

# Guidance on credit-related regulated activities



The following provides guidance on the credit-related regulated activities that a consumer credit firm may undertake under the arrangements set out in the DPB (Consumer Credit) Handbook. This guidance also sets out some activities which are not credit-related regulated activities.

## WHAT IS A CONSUMER CREDIT FIRM?

A firm that is eligible under the DPB (Consumer Credit) Handbook to undertake exempt credit-related regulated activities. Excluding any entity that is authorised by the Financial Conduct Authority (FCA).

## WHO IS A CONSUMER CLIENT?

In considering credit-related regulated activities, a consumer client is:

- an individual that is a natural person;
- a partnership consisting of two or three persons of which at least one partner is an individual; or
- an unincorporated body that does not consist entirely of bodies corporate and that is not a partnership.

For the purposes of debt administration only, a consumer client also includes any person including a body of persons corporate.

If the client is not a consumer as defined then the activity is not a credit-related regulated activity.

## WHAT IS CREDIT?

Generally the credit-related regulated activities have to be in respect of a regulated credit or consumer hire agreement (a credit agreement).

Credit includes a cash loan or any other form of financial accommodation.

'Credit agreement' is defined in Article 60B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) as 'an agreement between an individual or relevant recipient of credit ('A') and any other person ('B') under which B provides A with credit of any amount'.

## WHAT ARE CREDIT-RELATED REGULATED ACTIVITIES?

The guidance comprises 3 parts:

1

A flowchart to assist firms in deciding whether an activity can be undertaken within the scope of the DPB (Consumer Credit) Handbook.

