

REVIEW OF THE NORTHERN IRELAND PERSONAL CURRENT ACCOUNT BANKING MARKET INVESTIGATION ORDER 2008

Provisional decision

Published: 13 October 2010

The Competition Commission has excluded from this published version of the provisional decision information which the Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [§]. Non-sensitive alternative wording is also indicated in square brackets.

Contents

	<i>Page</i>
1. Summary	3
Background.....	3
Change of circumstances.....	4
Our provisional decision.....	6
Process and next steps.....	9
2. Introduction	10
3. Background	10
The 2007 report.....	10
The Order.....	11
Legal framework for review of the Order.....	13
The OFT's advice.....	13
New EU Directives	14
Payment Services Directive	15
Consumer Credit Directive	17
Other regulations and voluntary arrangements since the 2007 report.....	18
Banking Code of Business Sourcebook.....	19
OFT's voluntary initiatives	19
Lending Code.....	21
European Switching Principles.....	21
4. Assessment of the effect of the change of circumstances on the Order	22
Our approach	22
Article-by-Article assessment of overlap between the Order and the PSD and the CCD and proposed variations to the Order	23
Article 6: Duty to provide details of charges and interest rates to customers when choosing a PCA and when opening a PCA	24
Article 7: Duty to provide details of charges and interest rates on statements.....	27
Article 8: Duty to provide an annual summary	28
Article 9: Duty to notify a customer of overdraft charges and debit interest.....	29
Article 5: Duty to communicate clearly	30
Article 10: Provision of switching information.....	31
Article 11: Switching provision	32
Summary of proposed variations and remaining parts of Order	33
Other changes to the Order	34
Assessment of effectiveness and proportionality	35
Effectiveness.....	36
Proportionality	37
5. Our provisional decision	42

1. Summary

Background

- 1.1 In May 2007, the Competition Commission (CC) published a report¹ (the 2007 report) on personal current account (PCA) banking services in Northern Ireland. This followed a supercomplaint to the Office of Fair Trading (OFT) from Which? and the Consumer Council for Northern Ireland (CCNI). The CC identified three features of the PCA market giving rise to an adverse effect on competition (AEC):
- (a) banks had unduly complex charging structures and practices;
 - (b) banks did not fully or sufficiently explain their charging structures and practices;
 - and
 - (c) customers generally did not actively search for alternative PCAs or switch bank.
- 1.2 The CC's findings included a specific concern that customers' understanding of unauthorized overdraft charges was low—some customers were not aware of when they were charged; and few knew the levels of their banks' charges or how they compared with competitors. The CC also noted that annual rates of switching in the Northern Ireland PCA market were low and that customer perception was that switching PCAs was more difficult and risky than in practice.
- 1.3 To remedy the competition problem, the CC put in place a remedy package to provide greater information to customers and help facilitate the switching process. In February 2008, this remedy package was implemented through the CC's [Northern Ireland PCA Banking Market Investigation Order 2008](#) (the Order).²

¹*Personal current account banking services in Northern Ireland market investigation*, dated 15 May 2007. The report was made pursuant to section 131 of the Enterprise Act 2002 (the Act),

²An enforcement order made pursuant to section 161 of the Act.

Change of circumstances

- 1.4 Since the publication of the CC's findings and the making of the Order, financial services regulation has continued to undergo transformation in both the UK and the EU.
- 1.5 In May 2010, the OFT, which has a duty to consider whether CC orders remain appropriate in the light of any change of circumstances, advised the CC that there had been a change of circumstances making it appropriate to vary the Order. The OFT's advice, which is published on the OFT's website at the same time as this provisional decision, noted the following developments as constituting a change of circumstances:
- (a) the coming into force of two EU directives—the [Payment Services Directive](#) (PSD) and the [Consumer Credit Directive](#) (CCD)—both of which have been implemented into UK law and contain Articles that either cover the same subject matter or are different from requirements in the Order; and
 - (b) other developments, such as new regulations and voluntary arrangements, which had affected the PCA market since the 2007 report—some of these covered the same subject matter as the Order.
- 1.6 The PSD established a set of common rules for payment services providers on the form, content and manner of provision of pre-contractual and ongoing information on payment services to consumers.
- 1.7 The CCD established a set of common rules for consumer credit providers on the form, content and manner of provision of pre-contractual and ongoing information on consumer credit agreements including some types of overdrafts.

1.8 The PSD and CCD are both maximum harmonization directives, with certain limited exceptions. This means that in respect of matters falling within the scope of the relevant directive, member states are unable to maintain or introduce in their national law provisions which diverge from the provisions in the directives. Where no harmonized provisions exist, or where there is an explicit derogation from maximum harmonization, member states may maintain or introduce national provisions provided that these are compatible with any of the provisions of the relevant directives:

(a) The PSD was transposed into national legislation by the Payment Services Regulations 2009 (the PSRs), which came into force for most purposes on 1 November 2009. The competent authority for almost all of the PSRs is the Financial Services Authority (FSA).

