

Quarterly Consultation

No 28

Consultation Paper

CP20/7

June 2020

How to respond

The Financial Conduct Authority invites comments on this Consultation Paper.

Comments should reach us by 5 July 2020 for Chapter 2 and 3, and 31 July 2020 for Chapter 4.

Comments may be sent by electronic submission using the form on the FCA's website at fca.org.uk/cp20-07-response-form.

Alternatively, please send comments in writing to:

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If you are responding in writing to several chapters please send your comments to Ayesha Dayaji in the Handbook Team, who will pass your responses on as appropriate.

All responses should be sent to:

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1 Overview

Chapter No	Proposed changes for consultation	Consultation Closing Period
2	Rule clarification to confirm the ability of the FSCS to declare in default firms and successors subject to the proposed new moratorium under the Insolvency Act 1986.	One month
3	Bounce Back Loan Scheme – consequential amendments to CONC 7.	One month
4	Changes to the OPBAS Sourcebook for Professional Body Anti-Money Laundering Supervisors	Two months

2 Ability of the FSCS to declare in default firms and successors subject to the proposed new moratorium under the Insolvency Act 1986

Introduction

- 2.1** On 20 May 2020, the Government announced that it had introduced the Corporate Insolvency and Governance Bill in Parliament, which will put in place a series of measures to amend insolvency and company law to support business to address the challenges resulting from the impact of coronavirus (COVID-19)¹. The proposed changes include an amendment to the Insolvency Act 1986 to introduce a new moratorium for certain companies² which are insolvent or likely to become insolvent and where rescue as a going concern is a reasonable prospect ("the new moratorium"). The new moratorium is intended to give companies breathing space from creditors enforcing their debts for a period of time whilst they seek a rescue or restructure.
- 2.2** This expected new legislation has implications for the rules that set the framework for the Financial Services Compensation Scheme (FSCS).
- 2.3** FSCS is the UK's statutory compensation scheme of last resort. FSCS's protection covers deposits, insurance policies, investment business, insurance broking, home finance advice and debt management and it plays a critical role in protecting consumers and ensuring they can have confidence in the financial services market. FSCS can compensate eligible individuals (and some businesses) that are, or were, customers of an authorised financial services firm (or successor) that has been declared "in default". The Financial Services Compensation Scheme Limited operates and administers the Financial Services Compensation Scheme and generally declares the relevant firm or successor to be in default. For the purposes of this consultation, we are using the abbreviation of FSCS to refer to both the Financial Services Compensation Scheme and the Financial Services Compensation Scheme Limited, as appropriate.

¹ Corporate Insolvency and Governance Bill 2019-21

² The new moratorium will apply to 'eligible companies' which are set out in Schedule 1 to the Corporate Insolvency and Governance Bill (which proposes to add a new Schedule ZA1 to the Insolvency Act 1986). Under the Bill, certain companies will be excluded from being eligible companies, including insurance companies, banks, investment firms, electronic money institutions, payment institutions and recognised investment exchanges.

- 2.4** Following the proposed changes to the Insolvency Act 1986, we propose to amend the Compensation sourcebook part of the FCA's Handbook (COMP) to make it clear that in accordance with those rules³ the FSCS can declare a firm or a successor that is subject to the new moratorium to be in default and can therefore pay compensation to eligible customers of the firm or successor, if it considers it appropriate to do so. This will help ensure that the FSCS is able to pay compensation to protect customers of the firm or successor from financial losses they may have suffered even when a firm is subject to the new moratorium.
- 2.5** We are requesting feedback on the proposed changes to COMP by 5 July 2020. The limited time for responses is to ensure that, if appropriate, any changes to COMP apply as soon as possible after the new moratorium is introduced. We will consider the feedback to this consultation and publish our response.