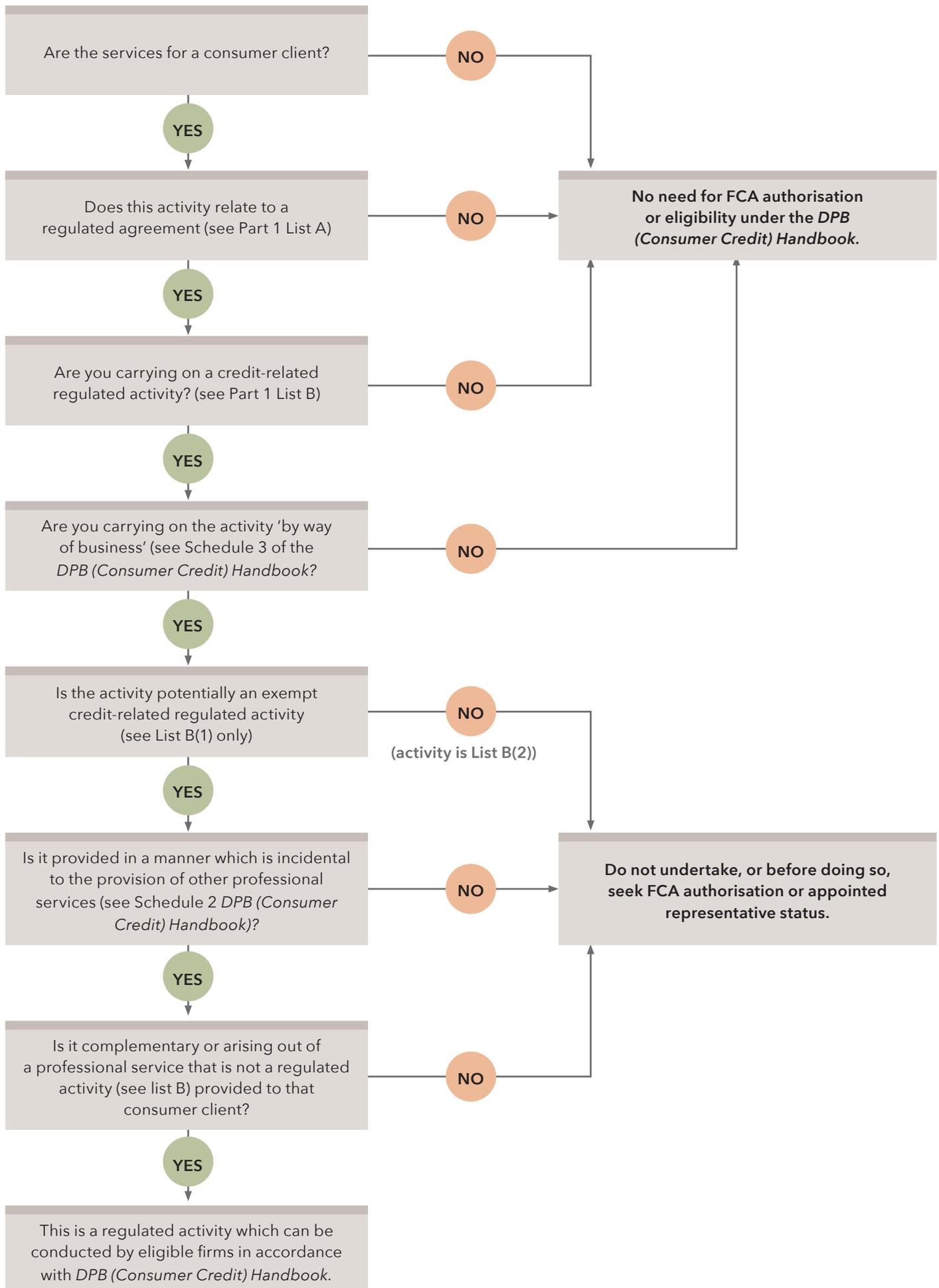
2

Details of when the arrangements a firm has in place for the payment of its fees is or isn't a credit-related regulated activity.

3

Guidance on the activities that may be undertaken by any firm, a consumer credit firm or an FCA authorised firm.

## PART 1: REGULATED ACTIVITES DECISION TREE



## PART 1: LIST A - REGULATED INVESTMENTS

References to the RAO below refer to the relevant section of the Regulated Activities Order.

RAO article	Credit-related regulated agreements
60B	Regulated credit agreement.
60N	Regulated consumer hire agreement.

The RAO lists other regulated investments which are outside the scope of the DPB (Consumer Credit) regime. For more information refer to the *DPB (Investment Business) Handbook*.

## LIST B - REGULATED ACTIVITIES

List B (1): Exempt credit-related regulated activities covered by DPB (Consumer Credit) arrangements.

RAO article	Regulated Activity
36A	Credit broking.
39D(1) and (2)	Debt adjusting.
39E(1) and (2)	Debt counselling.
39G(1) and (2)	Debt administration.
60B(1)	Entering into a regulated credit agreement as lender.
60B(2)	Exercising, or having the right to exercise, the lenders' rights and duties under a regulated credit agreement.
64	Agreeing to carry on a regulated activity.
89A	Providing credit information services.

For a description of each of these activities, please refer to Schedule 1 of the *DPB (Consumer Credit) Handbook*.

List B (2): Other credit-related regulated activities not covered by the DPB (Consumer Credit) arrangements.

RAO article	Regulated Activity
36H	Operating an electronic system in relation to lending.
39F(1) and (2)	Debt collecting.
60N(1)	Entering into a regulated consumer hire agreement as owner.
60N(2)	Exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement.
89B	Providing credit references.
60B(1)(2)	<p>A consumer credit firm may not enter into any transaction as lender with a consumer client in which it:</p> <ul style="list-style-type: none"><li>• provides the client with a cash loan or any other form of financial accommodation;</li><li>• provides a debt management plan to its consumer client</li></ul> <p>Further details are given in regulations 4.12 and 4.15 of the <i>DPB (Consumer Credit) Handbook</i>.</p>

## PART 2: CREDIT-RELATED REGULATED ACTIVITIES IN RELATION TO A FIRM'S FEES

There will be occasions when the arrangements that the firm makes with clients to pay their professional fees will be a consumer credit activity. Some activities in relation to fees are exempt, some are covered by the DPB (Consumer Credit) regime and some require FCA authorisation. With careful planning, firms should be able to structure their fee arrangements to minimise regulation.

