



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Consultation Paper | PRA CP45/16
| FCA CP16/41

Amendments to Notes for completion of the MLAR

December 2016

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Please address comments related to both the PRA Notes to the MLAR and the FCA guidance to the MLAR to both authorities at the addresses set out below. For PRA only related changes please e-mail the PRA inbox below. Please send all your comments by Monday 13 March 2017 to:

CP45/16@bankofengland.co.uk and CP16/41@fca.org.uk.

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You can address comments related to questions 5 and 8 of the MLA-D1 or any other FCA related enquiries to the FCA in writing to or via e-mail by Monday 13 March 2017 to:

CP16/41@fca.org.uk.

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1 Overview

1.1 In this joint Consultation Paper (CP), the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) propose updating the PRA's notes to the Mortgage Lenders & Administrators Return (MLAR), the notes for completion of the MLAR in the Supervision manual (SUP) of the FCA Handbook (henceforth, both notes will be referred to as 'Notes to the MLAR' in this CP), and the MLA-D1 form for reporting second charge lending, also in SUP. These changes, amongst other things, are to reflect the changes following transposition of the Mortgage Credit Directive 2014/17/EU (MCD) in the United Kingdom in March 2016. The proposals also include minor clarifications to other sections of the Notes to the MLAR. These clarifications will assist firms in their completion of the MLAR and to remove existing inconsistencies between the PRA and FCA versions of the Notes to the MLAR.

1.2 The proposed updates and clarifications do not introduce any material changes to the Notes to the MLAR and do not result in any new reporting requirements.

1.3 This consultation is relevant to all firms that submit the MLAR, ie all firms carrying on the regulated activities of home finance providing activity and administering a home finance transaction. As a consequence, the changes are relevant to both FCA-only regulated firms and dual regulated firms.

1.4 The policy has been designed in the context of the current UK and EU regulatory framework. The PRA and FCA will keep the policy under review to assess whether any changes would be required due to changes in the UK regulatory framework, including those arising once any new arrangements with the European Union take effect.

2 Proposed changes to the PRA's and FCA's Notes to the MLAR

2.1 This chapter proposes changes to the PRA's and FCA's Notes to the MLAR as set out in PRA Supervisory Statement (SS) 34/15¹ and the FCA's SUP 16.12 Annex 19BG in order to provide additional reporting clarifications. The proposed changes are as follows:

- In Section 3: 'Purpose of reporting requirements', the information on fee tariff measures should be reported annually, not quarterly. As existing reporting practice is to report this item annually, it is proposed to amend the Notes to the MLAR to reflect this. This proposal represents a change only to the Notes to the MLAR and not to reporting practice.
- It is proposed to update Section 4: 'Regulated mortgage contracts and the wider mortgage market', sub-Sections 4(i): 'UK Mortgage Market', 4(iii): 'Other secured lending' and 4(iv): 'Regulated mortgage contract' and Section A: 'Balance Sheet', sub-Section A3.5: 'Other loans', to clarify the treatment of loans and mortgages which are secured on land in the EEA, but outside the United Kingdom. Such loans and mortgages should be reported within 'Other loans' within Table A3 of the MLAR return, and should not be reported as 'Regulated' lending.
- It is proposed to update Section 4: 'Regulated mortgage contracts and the wider mortgage market', sub-Section 4(ii): 'Residential loans to individuals', to clarify instances of regulated mortgage contracts and non-regulated mortgage contracts within the scope of residential loans to individuals in order to reflect the change in the definition of a

¹ 'Guidelines for completing regulatory reports', December 2016; www.bankofengland.co.uk/pr/Pages/publications/ss/2016/ss3415update3.aspx.

regulated mortgage contract as a result of the transposition of the MCD in the United Kingdom.

