must meet the eligibility requirements of the Designated Professional Body (Consumer Credit) Handbook. An FCA authorised firm will not be able to meet the eligibility requirements as a firm cannot be FCA authorised and within the Part XX arrangements.

Insolvency practitioners are excluded from certain aspects of the new arrangements. An insolvency practitioner, when acting as an insolvency practitioner, and carrying on the credit-related regulated activities of debt adjusting, debt counselling, debt administration or debt collecting will not need permission from the FCA or under the transitional regulations. In addition, a person acting in reasonable contemplation of being appointed as an insolvency practitioner is excluded in relation to debt adjusting, debt counselling and providing credit information services. If the insolvency practitioner is carrying on credit-related regulated activities not covered by the exclusion then consideration will be needed if such activities can be carried out under the transitional regulations or require FCA permission.

(Note: 'acting as an insolvency practitioner' is to be read with section 388 of the Insolvency Act 1986 or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989.)

## Territorial Scope

It should be noted that these regulations only apply in relation to credit-related regulated activities carried on in the United Kingdom.

# Consumer Credit (Transitional Arrangements) Regulations

## 1. Citation and Commencement

- 1.1. These Regulations are made by the Institute of Chartered Accountants in England and Wales in terms of Clause 16 of the Supplemental Royal Charter of 1948, by the Institute of Chartered Accountants of Scotland in terms of Rule 8 and by the Institute of Chartered Accountants in Ireland in accordance with Principal Bye-Law 41.
- 1.2. These Regulations may be cited as the Consumer Credit (Transitional Arrangements) Regulations.
- 1.3. These Regulations shall come into force on 1 April 2014 and shall cease to have effect on 30 September 2014.

## 2. Interpretation and definitions

- 2.1. In these regulations words importing the singular number include the plural number and vice versa. Words importing the masculine gender include the feminine. Headings do not affect the interpretation of these Regulations. These Regulations will be governed by, and interpreted according to, the laws of the country of the appropriate Institute.
- 2.2. Any references to legislation, regulations, bye-laws, rules, standards or other documents, will apply to any re-enactment, re-issue or amendment.
- 2.3. Words and expressions have the meanings given by the Financial Services and Markets Act and the Interpretation Act 1978 unless defined in these Regulations. The definitions in these Regulations take precedence and, unless the context otherwise requires, the following words and phrases have the meanings shown next to them whenever they appear in *italics*.

**Credit-related Regulated Activity**

means certain activities as specified in the Financial Services and Markets Act (Regulated Activities) Order 2001 (as amended) which relate to a regulated credit agreement or a regulated consumer hire agreement as applicable to that activity, or in the case of (vii) to information about a person's financial standing. For the purposes of these Regulations the activities are:

- (i) entering into a regulated credit agreement as lender as set out in article 60B(1);
- (ii) exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement as set out in article 60B(2);
- (iii) credit broking as set out in article 36A;
- (iv) debt adjusting as set out in article 39D(1) and (2);
- (v) debt counselling as set out in article 39E(1) and (2);
- (vi) debt administration as set out in article 39G(1) and (2);
- (vii) providing credit information services as set out in article 89A; and
- (viii) agreeing to carry on a regulated activity so far as relevant to any of the activities in (i) to (vii);

**Consumer Credit Firm**

means any of the following entities when providing a Credit-related Regulated Activity:

- (i) An entity registered under the Institutes' Audit Regulations;
- (ii) An entity licensed under the Institutes' Designated

Professional Body Handbook;

(iii) An entity which is entitled to use the Description “Chartered Accountants” by virtue of the relevant regulations made by an Institute; or

(iv) any other entity that was, before 1 April 2014, within the scope of the Institutes’ group consumer credit licence,

but excluding an entity which is authorised by the FCA (such entity being excluded from these transitional arrangements and therefore required to hold the relevant permissions to undertake credit-related regulated activities from 1 April 2014.)