Allowing your clients to make fee payments by instalment is potentially exempt if structured correctly. Instalment credit agreements entered into on or since 18 March 2015 where there are 12 payments or less in a 12 month period, with no interest or charges (except for default charges), are exempt and are not regulated credit agreements. To avail of this exemption there must be a written agreement (for example via your engagement letter) entered into with your clients since 18 March 2015.

Example wording is:

'We offer you the facility to pay your professional fees by [monthly][quarterly] instalments. We do not charge any interest or charges [except for default charges]. As these terms have been agreed after 18 March 2015 this instalment agreement is not a regulated credit agreement.'

You will need to obtain your client's agreement to this in writing.

Any instalment agreements entered into before 18 March 2015 are only exempt credit agreements where there are 4 payments or less in a 12 month period, with no interest or charges (except for default charges). In other words, this exemption is more limited.

All other instalment arrangements are regulated and will require a firm to comply with the FCA's *Consumer Credit Sourcebook*. Regulation 4.12 of the *DPB (Consumer Credit) Handbook* limits the transactions that a consumer credit firm can enter into as a lender.

In the following table it does not matter if the instalments are paid by cheque, standing order or direct debit, it is payment by instalment that is the key. The table is divided into the credit-related regulated activities that are listed in the RAO. It is assumed that no other exemptions are applicable. If a consumer credit firm can undertake an activity, then so can a FCA authorised firm, provided it has the appropriate FCA permissions.

ACTIVITY/SCENARIO		Is this a credit-related regulated activity?	Who can undertake this work?
1	Consumer client is referred to a lender who provides the client with funds to pay the firm's fee and then repays the lender by instalments. Interest is charged by the lender.	Yes, this is credit broking.	A consumer credit firm.
2	Consumer client is referred to a lender who pays the fee directly to the firm and the client repays the lender by instalments. Interest is charged by the lender.	Yes, this is credit broking.	A consumer credit firm.
3	Firm renders fee on completion of work with normal payment terms such as 30 days from invoice date.	No.	Any firm.
4	Firm accepts payment of fees by credit card.	No.	Any firm.
5	Client takes longer than the agreed credit terms to pay invoice.	No, 'credit' has been taken but there was no written credit agreement to do so.	Any firm.
6	Firm allows client to pay fees by instalment where no interest or charges (excluding default charges) and there are 12 or less payments in a 12 month period provided the agreement was entered into after 18 March 2015. Instalment credit agreements entered into before 18 March 2015 are only exempt credit agreements where there are 4 payments or less in a 12 month period, with no interest or charges (except for default charges).	No.	Any firm.
7	Firm allows client to pay fees by instalment where no interest is charged and there are more than 12 payments in a 12 month period.		A consumer credit firm – but the FCA Consumer Credit Handbook (CONC) must be applied.
8	Firm allows client to pay fees by instalment and interest is charged.	Yes this is entering into a regulated credit agreement because interest is being charged.	A consumer credit firm – but the FCA Consumer Credit Handbook (CONC) must be applied.
9	Firm charges a late payment charge (fees are paid by instalments – less than 12 payments in a 12 month period).	No, a late payment charge is not interest and still means that the arrangement is exempt.	Any firm.
10	Obtaining a report from a credit information agency as part of client take-on procedures.	No.	Any firm.
11	Taking action to collect firm's own outstanding fees.	No.	Any firm.
12	Consumer client pays monthly instalments over a period of time in advance of being invoiced for fees.	No. Payments in advance are not credit.	Any firm.

## PART 3: CREDIT-RELATED REGULATED ACTIVITIES

The following table lists activities that a firm may undertake and identifies whether it is a credit-related regulated activity by reference to the activities and definitions used in the RAO. It then identifies if the activity can be undertaken by any firm, a consumer credit firm or only by a firm authorised by the FCA.

The table is not intended to be an exhaustive list of potential activities, but is intended to identify the most common ones. These may not match the specific circumstances which a firm may have to consider, and in such circumstances further guidance should be sought.