(b) The CCD was transposed into UK law via a group of six Consumer Credit Act 1974 Regulations (CCRs) which came into force on 30 April 2010 and 26 August 2010 and which are required to be complied with in full from 1 February 2011. The OFT, together with local trading standards offices, are responsible for enforcing the CCRs.

1.9 Within the UK, measures to increase the transparency of PCA interest rates and charges have included:

(a) the [Banking Code of Business Sourcebook](#) (BCOBS), which establishes rules which all banks, building societies and credit unions that are authorized to accept deposits must follow when dealing with a banking customer. BCOBS includes rules, which describe an outcome that must be achieved, and guidance. The FSA has wide powers to enforce adherence to BCOBS rules; and

(b) the [Lending Code](#), a self-regulatory code setting out minimum standards of good practice in relation to loans, credit cards, charge cards and PCA overdrafts; it is monitored and enforced by the Lending Standards Board (LSB).

1.10 In addition, the ongoing work by the OFT to address issues arising from the [2008 market study of PCAs in the UK](#) has included voluntary initiatives to address concerns regarding transparency and switching and unauthorized overdrafts. This has resulted in PCA providers in Great Britain agreeing to implement these voluntary initiatives.

Our provisional decision

1.11 In light of the change of circumstances advised by the OFT, we have taken a thorough review of the PSD and PSRs and the CCD and CCRs and found that they overlap with the Order in measures to increase transparency of information to consumers. We found that there was minimal overlap between the Order and the PSD and CCD in the area of switching.

1.12 We have provisionally concluded that, to avoid duplication of regulation, those parts of the Order that exceed or duplicate the requirements of the PSD or the CCD need to be revoked because the PSD and the CCD are maximum harmonization directives. Where the requirements of the Order are outside the scope of the PSD and the CCD, we propose to retain the requirements of the Order unless there are other regulations or voluntary arrangements which are as effective as the Order or there are reasons of practicability or proportionality which mean that it is appropriate for those requirements to be revoked.

1.13 We have provisionally concluded that, in principle, the articles in the Order which address transparency through the provision of information to consumers would need to be revoked or varied but those which address switching should remain. Table 1 sets out our provisional decision in relation to the relevant articles of the Order.

TABLE 1 Summary of proposed variations to Articles 5 to 11 of the Order and remaining requirements

Article	Proposed variations to Order and other regulations or voluntary arrangements which cover the revoked requirements	Remaining requirements of Order
Article 6	Revoke the requirements relating to provision of details of charges and interest rates to customers when <i>opening</i> a PCA. These requirements are largely duplicated by the PSD and the CCD. Any gaps in the PSD and the CCD are covered by BCOBS.	Provision of details of charges and interest rates to customer when <i>choosing</i> a PCA and in advertising and promotions. This requirement would relate to information not deemed 'pre-contractual information' under the PSD and the CCD. The requirements would cover literature in store and online. This ensures that information on unauthorized overdraft charges are provided to customers prior to signing the PCA agreement. It is also based on our view that we have reasonable grounds to conclude that choosing a PCA is not covered by the PSD and the CCD.
Article 7	Revoke in full the requirements to provide details of charges and interest rates on statements. These requirements duplicate or exceed the PSD and the CCD.	None
Article 8	Revoke in full the requirement to provide an annual summary, which exceeds the requirements of the PSD and the CCD. The requirement to provide an annual summary is covered by the OFT's voluntary initiatives with banks.	None
Article 9	Revoke the requirement to notify overdraft charges and debit interest. This requirement is duplicated by the PSD and the CCD.	Provision of a 14-day period between notifying overdraft interest and charges and deducting them from a customer's account.
Article 5	Vary requirement to communicate clearly so that it is aligned with the requirements of the PSD and the CCD ('given in easily understandable words and in a clear and comprehensible form') and no longer includes a requirement for independent certification of text.	Provision to communicate clearly when meeting Article 6 (but the standard for provision would be aligned with the PSD and the CCD).
Article 10	Vary requirement to provide switching information so that it is triggered by the provision of a statement rather than an annual summary, noting that this requirement can be satisfied by providing the information with the OFT's voluntary annual summary.	Provision of a switching rights reminder and switching leaflet.
Article 11	Revoke the requirement for a new bank to offer a customer an authorized overdraft level that takes into account the expected number and level of direct debits and standing orders. This requirement exceeds the CCD.	Switching provisions, save for the minor modification set out in the previous column.

Source: CC analysis.

Note: Article 5 is listed after Articles 6 to 9 as the changes are a consequence of the changes to Articles 6 to 9.

1.14 We have also identified a number of consequential changes that need to be made to the Order, including: amending the definitions in Article 2 to delete those which are no longer relevant; revoking Article 3, which would no longer be relevant; and revoking Articles 12 and 13, which have time expired.