<b>Institute</b>	means the Institute of Chartered Accountants in England & Wales (ICAEW); or the Institute of Chartered Accountants of Scotland (ICAS); or the Institute of Chartered Accountants in Ireland (ICAI) operating as Chartered Accountants Ireland.
<b>Member</b>	means an individual who is a member of an Institute.
<b>Professional services</b>	means services provided by a consumer credit firm that are subject to the rules of the Institute through the operation of the Charter, Rules, Bye-laws, Regulations, ethical guidance, training requirements, disciplinary codes and other regulations.
<b>Regulated activity</b>	means an activity that falls within the specified activities set out in the Financial Services and Markets Act (Regulated Activities) Order 2001 (as amended).

### 3. Scope and Eligibility

3.1. These Regulations apply to *Consumer Credit Firms*.

3.2. In deciding whether or not a *Consumer Credit Firm* has complied with these Regulations, any guidance issued by or on behalf of the *Institute* from time to time may be taken into account but in the event of any conflict between these Regulations and any guidance, these Regulations will prevail.

### 4. Obligations

4.1. A *Consumer Credit Firm* may only carry on those *credit-related regulated activities* that are permitted under these Regulations unless it is permitted to do so as an appointed representative of a person authorised by the Financial Conduct Authority.

4.2. No *member* may undertake or agree to undertake or hold themselves out as carrying on *credit-related regulated activities* under these Regulations unless they are a principal in or employed by a *Consumer Credit Firm*.

4.3. Where a *Consumer Credit Firm* carries on a *credit-related regulated activity* or connected activity the *Consumer Credit Firm* must comply with

- a the provisions of the Consumer Credit Act 1974 and the related secondary legislation made under that Act remaining in force; and
- b the provisions and guidance set out in Rule 1.3R of the transitional provisions in the Financial Conduct Authority’s Consumer Credit Sourcebook as they were in force immediately before 1 April 2014 in relation to that activity with any appropriate modification to take into account the coming into force of HM Treasury Orders that give effect to the transfer of consumer credit regulation from the Office of Fair Trading to the Financial Conduct Authority.

- 4.4. A Consumer Credit Firm may not provide any credit-related regulated activity to a client unless the credit-related regulated activity provided to that client is incidental to the provision of professional services which are not regulated activities.
- 4.5. A Consumer Credit Firm may not provide any credit-related regulated activity to a client unless:
- a the *credit-related regulated activity* provided to that client arises out of, or is complementary to, one or more *professional services* which are provided at that time (or earlier) to that client and which are not *regulated activities*; or
  - b the *Consumer Credit Firm* has been engaged to provide one or more professional services that are not *regulated activities*, and the *credit-related regulated activity* is complementary to those *professional services*.
- 4.6. A *Consumer Credit Firm* must cooperate with the relevant Institute, its staff and committees.
- 4.7. A *Consumer Credit Firm* must comply with:
- the Professional Indemnity Insurance Regulations of ICAEW;
  - the ICAS Public Practice Regulations, Part 4, Professional Indemnity Insurance; or
  - the ICAI Public Practice Regulations, Chapter 7, Professional Indemnity Insurance;
- as appropriate.
- 4.8. A *Consumer Credit Firm* must inform the *Institute* in writing, within ten business days of the situation arising, if the firm cannot, or expects not to be able to, fulfil one or more of the obligations set out in these Regulations. The notification must state what has happened and the action that the firm proposes to take.
- 4.9. If a *Consumer Credit Firm* fails to comply with these Regulations the *Institute* may take disciplinary action against such *Consumer Credit Firm* or a *member* who is a partner, director or member of the firm.
- 4.10. If a *Consumer Credit Firm* receives commission (or other benefit) because of acting for or giving advice to a client, in the course of *credit-related regulated activities*, it must account for the commission (or other benefit) to the client in writing.
- 4.11. The *Institute* reserves the right to pass information about a *Consumer Credit Firm* to any *Institute* Committee, the Financial Conduct Authority, HM Treasury, other Designated Professional Bodies, Recognised Supervisory Bodies, or Recognised Professional Bodies to enable any such body to discharge its functions, or if otherwise required to do so by law.
- 4.12. A *Consumer Credit Firm* shall ensure that when undertaking a *credit-related regulated activity* with a client, the client is made aware that the *Consumer Credit Firm* is not authorised by the Financial Conduct Authority but is regulated by the *Institute* in respect of these activities.