Summary of proposal

- 2.6** We are responsible for determining the framework for both the extent of protection that the FSCS will provide and how it is funded, for the financial services activities for which we have responsibility. The relevant rules are primarily set out in COMP. Chapter 6 of COMP sets out the types of person (ie a firm or successor) against whom a claimant must have a claim in order to be eligible for compensation and when those persons are "in default".
- 2.7** COMP 6.3.3R sets out that the FSCS may determine a relevant person (that is, a firm) to be in default if it is satisfied that a certain type of protected claim exists, and the relevant person is the subject of one or more stated proceedings in the United Kingdom (or of equivalent or similar proceedings in another jurisdiction). The proceedings are:
- 1.** the passing of a resolution for a creditors' voluntary winding up;
 - 2.** a determination by the relevant person's Home State regulator that the relevant person appears unable to meet claims against it and has no early prospect of being able to do so;
 - 3.** the appointment of a liquidator or administrator, or provisional liquidator or interim manager;
 - 4.** the making of an order by a court of competent jurisdiction for the winding up of a company, the dissolution of a partnership, the administration of a company or partnership, or the bankruptcy of an individual;
 - 5.** the approval of a company voluntary arrangement, a partnership voluntary arrangement, or of an individual voluntary arrangement.
- 2.8** COMP 6.3A.3R is the equivalent provision for determining successors to be in default.

³ Both the FCA and PRA make rules relating to the FSCS. The PRA's compensation rules deal with claims for deposits and under contracts of insurance and the FCA's compensation rules set out in COMP deal with other types of claim: see the [Introduction to COMP](#) and [COMP 1](#) for more detail. This consultation only relates to companies to which the FCA's compensation rules apply.

- 2.9** Although other rules are in place in relation to declaring firms and successors in default (in particular, COMP 6.3.2R and COMP 6.3A.2R which give the FSCS a general power to declare a firm and a successor (respectively) in default if the FSCS considers that the firm or successor is unable or likely to be unable to satisfy protected claims against it), the FSCS will typically base its decision to declare a firm or successor that is subject to an insolvency process in default in accordance with COMP 6.3.3R (for firms) or COMP 6.3A.3R (for successors).
- 2.10** We propose to add the new moratorium to the list of proceedings listed at COMP 6.3.3R and COMP 6.3A.3R (as set out at Appendix 2). This will make clear the FSCS's ability to declare a firm or successor subject to this process in default, if considered appropriate by the FSCS. We also propose to clarify that COMP 6.3.3R and COMP 6.3.4R (which enable the FSCS to declare a firm in default in the circumstances specified in those rules), and similar provisions at COMP 6.3A.3R and COMP 6.3A.4R for successors, do not limit the FSCS's power under COMP 6.3.2R and 6.3A.2R respectively.
- 2.11** The above changes will clarify FSCS's ability to declare a firm or successor that is subject of a moratorium in default, notwithstanding FSCS's ability to declare such a company in default under other existing rules (such as COMP 6.3.2R and COMP 6.3A.2R).
- 2.12** It is envisaged that some companies which enter the new moratorium will be rescued. However, the FSCS may nonetheless consider, in some cases, that it is appropriate to declare a firm or successor that is subject to the new moratorium in default in order to protect consumers from harm.

Q2.1: Do you agree with the proposed changes to COMP 6.3.3R and COMP 6.3A.3R (as set out at Appendix 2) to make clear the ability of the FSCS to declare certain firms and successors that are subject to the new moratorium "in default" if appropriate? Please provide reasons for your answer.

Q2.2: Do you agree with the proposed new guidance in COMP 6.3.4AG and COMP 6.3A.4AG (as set out at Appendix 2) to clarify that COMP 6.3.3R and COMP 6.3.4R, and COMP 6.3A.3R and COMP 6.3A.4R for successors, do not limit the FSCS's power under COMP 6.3.2R and COMP 6.3A.2R respectively? Please provide reasons for your answer.

Cost benefit analysis

- 2.13** Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when making rules unless, in accordance with section 138L, we believe that there will be no increase in costs or that the increase will be of minimal significance. Furthermore, under section 138I(8), we are not required to publish an estimate of costs and benefits if these cannot be reasonably estimated or it is not reasonably practicable to estimate them.

2.14 We are satisfied that the proposed amendments do not increase costs to firms or consumers or that any increase will be of minimal significance. This is because we consider that the FSCS already has the power to declare firms and successors subject to the new moratorium in default under current rules (in particular, COMP 6.3.2R and COMP 6.3A.2R). As to the proposed COMP 6.3.4AG and COMP 6.3A.4AG, they make express the effect of the rules in COMP 6.3 and COMP 6.3A respectively.

