

High Cost Credit Bill

CONTENTS

- 1 Financial Conduct Authority (“FCA”) duty to define high-cost credit agreements and make rules
- 2 FCA rules to set out penalties for contravention
- 3 Duty to review effectiveness and power to make additional rules beyond those specified
- 4 Power to place a levy on the high-cost credit sector to fund additional debt advice services
- 5 Duty to consider a cap on the total cost of high-cost credit agreements
- 6 Commencement, implementation and transitional powers
- 7 Short title

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- Schedule 1 – Prohibited features of high-cost credit agreements
Schedule 2 – Required behaviours of authorised persons entering into high-cost credit agreements

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Make provision for regulating high-cost credit arrangements and providers of such arrangements; to provide for controls on advertising, information and communications associated with such arrangements; to make measures to address the cost and affordability of such credit arrangements and their associated charges; to regulate matters concerning repayments under such arrangements; to make provision on advice and advice services in relation to debt arising from such arrangements; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Financial Conduct Authority (“FCA”) duty to define high-cost credit agreements and make rules

(1) In this Act—

“high-cost credit agreement” means a regulated credit agreement as defined by section 137C of the Financial Services and Markets Act 2000 (as inserted by the Financial Services Act 2012) that provides for—

- (a) the payment by the borrower of charges of a description from time to time specified by the FCA; or
- (b) the payment by the borrower over the duration of the agreement of charges that, taken with the charges paid under one or more other agreements which are treated by the FCA’s rules as being connected with it, exceed, or are capable of exceeding, an amount specified by the FCA;

“charges” means charges payable, by way of interest or otherwise, in connection with the provision of credit under the regulated credit agreement, whether or not the agreement itself makes provision for them and whether or not the person to whom they are payable is a party to the regulated credit agreement or an authorised person;

“authorised person” has the same meaning as in the Financial Services and Markets Act 2000.

- (2) The FCA shall make rules prohibiting specific features of high-cost credit agreements and those rules shall, for the purposes of section 137D of the Financial Services and Markets Act 2000 (as amended by the Financial Services Act 2012) be deemed to have been made under that section.
- (3) The specific features of high-cost credit agreements to be prohibited by those FCA rules are those contained in Schedule 1 (“the prohibited features”). 5
- (4) The FCA shall also make rules requiring any authorised person entering into a high-cost credit agreement to undertake or refrain from certain activities and those rules shall, for the purposes of section 137A of the Financial Services and Markets Act 2000 (as amended by the Financial Services Act 2012) be deemed to have been made under that section. 10
- (5) The specific activities to be the subject of those FCA rules are those contained in Schedule 2 (“the required behaviours”).
- 2 FCA rules to set out penalties for contravention**
- Any rules established by the FCA pursuant to this Act shall specify the penalties for contravention, and shall include provisions – 15
- (a) for high-cost credit agreements containing any of the features set out in Schedule 1 –
- (i) to be unenforceable against the borrower; and/or
- (ii) for the recovery of any money or other property paid or transferred under the agreement by the borrower; and/or 20
- (iii) for the payment of compensation for any loss sustained by the borrower as a result of paying or transferring any money or other property under the agreement or obligation; and
- (b) for authorised persons breaching the required behaviours set out in Schedule 2 to be subject to any of the disciplinary measures contained in Part XIV of the Financial Services and Markets Act 2000 (as inserted by the Financial Services Act 2012) as the FCA shall deem appropriate. 25
- 3 Duty to review effectiveness and power to make additional rules beyond those specified** 30
- (1) Nothing in this Act shall restrict the power of the FCA to make additional rules beyond those set out in Schedules 1 and 2 in relation to high-cost credit agreements.
- (2) The FCA shall keep the effectiveness of the rules made under this Act under review and shall, if it considers it necessary, exercise any discretion provided within Schedules 1 and 2 to change the rules relating to high-cost credit agreements and/or introduce additional rules relating to high-cost credit agreements beyond those specified in this Act. 35
- 4 Power to place a levy on the high-cost credit sector to fund additional debt advice services** 40
- (1) *In addition to any powers provided to the FCA within the Financial Services and Markets Act 2000 (as amended by the Financial Services Act 2012) to levy fees and charges in order to fund the Money Advice Service, the FCA shall also have the power to introduce an additional levy on authorised persons entering into high-cost credit agreements in order to fund debt advice services.* 45

(2) *When deciding whether to exercise this power, or the size of any such levy that may be required, the FCA shall have regard to the number of people reported by high-cost credit lenders to the FCA as referred to debt advice services by virtue of the requirement under Schedule 2, paragraph 4(4).*

(3) *In setting the size of such a levy, the FCA may also have regard to any other indicators of demand for debt advice amongst high-cost credit borrowers as it sees fit.* 5

5 Duty to consider a cap on the total cost of high-cost credit agreements

(1) The FCA shall consider, on an annual basis, whether or not to use the powers to cap the total cost of credit afforded to it in section 137C of the Financial Services and Markets Act 2000 (as inserted by the Financial Services Act 2012). 10

(2) In considering whether or not and how to use the powers referred to in this paragraph, the FCA shall have regard to information contained on the regulatory database referred to in Schedule 2, paragraph 4.