1.15 We have also provisionally decided to amend the monitoring regime (Articles 15 and 16) as a consequence of the substantive changes set out in Table 1. We have

provisionally decided that there is no longer a need for an explicit role for the LSB. In our view, monitoring of the reduced requirements of the Order can be achieved instead by the banks providing an annual statement of compliance to the OFT and the ability for the OFT to review customer complaints in the relevant areas. We therefore propose to revoke Articles 15(1)(a), 15(1)(c), 15(2) and 16 and put in place revised monitoring arrangements.

1.16 We have provisionally found that the varied Order, as described in Table 1, is the most effective our remedies can be in mitigating the AEC, taking into account the effect of the change of circumstances. In our view, the Order as varied would be more effective than the Order being completely revoked. We provisionally found that the costs of the remedies in the varied Order would not be disproportionate to the aims of the varied Order in mitigating the AEC as best we can, given the change of circumstances.

1.17 We recognize the value of EU directives that improve transparency for PCA banking customers and encourage the development of the internal market across member states. As these general measures are not tailored in the same way as the Order to address all of the specific competition problems identified in Northern Ireland, we still see a need for further measures in Northern Ireland, provided through a varied Order, that continue to remedy the AEC as best we can given the change of circumstances.

1.18 The overall effect of the changes to the Order is that:

(a) Almost all of the transparency requirements of the Order will continue to be provided in some way through a combination of the PSD and PSRs, the CCD and CCRs, BCOBS, the OFT's voluntary initiatives and the Lending Code, as well as by the varied Order. Where there are gaps, we encourage the relevant bodies to

look at how these requirements can be incorporated into voluntary arrangements or codes of practice. We noted that many banks are committed to continuing with the requirements of the Order even though they will not be required to do so, as these are already embedded in their business processes.

(b) The switching provisions of the Order, which are largely unaffected, can continue to provide a comprehensive approach to switching PCAs in Northern Ireland.

(c) Elements of the Order will be spread across the regulations and guidelines of several different monitoring bodies—the FSA, the OFT and the LSB. We therefore encourage the relevant regulatory authorities to provide as cohesive a monitoring and enforcement framework as possible.³

Process and next steps

1.19 As part of our review we have engaged with the banks, the FSA, the OFT, the government departments responsible for implementing the PSD and the CCD, and the LSB. We have also received the views of the CCNI. We welcome any representations in relation to this provisional decision. They should be made by 29 October 2010 and sent to: T J Oyler, Remedies Manager, Competition Commission, Victoria House, Southampton Row, London, WC1B 4AD, or email: tim.oyler@cc.gsi.gov.uk.

1.20 Following this consultation period, we will take into account any responses and issue a final decision. At the same time, we propose to give notice of a draft revised order. Subject to further representations, this draft revised order will incorporate the proposed variations in Table 1 and paragraphs 1.14 and 1.15. The draft revised order will be consulted upon for 30 days, as contemplated in Schedule 10 of the Act, before being made.

³We note that the Government is currently consulting on the creation of a new consumer protection and markets authority for the regulation of financial services.

2. Introduction

2.1 This report sets out our provisional decision regarding our review of the Order in light of the change of circumstances identified by the OFT. In this report we set out:

- (a) background, including the findings of the 2007 report and an overview of the Order; the legal framework for review of the Order; a summary of the OFT's advice; an overview of the PSD and the CCD and requirements relevant to PCAs; and the relevance of other regulations and voluntary arrangements introduced since the 2007 report (Section 3);
- (b) assessment of the effect of the change of circumstances on the Order, in which we set out our approach; assess the areas of overlap between the Order and the PSD and CCD on an Article by Article basis; and assess the effectiveness and proportionality of the proposed remaining parts of the Order (Section 4); and
- (c) our provisional decision (Section 5).

3. Background

The 2007 report

3.1 The CC's 2007 report on PCA banking services in Northern Ireland identified three features giving rise to an AEC:

- (a) banks had unduly complex charging structures and practices;
- (b) banks did not fully or sufficiently explain their charging structures and practices;
- and
- (c) customers generally did not actively search for alternative PCAs or switch bank.

3.2 The CC's findings included a specific concern that customers' understanding of unauthorized overdraft charges was low—some customers were not aware of when they were charged; and few knew the levels of their banks' charges or how they compared with competitors. The CC also noted that annual rates of switching in the

Northern Ireland PCA market were low and that customer perception was that switching PCAs was more difficult and risky than in practice.⁴

- 3.3 To remedy the AEC, the CC identified a remedy package which would promote competition in the market for PCAs by ensuring that information was available to bank customers before and after a PCA was opened and would make the process of switching a current account to another bank easier.