The table is divided into the credit-related regulated activities that are listed in the RAO. If a consumer credit firm can undertake an activity, then so can a FCA authorised firm, provided that the firm has the appropriate FCA permissions.

ACTIVITY/SCENARIO		Is this a credit-related regulated activity?	Who can undertake this work?
<b>CREDIT BROKING</b>			
1	Client is referred to a lender for payment of fees within a 12 month period and no interest is charged.	Yes, credit broking. Whilst the underlying loan agreement is exempt (being instalment credit within 12 instalments and no interest) the activity of credit broking is still a regulated activity.	A consumer credit firm.
2	Consumer client is referred to a lender for a hire purchase loan.	Yes, a hire purchase loan is a regulated credit agreement unless another exemption applies.	A consumer credit firm.
3	Consumer client is referred to a peer to peer lending platform.	This will be credit broking if the peer to peer loans are credit agreements as the lender is acting by way of business.	A consumer credit firm.
<b>DEBT ADJUSTING</b>			
4	Negotiating terms with creditors on behalf of a consumer client for settlement of the debt due under a specific credit agreement or consumer hire agreement.	Yes.	A consumer credit firm.
<b>DEBT COUNSELLING</b>			
5	Providing advice to a consumer client about the liquidation of a debt due under a specific regulated credit or consumer hire agreement.	Yes, this is debt counselling.	A consumer credit firm.
<b>DEBT ADMINISTRATION</b>			
6	Taking steps to perform duties or exercise rights under a specific credit or consumer hire agreement on behalf of a creditor or owner (but not to debt collecting).	Yes, this is debt administration.	A consumer credit firm.
<b>DEBT COLLECTING</b>			
7	All steps connected with the collecting of debts owed to others, when the debts are due under specific credit or consumer hire agreements.	Yes, this is debt collecting.	A FCA authorised firm.
<b>ENTERING A REGULATED CREDIT AGREEMENT AS LENDER</b>			
8	Entering into a credit agreement with the client.	Yes, this is entering a regulated credit agreement as lender. A firm would normally only do this in the context of arrangements made with a consumer client to pay its fees, see Part 2 of this helpsheet. Otherwise the firm should consider if such an arrangement is permitted under the Code of Ethics. Also refer to regulation 4.12 of the DPB (Consumer Credit) Handbook which restricts the activities that a firm can undertake as lender.	A consumer credit firm or a FCA authorised firm.

ACTIVITY/SCENARIO		Is this a credit-related regulated activity?	Who can undertake this work?
<b>CONSUMER HIRE</b>			
9	Hiring, renting out or leasing goods to clients.	Yes, this is consumer hire, provided the hire period is capable of exceeding 3 months.	A FCA authorised firm.
<b>CREDIT INFORMATION SERVICES</b>			
10	Seeking to obtain information on behalf of a consumer client about his financial standing such as his credit rating.	Yes, this is a credit information service.	A consumer credit firm.
11	On behalf of a consumer client seeking to amend information held by a credit information agency about his financial standing or to prevent that agency holding or disclosing such information.	Yes, this is a credit information service.	A consumer credit firm.
12	Providing information about credit information agencies or directing clients to free information that is publicly available, for the Information Commissioner's website.	No.	Any firm.
<b>PROVIDING CREDIT REFERENCES</b>			
13	Client has requested that the firm provides a reference in support of a mortgage or other loan application.	No.	Any firm.
14	Firm collects information to provide credit references on consumers to third parties.	Yes, provided this is the firm's primary business.	A FCA authorised firm.
<b>OTHER</b>			
15	Client has requested general advice from the firm on the terms of a regulated credit or consumer hire agreement.	No, provided the advice does not amount to debt adjusting or debt counselling.	Any firm.
16	Client has requested the firm to produce cash flows (or similar) to support an application for a regulated credit or consumer hire agreement.	No.	Any firm.
17	Holding clients' money	No.	Any firm.