6 Commencement, implementation and transitional powers

(1) The provisions of this Act shall come into force on the day on which it is passed. 15

(2) The FCA shall put in place rules pursuant to this Act within three months of the commencement of this Act.

(3) The regulatory database referred to in Schedule 2, paragraph 5 of this Act shall be established by the FCA within twelve months of the commencement of this Act. 20

(4) In advance of the regulatory database being established the FCA shall require any authorised person entering into a high-cost credit agreement to use credit reference services to determine whether or not a high-cost credit agreement can be entered into in accordance with the rules established by the FCA under this Act. 25

(5) For the purposes of this Act the definition of credit reference services is the same as that contained in the Financial Services and Markets Act 2000 (as amended by the Financial Services Act 2012).

7 Short title 30

This Act may be cited as the High Cost Credit Act 2013.

SCHEDULES

SCHEDULE 1

Sections 1 to 3

PROHIBITED FEATURES OF HIGH-COST CREDIT AGREEMENTS

Restrictions on the amount of high-cost credit that can be advanced

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| 1 | (1) No high-cost credit agreement may be entered into if this would be unaffordable for the borrower. The FCA shall specify how authorised persons are expected to assess the affordability of high-cost credit agreements and may also specify limits in respect of – | 5 |
| | (a) the total amount of contractual liability that may be created; and/ or | |
| | (b) the total amount of repayments permitted to fall due in any such period as the FCA may determine appropriate. | 10 |
| | (2) The FCA may express the limits referred to in this paragraph in absolute terms or as a proportion of the borrower’s income. | |
| | (3) The limits referred to in this paragraph may be specified in respect of a single high-cost credit agreement or the aggregate of all high-cost credit agreements entered into by a borrower. | 15 |

Level of default charges to be restricted

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| 2 | (1) No high-cost credit agreement may make provision for the payment by the borrower of additional charges on default or in respect of the collection of unpaid amounts unless the amounts contained in the agreement are beneath the limits from time to time be specified by the FCA. | 20 |
| | (2) When setting the limits referred to in this paragraph the FCA shall have regard to the duration of high-cost credit agreements and may set different limits for agreements of different durations. | |
| | (3) The limits referred to in this paragraph may include limits on the duration for which default or collection charges can be incurred by the borrower in respect of any high-cost credit agreement as well as limits on the amount of those charges. | 25 |

Prohibition on charges connected with the use of “continuous payment authority”

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| 3 | (1) No high-cost credit agreement or connected agreement may create a liability for any charge to the borrower for the collection of payments through the use of a “continuous payment authority” or similar process as may be specified by the FCA. | 30 |
| | (2) For the purposes of this Act “continuous payment authority” means an authorisation for the lender to collect payments directly from the borrower’s bank or other transactional account. | 35 |

Restrictions on “rollover” and repeat lending

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| 4 | (1) No high-cost credit agreement may make provision for the deferment of contractual repayments on payment of additional fees or charges by the borrower unless those fees or charges are beneath the limits from time to time specified by the FCA. | 5 |
| | (2) No high-cost credit agreement may make provision for the deferment of contractual repayments on payment of additional fees or charges by the borrower on more occasions than shall be specified by the FCA. | |
| | (3) No high-cost credit agreement may be entered into if this would cause the borrower to exceed a limit as may be set by the FCA on the total number of high-cost credit agreements that can be entered into in any “given period”. | 10 |
| | (4) For the purposes of this paragraph “given period” means such period of time as specified by the FCA. | |
| | (5) For the purposes of this paragraph the FCA may specify different limits on the number of high-cost credit agreements that may be entered into in any given period for high-cost credit agreements of different durations. | 15 |

Requirements in respect of high-cost credit agreements and guarantors

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| 5 | (1) No high-cost credit agreement may be entered into which imposes a liability on a third party unless – | |
| | (a) the liability that is being created to the third party has been adequately explained to that party; and | 20 |
| | (b) the third party has provided a signature consenting to the creation of the liability. | |
| | (2) For the purposes of this paragraph “adequately explained” shall have the meaning to be specified from time to time by the FCA. | 25 |

SCHEDULE 2

Sections 1 to 6

REQUIRED BEHAVIOURS OF AUTHORISED PERSONS ENTERING INTO HIGH-COST CREDIT AGREEMENTS

Advertising of high-cost credit agreements

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| 1 | (1) All authorised persons advertising high-cost credit agreements shall – | 30 |
| | (a) contain within their advertising a warning, in a form and manner from time to time specified by the FCA, that the agreements being promoted are high-cost and that entering into any such an agreement should be considered carefully; | |
| | (b) contain an illustration of the “typical cash cost” of the agreements being promoted in a form and manner specified by the FCA; | 35 |
| | (c) contain a clear statement of any default fees and charges that may be included in a high-cost credit agreement in a form and manner specified by the FCA; | |
| | (d) contain information on sources of free debt advice services in a form and manner specified by the FCA; | 40 |