The Order

- 3.4 The remedies in the 2007 report were implemented by the Order, made by the CC on 19 February 2008. The complete Order and accompanying explanatory notes are set out in full on the CC's website.⁵

- 3.5 The remedy package comprised seven consumer-facing remedies. A short description⁶ of the nature of each remedy together with a reference to the relevant part(s) of the Order is given below:

- (a) *Easy-to-understand terminology and descriptions of PCA services (Article 5 of the Order)*. A requirement that standard information that is to be provided to a customer when choosing a PCA, opening a PCA or notifying a customer of charges and interest that will be applied to a PCA should be easy to understand by the average customer. This requirement can be met by ensuring that information is either:
- (i) certified as easy to understand by an independent organization specializing in plain English; or
 - (ii) otherwise tested with customers and found to be easily understandable.

⁴2007 report, paragraph 5.3(d) and paragraph 5.3(b) and (e).

⁵www.competition-commission.org.uk/inquiries/ref2005/banking/ni_banks_notice_of_making_of_order.pdf; and www.competition-commission.org.uk/inquiries/ref2005/banking/ni_banks_explanatory_note.pdf.

⁶This is a brief summary which by nature does not capture all the details and conditions relating to the remedies. The requirements of each remedy are set out in the Order.

- (b) *Explanations of the levels of charges and interest rates and how and when they are applied (Article 6).* Banks are required to ensure that customers receive clear explanations of the level of charges and interest rates that apply to a PCA. This includes the circumstances in which each of the charges and interest rates would apply and whether any discretionary policies exist as to how the charges and interest rates apply to unauthorized overdrafts. This information should be available at the time when a customer or potential customer is choosing a PCA or is opening a PCA. Any advertisement or promotional material must include reference to where the full information about charges and interest can be found.
- (c) *Information on statements (Article 7).* The information set out in (b) above must be included on statements to customers.
- (d) *Summary and breakdown of charges and interest (Article 8).* At least once a year banks must provide customers with an annual summary for each PCA showing the total amount of charges and interest applied to the PCA. This should include an explanation of the basis for each charge.
- (e) *Advance notice of charges and debit interest incurred (Article 9).* Banks must notify customers within one month of their incurring any charges or interest relating to an overdraft. Banks cannot deduct such charges or interest until a period of at least 14 days after notification.
- (f) *Regular 'rights' reminder (Article 10).* Banks must provide customers with clear and prominent wording on an annual summary (see (d) above) advising them that they can close a PCA and switch to another bank and specifying where they can find further information. Banks must also include a leaflet explaining how to switch a PCA to another bank.
- (g) *Changes to the switching process (Article 11).* Any customer switching a PCA must be offered an interest- and charge-free overdraft with the new bank for at least three months. This overdraft amount should be sufficient to cover the expected transactions on the account. This overdraft should be available pro-

vided that the customer is eligible under the bank's usual credit assessment policy.

- 3.6 The provisions of the Order came into effect on 22 February 2008, except Articles 5 and 6, which came into force on 1 July 2008, and Articles 7 to 11, which came into force on 1 April 2009.⁷

Legal framework for review of the Order

- 3.7 Under section 162 of the Act, the OFT has a duty to consider whether, by reason of any change of circumstances, an enforcement order made under sections 158, 160 or 161 of the Act is no longer appropriate and needs to be varied or revoked. The OFT shall give such advice to the CC as it considers appropriate in relation to any possible variation or revocation of the enforcement order.

The OFT's advice

- 3.8 On 18 May 2010, the OFT notified the CC that, pursuant to its duty under section 162 of the Act, it had reviewed the Order. Accordingly it sent the CC its advice.
- 3.9 The OFT's advice, which is published on its website⁸ at the same time as this provisional decision, was that there had been a change of circumstances relating to the Order. This was due to the coming into force of the PSD and the CCD and their subsequent transposition into UK law by specific regulations. The OFT also recognized that there had been other developments which had affected the PCA market since the 2007 report.

⁷Banks were, however, able to request a temporary suspension of parts of the Order subject to a review by an independent expert and the approval of the CC. Temporary suspensions were granted to Barclays for Articles 5 and 6 (www.competition-commission.org.uk/inquiries/ref2005/banking/notice_of_suspension.pdf) and to Nationwide for Articles 8 and 10 (www.competition-commission.org.uk/inquiries/ref2005/banking/notice_of_suspension_nationwide.pdf).

⁸www.of.gov.uk/OFTwork/markets-work/register-orders-undertakings/reviews/.

3.10 The OFT concluded that, to the extent that parts of the Order were harmonized by either the PSD or the CCD and the related regulations, then such parts were likely to be unenforceable. The OFT identified those parts of the Order that it considered were affected in this way. It recommended that the CC either revoke those parts or vary them in such a way that they are no longer in conflict with the PSD or the CCD.

New EU Directives

3.11 In this section, we consider in further detail the EU Directives that have contributed to the change of circumstances: the PSD and the CCD. We set out how the PSD and the CCD have been transposed into UK law and consider when the relevant regulations take effect and how they will be monitored and enforced.