- In Section 4(a): ‘Home reversion and home purchase plans’, sub-Section: ‘Guidance to Home Reversion (HR) and Home Purchase Plan (HPP) firms on the completion of the MLAR’, the text refers to a wholesale review of the MLAR, which the Financial Services Authority proposed to undertake under its Better Regulation agenda. As the aim of the Notes to the MLAR is to provide guidance to firms on how to complete the MLAR, the FCA and the PRA are proposing to delete a number of paragraphs in this section as they are now redundant. For reference, the PRA may review the MLAR in due course¹, but should there be any changes to the return, they will be consulted upon separately.
- It is proposed to amend some text within Section 4b: ‘Sale and Rent Back (SRB) agreement business’ for clarification purposes.
- In Section 7: ‘Time period’, it is proposed to delete the reference to SUP 16.3.13R as this reference is no longer relevant.
- In Section 8: ‘Loans made before 31 October 2004’, sub-Section 8(i): ‘classifying the back book’, it is proposed to note that residential loans to individuals should be classified as non-regulated “for the purposes of the MLAR” to clarify that the Notes to the MLAR are for guidance only.
- In Section A: ‘Balance Sheet’, sub-Section ‘Balance sheet analysis’, part ‘A1, A2’, it is proposed to delete the following sentence: ‘However, the differences should only be presentational.’ and replace it with “Loans to customers’ is expected to be the customer balance after any write offs have been taken’ in order to provide additional clarification for reporting purposes. Additions to clarify the reporting requirements are also made to Section A: ‘Balance Sheet’, sub-Section ‘Balance sheet analysis’, parts ‘A 1.6’, ‘A 1.11’ and ‘A 2.7’.
- In Section D1: ‘Lending-Business Flows and Rates’, sub-Section D1: ‘Loans: Advances/Repayments – Transactions (columns)’, sub-Section: ‘Write-offs in Quarter’, it is proposed to add the following additional bullet point to clarify the reporting requirement: ‘The amount should be net of any write-backs in the quarter. If there are more write-backs than write-offs, the net figure should be shown as a negative’.
- In Section D1: ‘Lending - Business Flows and Rates’, sub-Section D1: ‘Loans: Advances/Repayments – Transactions (columns)’, sub-Section ‘Other debits/(credits) and transfers (net)’, it is proposed to add the following additional clarification to the NB that balances on loans books should be as at the date of the relevant event, ‘and not be subject to any revaluation factors’.
- In Section D1: ‘Lending - Business Flows and Rates’, sub-Section D2: ‘Loans: Book movements’, it is proposed to add the following sentence to section (c) in the FCA Notes to the MLAR and bullet (iii) in the PRA Notes to the MLAR to clarify the reporting: ‘Securitised loans brought back onto the balance sheet in the quarter should also be included and the amount here should be net of them. If the amount of securitised loans

¹ See PRA Consultation Paper 46/16 ‘IFRS 9: changes to reporting requirements’ December 2016; www.bankofengland.co.uk/pr/Pages/publications/cp/2016/cp4616.aspx, paragraphs 1.10 – 1.12 for further details about the PRA’s data strategy.

brought back onto the balance sheet is greater than the securitised balance then the net figure should be reported as a negative; and’.

- In Section D1: ‘Lending-Business Flows and Rates’, sub-Section D2: ‘Loans: Book Movements’, it is proposed to add the following sentence to clarify how non-recourse funding can be established for the purposes of the MLAR: ‘Non-recourse funding can be either established by contract or in-substance’.
- In Section F: ‘Lending-arrears analysis’, sub-Section F1 to F4: ‘Arrears categorisation by type of loan’, it is proposed to update ‘balance outstanding’ to ‘customer’s balance outstanding’ to clarify the reporting requirement.
- In Section G: ‘Mortgage administration – business profile’, it is proposed to clarify the wording regarding instances where a person is not to be treated as administering a regulated mortgage contract to align the wording with the Financial Services and Markets Act 2000 (FSMA) (Regulated Activities) Order 2001.
- In Section J: ‘Fee tariff measures’, it is proposed to change the FCA Handbook references to reflect the relevant current sections and to replace ‘appropriate regulator’ with ‘FCA’ to reflect the appropriate fee tariffs requested by the MLAR.
- It is proposed to update the definitions of ‘regulated mortgage contract’ and ‘lifetime mortgage’ in Section 4: ‘Regulated mortgage contracts in the wider mortgage market’, sub-Section 4(iv): ‘Regulated mortgage contract’ and Section E: ‘Residential loans to individuals – new business profile’, subsection E6.6: ‘Lifetime mortgages’, to update those definitions in line with the FCA Handbook Glossary.

3 Proposed changes to the PRA’s notes to the MLAR

3.1 This chapter sets out proposed changes to the PRA’s Notes to the MLAR contained in PRA SS34/15. The changes arise from the transposition of the MCD in the United Kingdom in March 2016, update the Notes more generally following the withdrawal of the FSA Handbook and clarify reporting requirements to align them with changes already made by the FCA in its Notes to the MLAR.

3.2 The changes regard the applicability of Section C of the MLAR to firms which exclusively carry on home finance activities in relation to second charge regulated mortgage contracts; the effect of the change in the definition of ‘regulated mortgage contract’ to understanding how regulated mortgage contracts and residential loans to individuals in the UK mortgage market interact; and the classification of the backbook for loans made before 31 October 2004. The FCA implemented these changes in FCA PS15/9¹ and FCA PS16/7².