2.15 Furthermore, given that (i) we consider that FSCS can already declare firms and successors subject to the new moratorium in default if the changes to COMP 6.3.3R and COMP 6.3A.3R did not proceed; and (ii) we do not know how many companies will apply to enter the new moratorium, we are not able to quantify what impact the rule change will have on the number of firms or successors that the FSCS declares in default, or any impact on the compensation that the FSCS pays out.

Impact on mutual societies

2.16 Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons.

2.17 We do not expect the proposals in this paper to have a significantly different impact on mutual societies.

Compatibility statement

2.18 When consulting on new rules, we are required by section 138I(2) FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B FSMA. We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.

2.19 We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. The amendments advance our operational objectives of securing an appropriate degree of consumer protection and promoting market integrity. We are satisfied that any burdens or restrictions are proportionate to the expected benefits.

Equality and diversity

2.20 We have considered the equality and diversity issues that may arise from the proposed amendments. We do not think that the proposals in this chapter adversely impact any of the groups with protected characteristics under the Equality Act 2010, ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment. We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

3 BBLs – Amendments to CONC 7

Introduction

- 3.1** On 4 May 2020, the Bounce Back Loan Scheme (BBLs) was formally launched by the Government to offer small businesses facing significant financial difficulties additional support through the Covid-19 crisis.
- 3.2** Due to amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) made by the Financial Services and Markets Act 2000 (Regulated Activities) (Coronavirus) (Amendment) Order 2020, certain lending through the BBLs that would otherwise have been under regulated credit agreements will instead be under exempt agreements. However, the effect of the amendments also means that the taking of steps by the lenders to procure the payment of debts due under these exempt agreements will constitute regulated debt collecting.
- 3.3** In light of these amendments to the RAO, we propose to amend Chapter 7 (Arrears, default and recovery (including repossessions)) of the Consumer Credit sourcebook (CONC) to ensure that the chapter applies to lenders in relation to credit agreements that are exempt agreements by virtue of the amendments to the RAO. Had the amendments not been made, these credit agreements would have been regulated credit agreements and therefore subject to the CONC 7 provisions.
- 3.4** We understand that firms lending under BBLs should be aware that changes to CONC 7 are being proposed as part of the overall package of regulation that supports the scheme.

Summary of proposals

- 3.5** We propose to amend CONC 7 to ensure broadly that the chapter applies in relation to lenders under credit agreements that are exempt agreements by virtue of the amendments made to the RAO in the same way that the chapter would have applied had they been regulated credit agreements.
- 3.6** The draft instrument makes the following proposed changes:
- Extends the application of CONC 7.12 (Lenders' responsibilities in relation to debt) to firms in respect of activity that would be consumer credit lending but for the changes made to the RAO; and
 - For the purposes of CONC 7, expands the expression regulated credit agreement to include a credit agreement that is an exempt agreement by virtue of the amendments made to the RAO, except in a limited number of instances.

Q3.1: Do you have any comments on our proposals to make amendments to CONC 7?

Cost benefit analysis

- 3.7** Sections 138I(2)(a) of the FSMA requires us to publish a CBA when proposing draft rules. Section 138L(3) of FSMA provides that Section 138I(2)(a) does not apply where we consider that there will be no increase in costs, or the increases will be of minimal significance.
- 3.8** Having assessed the changes proposed in this chapter, we believe this exemption applies to the proposals in this chapter. Had the changes to the RAO referred to in this chapter not been made, the credit agreements that are exempt by virtue of the amendments made to the RAO would have been regulated credit agreements in relation to which CONC 7 would have applied. The changes proposed are intended to ensure that CONC 7 applies in this way.
- 3.9** Authorised firms lending under the exempt agreements through BBLs are likely already to hold books comprising a significant number of regulated credit agreements in relation to which they are required to comply with CONC 7. Accordingly, the firms should already be aware of the provisions in CONC 7 and have in place policies and procedures to comply with these. We also note that the nature of the obligations to which firms would be subject if the proposed amendments to CONC 7 are made are not particularly onerous. Accordingly, we believe that the proposed changes will lead to no increase in costs or that any increases will be of minimal significance.

Q3.2: Do you have any comments on our assessment that there will be no increase in costs from the changes described in this chapter?