3.12 Before explaining the requirements of the PSD and the CCD, we note that although the Directives address the same subject matter as the Order, the focus and intention of each is different:

(a) The Order implements a comprehensive remedy package intended to promote competition in the market for PCAs in Northern Ireland; it adopts a life-cycle approach focusing on customers' experience of choosing, opening, running and switching a PCA as these are the stages where competition is most likely to occur.

(b) The PSD and the CCD are intended to enhance transparency of information to consumers and provide a level regulatory playing field to stimulate the development of the internal market in payment services and consumer credit respectively. In doing so, the PSD and the CCD focus separately on specific aspects of a PCA:

(i) The PSD is concerned with payment services, including those conducted through a payment account; it overlaps with the Order in the requirements for

pre- and post-contractual information relating to payment transactions through an account.

- (ii) The CCD is concerned with consumer credit including some overdrafts; it overlaps with the Order in the requirements for pre- and post-contractual information relating to the provision of consumer credit in the form of authorized and unauthorized overdrafts.

Payment Services Directive

3.13 The PSD⁹ establishes a set of common rules for payment services providers on the form, content and manner of provision of pre-contractual and ongoing information on payment services to consumers. These requirements are applicable to banks and building societies.

3.14 In order to achieve a common set of rules throughout the EU, the PSD is a maximum harmonization directive.¹⁰ This means that in respect of matters falling within the scope of the relevant directive, member states are unable to maintain or introduce in their national law provisions which diverge from the provisions in the directives. Where no harmonized provisions exist, or where there is an explicit derogation from maximum harmonization, member states may maintain or introduce national provisions provided that these are compatible with any of the provisions of the relevant directives.

3.15 In the UK, the PSD was transposed into national legislation by the Payment Services Regulations 2009, which came into force for most purposes on 1 November 2009.¹¹

⁹Directive 2007/64/EC. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:319:0001:0036:EN:PDF>.

¹⁰PSD Article 86.

¹¹Although the regulations implement the Directive into UK law, the Directive sets out the area of coverage and in the event of any doubt or conflict between the regulations and the Directive, the Directive will prevail.

The competent authority for almost all of the PSRs is the FSA. The FSA has published guidance on its approach to the PSRs.¹²

3.16 The PSD and the PSRs prescribe a consumer-facing information regime for payment services which includes information on the establishment and operation of direct debits and standing orders from PCAs. The PSD recognizes that payment services may be undertaken pursuant to a single payment transaction contract or a framework contract and sets out different information requirements for such relationships. A framework contract governs the future execution of individual or successive payment transactions and may also include the obligations and conditions for setting up a payment account.

3.17 The PSD and the PSRs use different terminology from the 2007 report and the Order. However, we understand that an agreement between a customer and a bank to open a PCA, under which standing orders and direct debits may be drawn, falls within the definition of a 'framework contract'. It therefore falls within the scope of the PSD. In other words, in order to permit direct debits and standing orders to be paid from a PCA, a customer must enter into a framework contract.

3.18 The PSD¹³ and the PSRs require that in good time before the payment service user is bound by a framework contract or offer, the payment service user must be given certain specified information in easily understandable words and in a clear and comprehensible form.¹⁴

¹²The FSA's role under the Payment Services Regulation 2009, www.fsa.gov.uk/pubs/other/PSD_approach.pdf.

¹³PSD Articles 41 and 42.

¹⁴If the framework contract has been concluded at the request of the payment service user using a means of distance communication, which does not enable the payment service provider to comply with the prior information requirement, the payment service provider must provide such information immediately after the conclusion of the framework contract.

Consumer Credit Directive

- 3.19 The CCD¹⁵ establishes a set of common rules for consumer credit providers (which are not always banks) on the form, content and manner of provision of pre-contractual and ongoing information on consumer credit agreements including overdrafts to consumers.
- 3.20 The CCD is also a maximum harmonization directive in respect of areas within its scope.¹⁶
- 3.21 The CCD was transposed into UK law via a group of six Consumer Credit Act 1974 Regulations which came into force on 30 April 2010 and 26 August 2010 and which are required to be complied with in full from 1 February 2011.¹⁷ The OFT, together with local trading standards offices, is responsible for enforcing the CCRs. The Department for Business, Innovation and Skills (BIS) issued guidance on the implementation of the CCRs in August 2010.¹⁸
- 3.22 The CCD applies to consumer credit agreements including some overdrafts. The CCD does not use the terms 'authorized' and 'unauthorized' overdrafts but distinguishes between overdrafts which are explicit agreements to provide credit in the event of a shortfall and 'overrunning' which is a 'tacitly accepted overdraft'.¹⁹ BIS told

¹⁵Directive 2008/48/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:133:0066:0092:EN:PDF>.

¹⁶CCD Article 22.

