



FINANCIAL SERVICES FUTURE REGULATORY FRAMEWORK REVIEW PROPOSALS FOR REFORM: FINANCE & LEASING ASSOCIATION RESPONSE

About the FLA

1. The Finance & Leasing Association (FLA) is the leading trade body for the UK asset, consumer and motor finance sectors. In the twelve months to November 2020, FLA members provided nearly £128.2 billion of new finance to UK businesses and households. £96.9 billion was in the form of consumer credit, accounting for over a third of all new consumer credit written in the UK. £31.3 billion of finance was provided to businesses (including nearly £19 billion to SMEs) and the public sector to support investment in new equipment, representing over a third of UK investment in machinery, equipment and purchased software. In total, FLA members provided over £36.3 billion to support the purchase of new and used cars, including over 92% of private new car registrations.
2. Our members provide both regulated and exempt lending and are subject to regulatory oversight by the Financial Conduct Authority (FCA), Prudential Regulation Authority (PRA) and the Competition and Markets Authority (CMA). The Financial Ombudsman's Service (FOS) also plays a quasi-regulatory role in interpreting FCA rules and guidance. The FLA's Lending Code and Business Finance Code have also formed part of the overarching regulatory framework for over 25 years, providing additional protection for customers.

The Future Regulatory Framework

3. The FLA broadly welcomes the Government's proposals to create a more dynamic, simplified and transparent future regulatory framework for financial services.
4. To bring this vision to life in the markets the FLA represents requires modernisation of the Consumer Credit Act (CCA) as it approaches its half-century. Having left the EU, the opportunity now arises to scale back the Consumer Credit Directive and create a UK regime which facilitates online activity, enhances consumer protections for all products, including Sharia-compliant products, and treats customers in financial difficulty in a more efficient and sensitive manner.
5. This aspiration to better serve the modern consumer and small business customer (many of whom are protected by the CCA) could be best met by moving to a simpler regulatory framework in keeping with the Government's proposals, notably a limited core of primary legislation (restricted to those matters that only primary legislation can deal with, such as rights, liabilities and the terms of the framework) with the setting and enforcement of the rules delegated to the FCA.

6. This concept of a modern CCA could be delivered via the Bill that will be required to enact features of the Government's new approach (to wider financial services regulation) or via a stand-alone Bill. We would be happy to discuss this in more detail with Ministers and officials.

RESPONSE TO QUESTIONS

Q1. Do you agree with the government's approach to add new growth and international competitiveness secondary objectives for the PRA and the FCA?

7. The FLA supports the Government's proposal to introduce secondary objectives for growth and international competitiveness but situations have arisen where a regulator may over-index on a particular objective to the perceived or real harm of another. We would caution that introducing more objectives will likely make this risk even more complex to manage.
8. We have long urged the FCA to strike the right balance between consumer protection, market integrity and competition objectives. This approach should help reconfigure the equilibrium. Of the two new objectives, growth is more important for the FLA's markets (our members serve domestic markets only).

Q2. Do you agree that the regulatory principle for sustainable growth should be updated to reference climate change and a net zero economy?

9. We agree with updating the principle to take account of the finance sector's critical facilitation for the UK to meet its Net Zero emission targets. FLA members provide finance for an ever-increasing volume of electric vehicles, greener heating systems in homes and more energy-efficient equipment used by the private (e.g. plant and machinery) and public sectors (e.g. for medical equipment).

Q3. Do you agree that the proposed power for HM Treasury to require the regulators to review their rules offers an appropriate mechanism to review rules when necessary?

10. We have no objections to a proposed new statutory requirement for the FCA and PRA to respond to HMT recommendations. However, we would suggest that guidance is provided on what constitutes grounds for an HMT recommendation under the new arrangements. Currently, the driver is "matters of economic policy" but issues such as access to financial services stray into social policy. Indeed, the FLA would like the Government to foster an approach to household finances which takes into account wider pressures on household incomes, including utility prices and Council Tax.

11. We welcome the fact that if deployed, the new power for HMT to require the regulator to conduct a rule review would be overseen by an independent person to avoid over-politicisation of issues as has been the case in the consumer credit market.

Q4. Do you agree with the proposed approach to resolve the interaction between the regulators' responsibilities under FSMA and the government's overseas arrangements and agreements?

12. FLA members serve domestic markets therefore we have no view.

Q5. Do you agree that these measures require the regulators to provide the necessary information to Parliament on an appropriate statutory basis to conduct its scrutiny?

13. We strongly support new measures to strengthen scrutiny by select committees of regulators' consultations. Depending on the level of detail anticipated, this might involve the Treasury Committee and other parliamentary committees requiring additional staff or seconding outside expertise.

Q6. Do you agree with the proposals to strengthen the role of the panels in providing important and diverse stakeholder input into the development of policy and regulation?

14. We support enhancing regulators' accountability with the panel. We also welcome increased scrutiny of the panels' appointments process to ensure that representation of interests and backgrounds is wide.

Q7. Do you agree that the proposed requirement for regulators to publish and maintain frameworks for CBA provides improved transparency for stakeholders?

15. We agree with these proposed measures.

Q8. Should the role of the new CBA Panel be to provide pre-publication comment on CBA, or to provide review of CBA post-publication?

16. We strongly favour CBA Panel input pre-publication to identify issues before they come into effect. This is more efficient than unravelling interventions once they have been implemented.

Q9. Do you agree that the proposed requirement for regulators to publish and maintain frameworks for how the regulators review their rules provides improved transparency to stakeholders?

17. We agree that this is a sensible approach.

Q10. Do you agree with the government's proposal to establish a new Designated Activities Regime to regulate certain activities outside the RAO?

18. We agree with this proposed measure. We also strongly welcome the proposal that the Government take a power to repeal retained EU law, which it will use to repeal the direct regulatory requirements which apply to firms and enable the FCA to replace those provisions with their own rules (para 7.7). Furthermore, we also support the proposal that the Government have the ability to amend or repeal provisions in primary legislation, in order to deliver a coherent regulatory framework (para 7.10).

19. We would, in particular, favour the Government deploying these powers to amend or repeal the Consumer Credit Act 1974 (CCA) in its entirety. It is not clear from the consultation paper whether such powers would be granted broadly enough to allow this. Nevertheless, we would argue that, though the CCA pre-dates the EU Consumer Credit Directive (CCD), the latter permitted Member States to retain or introduce provisions that went beyond the requirements of the directive – so the then Government's decision to retain the CCA had the effect that the Act then became the gold-plated implementing provisions for the CCD. As such, we believe that the whole of the CCA, and its subsidiary statutory instruments, be within the scope of the government's repeal powers – either within the specific power proposed or within a separate CCA-specific power contained within the Bill.

Q11. Do you agree with the government's proposal for HM Treasury to have the ability to apply "have regards" and to place obligations on the regulators to make rules in relation to specific areas of regulation?

20. We support these proposals.

Finance & Leasing Association
20 January 2022