Impact on mutual societies

- 3.10** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons.
- 3.11** We do not expect the proposals in this paper to have a significantly different impact on mutual societies.

Compatibility statement

- 3.12** When consulting on new rules, we are required by section 138I(2)(d) FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B FSMA. We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.

- 3.13** We are satisfied that the proposed amendment is compatible with our objectives and regulatory principles. The amendment advances our operational objectives of securing an appropriate degree of consumer protection, such as the fair collection of loans. The amendment is part of the package of measures required to deliver the BBLS. We are satisfied that there are no additional burdens placed on firms in complying with the amendment, or any additional burdens are minimal, and the amendment is therefore proportionate.

Equality and diversity

- 3.14** We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, to and foster good relations between people who share a protected characteristic and those who do not.
- 3.15** We do not believe that the proposals in this chapter adversely impact any of the groups with protected characteristics specified in legislation. We will continue to consider the equality and diversity implications of the proposals during the consultation period, and, if necessary, will revisit them when we publish the final rules.
- 3.16** We welcome any feedback to this chapter of the consultation on our equality and diversity assessment.

4 Changes to the Sourcebook for professional body anti-money laundering supervisors – criminality checks

Introduction

- 4.1** The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (the 'OPBAS Regulations') give the FCA powers to supervise professional body anti-money laundering supervisors ('self-regulatory organisations') in relation to compliance with the supervision requirements set out in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. In July 2017, the FCA consulted on a Sourcebook for professional body supervisors (the 'Sourcebook') which sets out its expectations for compliance with these requirements. The Sourcebook took effect on 1 February 2018. Supervision is undertaken by the Office for Professional Body Anti-Money Laundering Supervision (OPBAS).
- 4.2** We are consulting on an addendum to the Sourcebook. This relates to Regulation 26 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the 'MLRs'), as amended by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 on 10 January 2020. This relates to the approval process for a person to be a beneficial owner, officer or manager of a relevant firm or a relevant sole practitioner. We seek to set out our expectations in relation to compliance with Regulation 26 due to various ways it may be interpreted. This supplements Chapter 5.3a of the Sourcebook which refers to professional body supervisors in their 'gatekeeper role'.

Summary of proposals

- 4.3** Regulation 26 seeks to prevent relevant persons convicted of relevant offences from holding a function as a beneficial owner, officer, manager ('BOOM') or sole practitioner ('SP') in certain sectors. It requires applications for approval to include 'sufficient information' to enable a professional body supervisor ('PBS') to determine whether the person concerned has been convicted of a relevant offence. Applications must be made in such manner as a PBS may direct and include such other information it may reasonably require. A PBS must grant such an application unless the applicant has been convicted of a relevant offence.
- 4.4** Regulation 46 MLRs requires a PBS to take 'necessary measures' for the purpose of securing compliance by its own sector with the MLRs, and specifically applies in securing that the requirements in Regulation 26(7) are met. In this consultation, the expectations proposed take Regulation 46 into account, and reference to an applicant refers to the person to whom the application relates (regardless of whether it is submitted by another on their behalf).

4.5 Regulations 26 and 46 of the MLRs were amended on 10 January 2020 by the amendment regulations. This included the requirement for applications to include 'sufficient information' to enable a PBS to determine whether the person concerned has been convicted of a relevant offence. The explanatory memorandum to the amendment regulations states this was to address concerns about supervisors relying solely on self-certification. This amendment was bolstered by the amended requirement in Regulation 46 for a PBS to take 'necessary measures' specifically for securing that the requirements in Regulation 26(7) are met. Although regulations do not define 'sufficient information' as a criminality check by a disclosure agency, OPBAS considers such checks to reflect the default expectation. Sources upon which this approach is based include HMT's Impact Assessment of the MLRs dated 13 April 2017 which assessed costs and benefits based on disclosure agency fees. We acknowledge that there are circumstances where a criminality check by a disclosure agency may not be possible and we seek to address these in this consultation. We considered whether self-declaration by an applicant could meet the definition of 'sufficient information'. However, we considered that this would be inconsistent with HMT's clear policy aim of Regulation 26.