¹⁷The Consumer Credit (EU Directive) Regulations 2010 (SI 2010/1010); The Consumer Credit (Total Charge for Credit) Regulations 2010 (SI 2010/1011); The Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013); The Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014); The Consumer Credit (Amendment) Regulations 2010 (SI 2010/1069); and The Consumer Credit (Advertisements) Regulations 2010 (SI 2010/1970).

¹⁸Consumer Credit Regulations: Guidance on the regulations implementing the Consumer Credit Directive: www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1053-consumer-credit-directive-guidance.pdf.

¹⁹CCD Article 3(d) and (e).

us that, as set out in the CCR guidelines, the term 'overrunning' used in the CCD means an unauthorized overdraft and 'overdraft' means an authorized overdraft.²⁰

- 3.23 The CCD requires that information on all charges payable, when these may be charged and the interest rate to be applied on overdrafts must be given to a consumer as pre-contractual information in a standard form containing other information.²¹ Where overrunning is permitted on a PCA, the CCD requires a consumer be advised of this on opening of the account but a format is not prescribed.²²
- 3.24 The CCD does not apply to all authorized overdrafts: it does not apply to authorized overdrafts repayable within one month and it applies a lighter touch regime to overdrafts repayable on demand or within three months. All other types of overdraft (to the extent that they exist in the UK) are subject to the full regime. However, in implementation of the CCD, because this aspect was not a maximum harmonization requirement, the Government decided to include authorized overdrafts repayable within one month in the light touch information regime which applied to some other types of overdrafts.²³

Other regulations and voluntary arrangements since the 2007 report

- 3.25 Other mandatory regulations and voluntary arrangements have also emerged since the 2007 report. These have been issued by different bodies each with differing responsibilities for overseeing those providing PCAs and/or providing credit to consumers.²⁴ Each body has a different approach to monitoring and enforcement. In

²⁰ Authorized and unauthorized overdrafts are defined in the Order. Authorized overdraft is defined as a debit balance which is within a limit agreed between a customer and a bank; unauthorized overdraft is defined as a debit balance which exceeds a limit agreed between the customer and the bank or a debit balance if no such limit had been agreed.

²¹ CCD Article 6 (1). The CCD uses the term 'borrowing rate' which is not materially different from the term 'interest rate' as defined by the Order. The OFT work on overdrafts picks up the lighter touch requirements for overdrafts not within scope of the CCD. The prescribed form is called an ECCI or European Consumer Credit Information and the contents are set out in Annex III to the CCD.

²² CCD Article 18

²³ Consumer Credit (Disclosure of Information) Regulations 2010, regulation 10.

²⁴ We note that the Government is currently consulting on the creation of a new consumer protection and markets authority for the regulation of financial services.

this section, we outline the range of other areas of regulation and guidance. The extent of any overlap between these other regulations and guidance and the Order is covered in detail in Section 4 and Appendix A.

Banking Code of Business Sourcebook

- 3.26 In addition to complying with the PSRs, payment service providers need to comply with a set of rules issued by the FSA. The rules are set out in BCOBS were issued in November 2009 and replaced the deposit-taking elements of the voluntary Banking Code. All banks, building societies and credit unions that are authorized to accept deposits must follow these rules when dealing with a banking customer. BCOBS includes rules, which describe an outcome that must be achieved, and guidance. BCOBS guidance is not binding upon those to whom the rules apply but may be used, for example, to explain the implications of other provisions, to indicate possible means of compliance or to recommend a particular course of action or arrangement. The FSA has wide powers to enforce adherence to the PSRs and BCOBS rules.
- 3.27 The British Bankers' Association (BBA), the Building Society Association (BSA) and Payments Council jointly issued Industry Guidance that sets out in more detail one way that firms can achieve adherence to BCOBS.²⁵ This Industry Guidance is not mandatory. However, the FSA has confirmed that it will take this Industry Guidance into account when exercising its regulatory functions.

OFT's voluntary initiatives

- 3.28 The OFT has been working with PCA providers in Great Britain to agree voluntary initiatives to address the issues it identified in its 2008 market study of PCAs in the UK, which was published after the CC's market investigation into PCAs in Northern

²⁵Industry Guidance for FSA Banking Conduct of Business Sourcebook, May 2010.

Ireland.²⁶ In October 2009, the OFT announced initiatives to address concerns regarding transparency and switching,²⁷ and in March 2010, it reported on the outcome of discussions it had held with PCA providers to address its concerns around unarranged overdrafts.²⁸ The OFT intends to monitor the PCA market and will publish update reports on a regular basis until 2012, when it expects to consider a further review of the market and the impact of the range of initiatives introduced following the 2008 market study. The first of its regular updates was published in September 2010.²⁹

- 3.29 In its October report, the OFT set out that the largest PCA providers in Great Britain, along with many smaller ones, would provide an annual summary of charges and interest for customers; would enhance their regular (usually monthly) statements for customers; and would publish information on charges for a series of unarranged overdraft scenarios. As the Order was in place for the Northern Ireland banks at the time these voluntary initiatives were agreed and covered many of the aspects of concern to the OFT, the OFT did not seek to extend the scope of these initiatives to banks in Northern Ireland. However, all the banks in Northern Ireland bound by the Order have subsequently committed to provide consumers with an Annual Summary as described in Article 8 of the Order whether that part of the Order is enforceable or not. In addition, the largest banks in Northern Ireland have entered into discussions with the OFT about improving consumers' control over incurring overdraft charges; the clarity and predictability of charges; and responsible lending through unarranged overdrafts.