3.3 The proposed changes described in paragraph 3.2 affect the following sections of the PRA’s Notes to the MLAR:

- Section 2: ‘Overview of reporting requirements’, sub-Section C: ‘Capital’;

1 ‘Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages, feedback to CP14/20 and final rules’, March 2016; www.fca.org.uk/publications/policy-statements/ps15-9-implementation-mortgage-credit-directive-and-new-regime-second.

2 ‘Future regulatory treatment of CCA regulated first charge mortgages’, March 2016; www.fca.org.uk/publication/policy/ps16-7.pdf.

- Section 4: 'Regulated mortgage contracts and the wider mortgage market', sub-Section 4(ii): 'Residential Loans to Individuals'; and
- Sections 8: 'Loans made before 31 October 2004', sub-Sections 8(i): 'Classifying the back book', 8(ii): 'Specific treatment of residential loans to individuals', and 8(iii): 'Further advances made on loans made before 31 October 2004'.

3.4 It is proposed to change Section 4: 'Regulated mortgage contracts and the wider mortgage market', sub-Section 4(iv): 'Regulated mortgage contract'; Section 4a: 'Home reversion and home purchase plans'; Section 4b: 'Sale and rent back business'; and Section E: 'Residential loans to individuals', sub-Section 6.6: 'Lifetime Mortgages', to clarify that the definitions quoted refer to the definitions in the Glossary of the FCA Handbook.

3.5 It is proposed also to remove the italics in the PRA's Notes to the MLAR. All terms in the PRA's Notes to the MLAR are defined as in the PRA Rulebook, as defined from time to time, except for those terms which are otherwise footnoted or defined in the document. It is proposed to add a sentence to the top of the document to reflect this change.

3.6 The proposed changes referred to in paragraphs 3.1 to 3.5 are set out in Appendix 1 of this CP.

3.7 These proposals do not represent a change in PRA policy and do not significantly change the way firms populate the MLAR return.

4 Proposed changes affecting the reporting of second charge mortgages to the FCA

4.1 This chapter sets out proposals to alter the second charge reporting form MLA-D1 to change the categories for reporting so that they match form MLA-D.

4.2 It is proposed to:

- (i) change row 5 of MLA-D1 Second Charge Lending from 'New Loan' to 'House Purchase'; and
- (ii) add a new row 8 in MLA-D1 named 'Other'.

4.3 The proposed change to MLA-D1 is not substantial and aligns the second charge lending form with the equivalent rows contained in form MLA-D.

4.4 The proposed changes do not represent a change in FCA policy, but will provide greater clarity on where firms should include data in the return and ensure the first charge and second charge data are directly comparable.

5 PRA statutory obligations

5.1 The proposals are compatible with the PRA's statutory objectives under FSMA to promote the safety and soundness of firms by facilitating their ability to complete the MLAR report.

5.2 When determining the general policy and principles by reference to which it performs particular functions, the PRA is legally required, so far as is reasonably possible, to facilitate effective competition in the markets for services provided by PRA-authorized persons in

carrying out regulated activities. The PRA does not consider that the proposals in this CP will either hinder or promote effective competition.

5.3 When determining the general policy and principles by reference to which it performs particular functions, the PRA must have regard to the regulatory principles. Of particular relevance in this circumstance is the need for the PRA to use its resources in the most efficient way and exercise its functions as transparently as possible. The PRA considers both of these principles to be met in that the proposals clarify the Notes to the MLAR return in the PRA Rulebook, thereby making firms' reporting submissions more efficient, and that proposals are set out clearly for scrutiny by firms in this joint CP.

5.4 The PRA is required to perform an analysis of the economic impact in respect of proposed rules. The PRA considers that the costs to firms associated with these proposals will be negligible and therefore a full cost benefit analysis has not been provided.

5.5 The PRA does not consider that the impact of the proposals on mutual societies will be significantly different from the impact on other firms.

5.6 The PRA may not act in an unlawfully discriminatory manner. It is required, under the Equalities Act 2010, to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions. The PRA does not consider that the proposals give rise to equality and diversity implications.

6 FCA statutory obligations

6.1 This chapter records the FCA's compliance with a number of legal requirements applicable to the proposals in our consultation, including an explanation of our reasons for concluding that our proposals are compatible with certain requirements under FSMA.

6.2 When consulting on new rules, the FCA is required by s.138I(2)(d) FSMA to report why we believe making the proposed rules is (a) compatible with our general duty under s.1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with our strategic objective and advances one or more of our operational objectives; and (b) our general duty under s.1B(5)(a) FSMA to have regard to the regulatory principles in s.3B FSMA. We are also required by s.138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

6.3 This chapter also sets out our view of how the proposed rules are compatible with our duty to discharge our general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s.1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.