4.6 We also propose it is necessary and proportionate to expect the criminality status of a BOOM/SP to be monitored to ensure that only those without relevant convictions are regarded as being approved by a PBS. Without ongoing monitoring, a BOOM/SP may be considered to remain approved by a PBS for many years despite having received a relevant conviction. We consider this would place undue reliance on the safeguard that a BOOM/SP is under an obligation to report a relevant conviction to their PBS.

4.7 A PBS may be presented with a number of considerations when processing an application for approval under Regulation 26 which we seek to address. We consider 'sufficient information' to:

- a) exclude acceptance of a 'self-declaration',
- b) mean, by default, a criminal record check by the Disclosure and Barring Service (DBS), Disclosure Scotland (DS), or Access Northern Ireland (AccessNI), and
- c) include evidence of UK residency within the previous 5 years (from the date of the application). This is to ensure that a DBS check from the UK, as opposed to another country, is appropriate. A PBS may take into account existing information it holds on a member.

Q4.1: Do you agree with our expectations of the term 'sufficient information'? If not, why?

4.8 We understand that applicants who are residing or have resided overseas may not be able to obtain an equivalent DBS/DS/AccessNI criminality check. Where the applicant has been resident overseas for 12 months or more (whether continuously or in total) in the past 5 years (from the date of the application) we expect PBSs to require that applicants take robust measures to obtain an equivalent check to cover this period. If they are satisfied that such measures have been taken, and no criminality check is produced, this expectation shall apply to alternative information the PBS will reasonably expect the applicant to source. After such efforts have been exhausted, 'statutory declarations' may be accepted as a bare minimum.

Q4.2: Do you agree with our expectations regarding applicants who are residing or have resided overseas? If not, why?

4.9 We recognise that a criminality check may be obtained by an applicant, or with the applicant's permission, by the firm, PBS (or Inn of Court). We consider a PBS to have discretion in this regard. For example, a PBS may require the applicant to obtain the criminality check. We also do not think it unreasonable that a PBS permits firms to oversee the process. Whichever approach the PBS takes, we would expect (as a minimum) the application of a risk-based approach to sample checking in the monitoring of criminality checks. To achieve the aim of Regulation 26, we consider that this must include ongoing monitoring. We consider it would be good practice to require that a criminality check is renewed within 5 years of the date it was last generated. As a minimum, we would expect a PBS to require such renewal on a risk-based approach. Subject to this, a PBS may accept a criminality check that had previously been submitted to a different PBS.

Q4.3: Do you agree with our expectations regarding the obligation and approach to the monitoring of criminality checks? If not, why?

4.10 We consider that the requirement for criminality checks in Regulation 26 applies to all existing BOOMs and relevant SPs, as well as to all new such applicants.

Q4.4: Do you agree with our expectation that the requirements in Regulation 26 are considered to apply to all existing BOOMs and relevant SPs? If not, why?

4.11 There may be cases where an existing BOOM or relevant SP has chosen not to apply for approval. This presents a risk of such a person with relevant convictions operating 'under the radar' in a seemingly more junior role. We would expect a PBS to factor this into their supervision of the relevant firm or SP.

Q4.5: Do you agree with our expectation that a PBS factors into its supervision the fact that an existing BOOM or relevant SP has chosen not to apply for approval under Regulation 26? If not, why?

Q4.6: Are there any other matters you wish to be considered for guidance on compliance with Regulation 26?

Cost benefit analysis

4.12 FSMA mandates the provision of CBA for new rules but not for guidance. However, it is the FCA's policy to produce a CBA for general guidance about rules where the guidance be in effect prescriptive or prohibitive such that significant costs may be incurred. These proposals do not constitute guidance on FCA rules but we have set out below our view on the cost and benefit of these proposals. These reflect those set out by HM Treasury (HMT) when it carried out an assessment of 'monetised and non-monetised costs and benefits' of criminality checks in its *Impact Assessment of the Money Laundering Regulations 2017* dated 13 April 2017. To achieve the aim of Regulation 26, we consider that this must include ongoing monitoring and this enables delivery of the expected benefits from the proposals. We have proposed that it would be good practice for PBSs to require that a criminality check is renewed within 5 years of the date it was last generated. Although the proposals are neither prescriptive nor

create significant costs, we have included for illustrative purposes only an indication of the types of costs that may arise. Based on the figures and methodology in HMT's Impact Assessment in 2017 (to enable broad comparison) this would result in an additional annual cost of £760,000 to all relevant firms and businesses.