- (e) refrain from using content or advertising in such a way that breaches the standards as shall from time to time be set for high-cost credit advertising by the FCA following consultation with the Advertising Standards Authority;
 - (f) refrain from promoting high-cost credit agreements through the use of SMS text or picture messages to mobile phones; 5
 - (g) refrain from promoting high-cost credit agreements through the use of phone calls.
- (2) For the purposes of this paragraph the advertising standards set by the FCA may specify restrictions on the timing of television or other broadcast advertising and the sponsorship of specific types of sporting or cultural activities as may be determined inappropriate by the FCA. 10

Requirement to disclose information concerning business practices to the FCA

- 2 (1) Any authorised person entering into high-cost credit agreements may be required by the FCA to disclose details of their marketing strategy and methods of generating loans to the FCA. 15
- (2) For the purposes of this paragraph the terms “marketing strategy” and “methods of generating loans” have the meanings specified from time to time by the FCA.

Requirement of credit brokers to provide lender details to the borrower 20

- 3 (1) Any person engaging in credit brokerage shall be required to disclose details of the lenders on whose behalf they are acting to a credit applicant in a form and manner and at a time in the application process to be specified by the FCA.
- (2) For the purposes of this paragraph “credit brokerage” has the same meaning as in the Consumer Credit Act 1974. 25

Requirement to register details of loans on a regulatory database and to consult this prior to entering into agreements

- 4 (1) The FCA may require any authorised person entering into high-cost credit agreements to enter details of their agreements on a database as shall be established for that purpose by the FCA. 30
- (2) For the purposes of this paragraph the agreement details to be entered on the database shall be those as shall be specified by the FCA and shall include –
- (a) details of borrower: including name, address, date of birth and national insurance number or other unique identifiers as may be specified by the FCA; and 35
 - (b) details of the loan agreement: including the amount advanced, the interest and other fees contained in the agreement, the amount repayable, and the contractual date on which repayment is due.
- (3) Persons entering details of high-cost credit agreements onto the database shall also be required – 40
- (a) to consult the database prior to making any high-cost credit agreements in order to ensure that any limitations on the making of high-cost credit agreements that may be set by the FCA pursuant to this Act are observed; and 45

- (b) to maintain up to date records of the performance of any high-cost credit agreements entered on the database, including but not limited to details of any missed contractual repayments, any deferments, and the level of default fees or other charges imposed as a consequence. 5
- (4) In the event that a high-cost credit agreement cannot be entered into as a result of the limitations set by the FCA pursuant to this Act then authorised persons required to use the database shall refer credit applicants to debt advice services in a manner to be specified by the FCA and shall report any such referral to the FCA. 10
- (5) In so far as the FCA incurs any costs in establishing and maintaining the database referred to in this paragraph, the FCA may recover these from authorised persons entering into high-cost credit agreements by requiring – 15
- (a) a payment per agreement entered into the database by the authorised person; or
- (b) an annual payment based on the overall size, as defined by the FCA, of the high-cost credit lending business undertaken by the authorised person; or
- (c) a combination of these methods.
- Requirements relating to use of “continuous payment authority”* 20
- 5 Where an authorised person enters into a high-cost credit agreement which provides for the collection of payment through the use of “continuous payment authority”, the FCA may require the authorised person to –
- (a) provide information to the borrower about their right to cancel any such authority with their bank account provider in a manner and form as may be specified by the FCA; 25
- (b) provide borrowers with three days notice of the date on which the continuous payment authority is to be used;
- (c) refrain from exercising the use of the continuous payment authority in such circumstances as may be specified by the FCA. 30
- Circumstances under which lenders must inform borrowers of sources of free debt advice*
- 6 Authorised persons entering into high-cost credit agreements shall be required to inform borrowers of sources of free debt advice in a manner and form to be specified by the FCA whenever – 35
- (a) a contractual repayment has been missed; or
- (b) there has been a deferment of a contractual repayment.
- Requirement to put in place repayment plan for debtors*
- 7 Where a debt advice service contacts an authorised person concerning a high-cost credit agreement in relation to which a default has occurred then the FCA shall require the authorised person to – 40
- (a) immediately cease any enforcement action against the borrower; and
- (b) agree to a schedule of repayments (“a repayment plan”) based on the ability of the debtor to pay as advised by the debt advice service; and
- (c) waive any fees, charges or interest, which may otherwise have fallen due under the agreement over the period of the repayment plan. 45

Requirement to accept offers from third parties to settle outstanding debts

- 8 Where an authorised person is contacted by third parties as shall be specified by the FCA, and the third party is acting with the consent of the borrower and offers to make a payment to settle any outstanding high-cost credit agreement then the FCA shall require the authorised person to— 5
- (a) co-operate fully with the third party to ensure that the settlement of the agreement takes place as quickly as possible; and
 - (b) not add any interest, fees, or other charges to the amount outstanding from the date on which the authorised person has been contacted by the third party. 10

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