6.4 This chapter includes our assessment of the equality and diversity implications of our proposals.

6.5 Finally, under the Legislative and Regulatory Reform Act 2006 (LRRRA) we are subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This chapter sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: compatibility statement

6.6 The policy proposals and draft guidance in this CP are intended to improve the data we collect from firms and to clarify to firms how they should report the data to us. The proposals primarily advance our operational objective of securing appropriate levels of consumer protection by helping to ensure we have appropriate and high quality data to supervise the mortgage market.

6.7 These proposals also advance our competition objective because the data we collect will contribute to our overall understanding of how competition is evolving in the market and help us to identify emerging risks to effective competition without adding any significant costs to firms' regulatory burden.

6.8 We consider our proposals to be compatible with our strategic objective of ensuring that the relevant markets function well.

6.9 Further information about how our proposals have regard to the regulatory principles in s.3B of FSMA is set out below.

The need to use our resources in the most efficient and economic way

6.10 Our proposals should make our supervision function more efficient because the improved data we will receive and the resulting analysis will allow us to target our resources more effectively.

The principle that a burden or restriction should be proportionate to the benefits

6.11 The proportionality of our approach is addressed in the cost benefit analysis (CBA) in Chapter 7.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

6.12 We do not expect our proposals to have a material impact on economic growth in the United Kingdom.

The general principle that consumers should take responsibility for their decisions

6.13 Our proposals do not alter the principle that consumers should take responsibility for their decisions.

The responsibilities of the senior management of persons subject to requirements imposed by or under FSMA, including those affecting customers in relation to compliance with those requirements

6.14 We do not anticipate any impact on senior management requirements as a result of our proposals.

The desirability, where appropriate, of the FCA exercising its functions in a way that recognises differences in the nature and objectives of the businesses it regulates

6.15 We have had regard to this principle and do not believe our proposals undermine it.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

6.16 We have had regard to this principle and do not believe our proposals undermine it.

The principle that we should exercise our functions as transparently as possible

6.17 We consider that improving our guidance for the MLAR will give firms more certainty regarding our reporting requirements.

6.18 Some of the proposed changes to guidance and the second charge reporting form MLA-D1 were influenced by queries we received through our contact centre from firms. We have acted on these queries and, as part of the consultation process, are providing the industry and other stakeholders the opportunity to comment on the proposed changes.

Expected effect on mutual societies

6.19 We do not expect the proposals in this paper to have a significantly different impact on mutual societies than on other authorised persons or present them with any more or less of a burden than other authorised persons.

Compatibility with the duty to promote effective competition in the interests of consumers

6.20 In preparing the proposals as set out in this consultation, we have had regard to our duty to promote effective competition in the interests of consumers.

Equality and diversity

6.21 We are required under the Equality Act 2010 to ‘have due regard’ to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conducted an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals were considered.

6.22 Overall, the FCA does not believe that the proposals in this CP adversely impact any of the groups with protected characteristics specified in legislation i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

6.23 The FCA will continue to consider the equality and diversity implications of the proposals during the consultation period, and, if necessary, will revisit them when the final policy is published.

Legislative and Regulatory Reform Act 2006

6.24 We have had regard to the principles in the LRR for the parts of our proposals that consist of general policies, principles or guidance. Through the contact centre we have engaged with firms and have taken into account their feedback when drafting the proposed changes to the guidance notes for the MLAR. We consider the proposals in this CP are proportionate and will advance our operational objectives, in particular securing an appropriate degree of consumer protection and promoting effective competition in the interests of consumers. Firms also have a chance to comment on our proposals through engagement in this consultation process and once our final policy is published firms will be given greater clarity about the MLAR reporting requirements.

7 FCA cost benefit analysis

7.1 S.138I(2)(a) of FSMA requires us to publish a CBA when proposing draft rules. S.138L(3) of FSMA provides that s.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. Having assessed the changes proposed in this CP and having considered previous estimates of similar reporting changes, we believe there will be no or a minimal increase in costs as a result of the proposals.

Appendices

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- 1 Appendix 1: Notes for completion of the Mortgage lenders & administrators return (MLAR) available at www.bankofengland.co.uk/pr/Pages/publications/cp/2016/cp4516.aspx**
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- 2 Appendix 2: Amendments to the Supervision manual (SUP) available at www.bankofengland.co.uk/pr/Pages/publications/cp/2016/cp4516.aspx**