- 4.13** According to HMT's Impact Assessment, 64,000 audit, external accountant and tax advisor businesses and 12,000 notaries and independent legal professional will be affected, with 2 people from each business needing to undergo a criminality test at a cost of £25 per BOOM/SP. We would expect a PBS to require such renewal on a risk-based approach, therefore the estimates represent an upper limit of expected costs as some PBSs may decide that it is proportionate for criminality checks to be undertaken less frequently. The estimates would also be lower as disclosure agency fees decreased in 2019 to £23 in England and Wales (DBS) and £18 in Northern Ireland (AccessNI).

Compatibility statement

- 4.14** This consultation sets out guidance for PBS for the purposes of the exercise of the functions which is conferred on the FCA under the OPBAS Regulations. The responsibilities given to the FCA under the OPBAS Regulations sit outside our main responsibilities under FSMA. We are therefore not required to prepare a compatibility statement in relation to those responsibilities under FSMA. However, under the OPBAS Regulations, the FCA is required to have regard to the importance of ensuring compliance by PBSs of any requirement imposed on them by the MLRs. We are satisfied that this proposal is compatible with this obligation.
- 4.15** Under the Legislative and Regulatory Reform Act 2006 (LRRRA), we are also required to have regard to a number of high level principles in relation to some of our regulatory functions; and to have regard to a Regulators' Code when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). The FCA has had regard to the LRRRA principles and the Regulators' Code. We are satisfied that in giving the guidance proposed in this consultation we are acting in a way which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

Equality and diversity

- 4.16** We have considered the equality and diversity issues that may arise from the proposed amendments. We do not think that the proposals in this chapter adversely impact any of the groups with protected characteristics under the Equality Act 2010, ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment. We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final guidance. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

Annex 1

Abbreviations used in this paper

AccessNI	Access Northern Ireland
Amendment regulations	The Money Laundering and Terrorist Financing (Amendment) Regulations 2019
BBLs	Bounce Back Loan Scheme
BOOM	beneficial owner, officer or manager
CBA	Cost benefit analysis
COMP	Compensation rules
CONC	Consumer Credit sourcebook
DBS	Disclosure and Barring Service
DS	Disclosure Scotland
FCA	Financial Conduct Authority
FSCS	Financial Services Compensation Scheme or the Financial Services Compensation Scheme Limited, as appropriate
FSMA	Financial Services and Markets Act 2000
HMT	HM Treasury
MLRs	The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
OPBAS	Office for Professional Body Anti-Money Laundering Supervision
OPBAS Regulations	The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017
PBS	professional body supervisor
RAO	Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544
Sourcebook	Sourcebook for professional body supervisors
SP	relevant sole practitioner



We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Appendix 1: List of questions

- Q2.1:** Do you agree with the proposed changes to COMP 6.3.3R and COMP 6.3A.3R (as set out at Appendix 2) to make clear the ability of the FSCS to declare certain firms and successors that are subject to the new moratorium “in default”, if considered appropriate by FSCS? Please provide reasons for your answer.
- Q2.2:** Do you agree with the proposed new guidance in COMP 6.3.4AG and COMP 6.3A.4AG (as set out at Appendix 2) to clarify that COMP 6.3.3R and COMP 6.3.4R, and COMP 6.3A.3R and COMP 6.3A.4R for successors, do not limit the FSCS’s power under COMP 6.3.2R and COMP 6.3A.2R respectively? Please provide reasons for your answer.
- Q3.1:** Do you have any comments on our proposals to make amendments to CONC 7?
- Q3.2:** Do you have any comments on our assessment that there will be no increase in costs from the changes described in this chapter?
- Q4.1:** Do you agree with our expectations of the term ‘sufficient information’? If not, why?
- Q4.2:** Do you agree with our expectations regarding applicants who are residing or have resided overseas? If not, why?
- Q4.3:** Do you agree with our expectations regarding the obligation and approach to the monitoring of criminality checks? If not, why?
- Q4.4:** Do you agree with our expectation that the requirements in Regulation 26 are considered to apply to all existing BOOMs and relevant SPs? If not, why?
- Q4.5:** Do you agree with our expectation that a PBS factors into its supervision the fact that an existing BOOM or relevant SP has chosen not to apply for approval under Regulation 26? If not, why?
- Q4.6:** Are there any other matters you wish to be considered for guidance on compliance with Regulation 26?

