

SCOPE PROVISIONS OF THE CONSUMER CREDIT ACT REGIME – WHERE ARE THEY TO BE FOUND IN THE FSMA REGIME?

The table below lists all the key provisions of the Consumer Credit Act 1974 and relevant secondary legislation under that Act which relate to the scope of regulation and specifies where the analogous provision is to be found in the Financial Services and Markets Act 2000 or secondary legislation made under it. The last column notes any significant modifications which have been made to the provision.

Relevant definitions:

CCA: Consumer Credit Act 1974

RAO: The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, as amended by the draft RAO (Amendment) Order

1989 Order: Consumer Credit (Exemption Agreements) Order 1989

2007 Order: Consumer Credit (Exempt Agreements) Order 2007

CCA provision	FSMA provision	Comment
Section 8 (consumer credit agreements): definition of “consumer credit agreement” and “regulated agreement”	See definitions of “credit agreement” and “regulated credit agreement” in article 60L of the RAO	The expanded definition of “individual” in the CCA has been replaced by the definition of “relevant recipient of credit” in article 60L of the RAO
Section 9 (meaning of credit): meaning of “credit” and ancillary matters	See definition of “credit” in article 60L of the RAO; article 60L(13) deals with credit not provided in sterling (section 9(2)); article 60L(12) deals with treatment of hire-purchase agreements (section 9(3))	Section 9(4) CCA not carried forward as not considered necessary or appropriate
Section 10 (running-account credit and fixed-sum credit)	See definitions of “running-account credit” and “fixed-sum credit” in article 60L of the RAO	Minor drafting changes have been made including use of “borrower” and “lender” (in line with existing provisions of FSMA) rather than “debtor” and “creditor”. Section 10(2) and (3) not carried forward in HMT legislation as not relevant to provision made in that legislation
Section 11 (restricted-use credit and unrestricted-use credit)	See definitions of “restricted-use credit agreement” and “unrestricted use credit agreement” in article 60L(1) of the RAO and article 60L(2)	
Section 12 (debtor-creditor-supplier agreements)	See definition of “borrower-lender-supplier agreement” in article 60L of the RAO	Minor drafting changes made to reduce cross references; terminology has been modified (“lender” for “creditor” etc.)

Section 13 (debtor-credit agreements)	See definition of “borrower-lender agreement “ in article 60L of the RAO	Minor drafting changes made to reduce cross references; terminology has been modified (“lender” for “creditor” etc.)
Section 14 (credit-token agreements)	-	Not carried forward in HMT legislation as not relevant to provision made in that legislation
Section 15 (consumer hire agreements): definition of “consumer hire agreement” and “regulated consumer hire agreement”	See the definition of “consumer hire agreement” and “regulated consumer hire agreement” in article 60N of the RAO	The expanded definition of “individual” in the CCA has been replaced by the definition of “relevant recipient of credit” in article 60L of the RAO
Section 16 (1) to (4) (exempt agreements where creditor is specified or of a description specified by Secretary of State) + article 2 of 1989 Order	See article 60E(1) to (4) and (7) of the RAO.	FCA, rather than Secretary of State, to maintain list of persons/class of persons to whom exemption applies so provisions of 1989 Order not carried forward in HMT legislation. This reflects the technical nature of the provision and the need to be able to amend it easily. Some terminology (e.g. “land mortgage”) aligned with FSMA terminology
Section 16(5)(a) + article 3 of 1989 Order (exemption by reference to number of payments to be made)	See article 60F of the RAO	Minor changes to drafting have been made e.g. not thought necessary to carry forward elaboration on what “payment” means in art.3 of the 1989 Order
Section 16(5)(b) + article 4 of the 1989 Order (exemption by reference to the total charge for credit)	See article 60G of the RAO	Minor changes to drafting have been made
Section 16(5)(c) + article 5 of the 1989 Order (exemption by reference to connection with a country outside the UK)	See article 60C(8) to (10)	
Section 16(6) + art. 6 of the 1989 Order (exemption in relation to consumer hire agreements linked to metering equipment)	See article 60P of the RAO	
Section 16(6A), (6B) (exemption for housing authorities)	See article 60E(5) and (7)	
Section 16(6C)-(6E) (exemption for regulated mortgage contracts, home purchase plans)	See article 60C(2)	

Section 16A (exemption in relation to high net worth individuals) + arts.2-5 of 2007 Order	See articles 60H and 60Q of the RAO	FCA, rather than Secretary of State, to make provision in rules as to the declaration and statement to be made by the individual. This reflects the technical nature of the provision and the need to be able to amend it in appropriate cases
Section 16B (exemption relating to businesses) and art.6 of 2007 Order	See article 60C(3) to (7) and 60O of the RAO.	FCA, rather than Secretary of State, to make provision in rules as to the declaration to be made by the borrower/hirer. This reflects the technical nature of the provision and the need to be able to amend it in appropriate cases
Section 16C (exemption relating to investment properties)	See article 60D of the RAO	
Section 20 (total charge for credit)	See article 60M of the RAO	FCA, rather than Secretary of State, to make provision in rules as to the total charge for credit. This reflects the technical nature of the provision and the need to be able to amend it in appropriate cases
Section 21 (businesses needing a licence)	“business” test reflected in section 22 of FSMA. Position of local authorities addressed in amendment to para.47 of Schedule to the Exemption Order.	Business test being applied in most cases is FSMA “by way of business” test rather than CCA “carrying on a business so far as it comprises or relates to” the provision of credit etc. Section 21(3) CCA not carried forward as no longer relevant. New exclusion also included to avoid overlap with the regulation of P2P platforms (see article 36A(2))
Section 145(1)(a), (2) to (4) and 146(5) and (5A): definition of credit brokerage	See articles 36A to 36E of the RAO	Credit mediation activities brought within the scope of the concept of “credit broking”
Section 145(1)(b), (5), 146(5B) and (6): definition of debt-adjusting	See article 39D of the RAO	
Section 145(1)(c), (6): 146(5C), (6): definition of debt-counselling	See article 39E of the RAO	
Section 145(1)(d), (7), 146(6): definition of debt-collecting	See article 39F of the RAO	

Section 145(1)(da), (7A), 146(7): definition of debt administration	See article 39G of the RAO	
Section 145(1)(db), (7B) to (7D): definition of credit information services	See article 89A of the RAO	
Section 145(1)(e), (8): definition of credit reference agency	See article 89B of the RAO	Scope of regulation has been narrowed – see article 89B(2) which is new. New exclusion also included to avoid overlap with the regulation of P2P platforms (see article 89B(3))
Section 146(1) to (5) (exemptions in relation to lawyers and contentious business)	-	Not carried forward. Part 20 of FSMA will permit members of certain professions to carry on regulated activities without permission in certain cases

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