²⁶ *Personal current accounts in the UK: An OFT market study*, July 2008: www.of.gov.uk/shared_of/reports/financial_products/OFT1005.pdf.

²⁷ *Personal current accounts in the UK: A follow up report*, October 2009: www.of.gov.uk/shared_of/personal-current-accounts/OFT1123.pdf.

²⁸ *Personal current accounts in the UK: unarranged overdrafts*, March 2010. www.of.gov.uk/shared_of/personal-current-accounts/of1216.pdf

²⁹ *Personal current accounts in the UK: Progress update*, September 2010 http://www.of.gov.uk/shared_of/reports/financial_products/OFT1275.pdf

Lending Code

3.30 The LSB³⁰ monitors and enforces the Lending Code. This is a self-regulatory code setting minimum standards of good practice in relation to loans, credit cards, charge cards and current account overdrafts. Its wording is owned and has been jointly agreed by the BBA, the BSA and the UK Cards Association on behalf of their subscribing members. Subscribers to the Lending Code include all the major banks providing PCAs. Subscribers provide the LSB with an annual statement of compliance. In addition, the LSB has a monitoring programme under which it visits subscribers, typically on a themed basis, to assess compliance with the Code and consumer outcomes. The LSB's powers include warnings, public censure or removal from the register of Code subscribers. Consumers can bring to the LSB's attention evidence of breaches of the Lending Code but the LSB is not able to investigate individual complaints. The Financial Ombudsman Service may take note of the Lending Code provisions, as statements of good industry practice, when considering complaints and making adjudications.³¹

European Switching Principles

3.31 The European Banking Industry Committee (EBIC) adopted a set of Common Principles for Bank Account Switching.³² These voluntary principles relate to PCAs and were adopted from 1 November 2009. They are compatible with existing switching services and take into account the different legal and technical constraints in individual member states. The principles seek to ensure that there is no unnecessary delay to the switching process and that the consumer is aware of the process.

³⁰The LSB was formerly the BCSB.

³¹The Financial Ombudsman Service resolves complaints between firms and consumers relating to financial services. It is an independent expert body established by Parliament and although often reaching voluntary resolution, can make rulings that are binding on firms provided the consumer agrees.

³²http://ec.europa.eu/internal_market/finances-retail/docs/baeg/switching_principles_en.pdf and <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1841&format=HTML&aged=0&language=EN&guiLanguage=en>.

4. Assessment of the effect of the change of circumstances on the Order

4.1 In this section, we set out our approach to assessing the relationship between the requirements of the Order and the requirements of the PSD and the CCD, and other regulations, codes of practice and voluntary arrangements. We then consider on an Article-by-Article basis how and why we propose the Order to be varied to take into account any overlap between the Order and the PSD or the CCD. Having summarized the proposed variations to the Order, we then assess the effectiveness and proportionality of the varied Order.

Our approach

4.2 In assessing how the requirements of the Order relate to the requirements of the PSD and CCD, we identified three possible scenarios:

(a) Where the requirements of the Order are *in scope* of and *exceed* the requirements of the PSD or the CCD, we propose to revoke these parts of the Order.

Where aspects of the Order are to be revoked for this reason, we have examined whether existing voluntary arrangements or guidance may achieve some of the objectives of the Order.

(b) Where the requirements of the Order are *in scope* of and are *duplicated by or are duplicated in effect by* the requirements of the PSD or the CCD, we propose to revoke the relevant requirements of the Order so as to avoid duplication of regulation.

(c) Where the requirements of the Order are *outside the scope* of the PSD and the CCD, we propose to retain the requirements of the Order unless there are other regulations or voluntary arrangements which are as effective as the Order or there are reasons of practicability or proportionality which mean that it is appropriate for those requirements to be revoked.

4.3 Given our approach in (a), we have assessed the nature of other regulations, codes of practice and voluntary arrangements (ie those regulations not including the PSD or the CCD). We have found that:

(a) Other mandatory regulations, such as BCOBS, cannot be seen as a substitute for aspects of the Order that exceed the PSD or the CCD, because these regulations are also subject to the maximum harmonization requirements of the PSD and the CCD. Other mandatory regulations can, however, act as an alternative for those parts of the Order that are outside the scope of the PSD and CCD, although the reliance we can place on them depends on how the specific requirements and powers of enforcement compare with those of the Order.