Appendix 2: Financial Services Compensation Scheme (Determination of Default) Instrument 2020

**FINANCIAL SERVICES COMPENSATION SCHEME (DETERMINATION OF
DEFAULT) INSTRUMENT 2020**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 213 (The compensation scheme); and
 - (5) section 214 (General).
- B. The rule-making provisions listed above are specified for the purposes of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on *[date]*.

Amendments to the Handbook

- D. The Compensation sourcebook (COMP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Financial Services Compensation Scheme (Determination of Default) Instrument 2020.

By order of the Board
[date]

Annex

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text.

6 Relevant persons and successors in default

...

6.3 When is a relevant person in default?

...

6.3.3 R The *FSCS* may determine a *relevant person* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim*), and the *relevant person* is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):

- (1) the passing of a resolution for a creditors' voluntary winding up;
- (2) a determination by the relevant person's Home State regulator that the relevant person appears unable to meet claims against it and has no early prospect of being able to do so;
- (3) the appointment of a liquidator or administrator, or provisional liquidator or interim manager;
- (4) the making of an order by a court of competent jurisdiction for the winding up of a company, the dissolution of a partnership, the administration of a company or partnership, or the bankruptcy of an individual;
- (5) the approval of a company voluntary arrangement, a partnership voluntary arrangement, or of an individual voluntary arrangement;
- (6) a moratorium under [Part A1] of the Insolvency Act 1986 being in force.

...

6.3.4A G For the avoidance of doubt, COMP 6.3.3R and COMP 6.3.4R do not limit COMP 6.3.2R.

...

6.3A When is a successor in default?

...

- 6.3A.3 R The *FSCS* may determine a *successor* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim* against a *successor* that is a *MiFID investment firm*), and the *successor* is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):
- (1) the passing of a resolution for a creditors' voluntary winding up; or
 - (2) a determination by the successor's Home State regulator that the successor appears unable to meet claims against it and has no early prospect of being able to do so; or
 - (3) the appointment of a liquidator or administrator, or provisional liquidator or interim manager; or
 - (4) the making of an order by a court of competent jurisdiction for the winding up of a company, the dissolution of a partnership, the administration of a company or partnership, or the bankruptcy of an individual; or
 - (5) the approval of a company voluntary arrangement, a partnership voluntary arrangement, or of an individual voluntary arrangement; or
 - (6) a moratorium under [Part A1] of the Insolvency Act 1986 being in force.

...

- 6.3A.4A G For the avoidance of doubt, COMP 6.3A.3R and COMP 6.3A.4R do not limit COMP 6.3A.2R.

...

Appendix 3: Consumer Credit (Bounce Back Loans) Instrument 2020

CONSUMER CREDIT (BOUNCE BACK LOANS) INSTRUMENT 2020

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*].

Amendments to the Handbook

- D. The Consumer Credit sourcebook (CONC) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Consumer Credit (Bounce Back Loans) Instrument 2020.

By order of the Board
[*date*]

Annex

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

7 Arrears, default and recovery (including repossessions)

7.1 Application

Who? What?

...

7.1.2 G The following sections provide otherwise for application:

- (1) *CONC 7.12* (lenders' responsibilities in relation to debt) applies only to *firms* in respect of *consumer credit lending* or in respect of activity that would be *consumer credit lending* but for article 60C(4A) of the *Regulated Activities Order*.

...

...

7.1.3A R In this chapter, the expression *regulated credit agreement* includes a *credit agreement* that is an exempt agreement by virtue of article 60C(4A) of the *Regulated Activities Order* except for the purposes of the following:

- (1) *CONC 7.5.1G*;
 (2) *CONC 7.6*; and
 (3) *CONC 7.7.4G*.

...

7.12 Lenders' responsibilities in relation to debt

Application

7.12.1 R This section applies to a *firm* in respect to *consumer credit lending* or in respect to activity that would be *consumer credit lending* but for article 60C(4A) of the *Regulated Activities Order*.

...