(b) Voluntary arrangements, which might be seen as an alternative to the Order, do not have the legal right to action of CC Orders and therefore have no enforcement mechanisms for consumers. For example, the OFT's voluntary initiatives can only be given strength in terms of compliance through 'naming and shaming' of non-compliant parties. Voluntary arrangements are therefore less effective than the Order and should not be seen as a substitute for the Order where the Order can remain in force. Nevertheless, where the requirements of the Order exceed those of the PSD or the CCD such that they should be revoked, we recognize that voluntary arrangements may contribute usefully to the matrix of solutions that remain available to address the AEC.

Article-by-Article assessment of overlap between the Order and the PSD and the CCD and proposed variations to the Order

4.4 In this section, we set out our assessment of the overlap between the Order and the PSD and the CCD and the proposed changes to Articles 5 to 11 of the Order on an Article-by-Article basis (we present our views on Article 5 after we consider Articles 6 to 9 because the changes to Article 5 are dependent on our approach to Articles 6 to 9). Our full assessment of the overlap of each Article with the PSD and the CCD,

including the views of the banks and third parties on these overlaps, is set out in Appendix A.

- 4.5 We have also considered consequential changes to the other Articles of the Order (Articles 1 to 4 and Articles 12 to 16).

Article 6: Duty to provide details of charges and interest rates to customers when choosing a PCA and when opening a PCA

- 4.6 The requirements of Article 6 relate to explanations of the level of charges and interest rates that apply to a PCA with respect to financial promotions (Article 6(3)), choosing a PCA (Articles 6(1)(a) and 6(2)) and opening a PCA (Articles 6(1)(b) and 6(2)).

Financial promotions

- 4.7 Article 6(3) of the Order requires that any advertisement or promotional material must include reference to where the full information about charges and interest can be found. We propose to retain the requirements of Article 6(3) because:
- (a) Advertising of payment services is not within the scope of the PSRs. In our view, the requirements of Article 6(3) are outside the scope of the PSD.
 - (b) The requirements of Article 6(3) are largely outside the scope of the CCD (see Appendix A). BIS told us that the requirements of the CCD relating to financial promotions did not preclude the Order from requiring information on interest rates and charges for overdrafts to be included in advertisements or literature for PCAs. We propose to align the definition of interest rates in the Order with those of the CCD and make reference to the need for banks to meet requirements of the CCRs that are additional to the Order. The Order would not, however, make any additional requirements.
 - (c) BCOBS contains some requirements in relation to communication with banking customers and financial promotions. Whilst we welcome the adoption of a clear

communication rule in BCOBS, we consider that the requirements of the Order in Article 6(3) are more specific than BCOBS and specifically aimed at addressing the AEC identified in the Northern Ireland PCA market.

Choosing and opening a PCA

4.8 Both the PSD and the CCD have pre-contractual information requirements which apply 'in good time before the consumer is bound'. As set out in Appendix A, in our view, it is clear that 'in good time before the consumer is bound' covers the period described in the Order as 'at the time of opening a PCA' but it is not clear that it includes literature supplied online or in branch, which are described by the Order as 'when choosing a PCA'.

- *Choosing a PCA*

4.9 We propose to retain in the Order those parts of Article 6 relating to choosing a PCA but re-define 'choosing to open a PCA' so that the requirements of Article 6(2) cover that literature supplied in store or online (as set out in Article 6(1)(a)) which is not deemed to be pre-contractual information under the PSD and the CCD. We have reached this view on the basis that:

(a) Based on paragraph 4.8, we have taken the view that the requirements of the Order when choosing a PCA are outside the scope of the PSD and the CCD.

(b) Under CCD Article 18, information on charges and borrowing rates for unauthorized overdrafts are not required to be provided until such point as a consumer reaches an agreement on opening a PCA. Taking the period from which a consumer first searches for a PCA to the point of opening the PCA, this would mean that there would be a gap in the regulatory framework of the PSD, the CCD and other regulatory requirements with respect to pre-contractual information *prior to* opening a PCA unless the Order continued to require provision of information on unauthorized overdrafts when choosing a PCA. This gap means that it is

important to retain the requirements of the Order when choosing a PCA. This will ensure that by the time a consumer has made a decision to open a PCA, he/she has seen all the necessary information to make a fully informed choice.

(c) We understand that the requirements of BCOBS cover, among other things, communications and financial promotions, and information to be communicated to banking customers. In our view, these requirements are less specific than the Order, and are not specifically aimed at addressing the AEC identified in the Northern Ireland PCA market.

- *Opening a PCA*

4.10 We propose to revoke from the Order Article 6(1)(b) relating to opening a PCA because:

(a) Based on paragraph 4.8, the requirements of the Order at the time of opening a PCA are largely duplicated by PSD Article 42 and CCD Articles 6 and 18.

(b) We understand that provision of information concerning those charges not covered by PSD Article 42 and CCD Articles 6 and 18, which comprise certain current account charges and transaction charges (see Appendix A), should be considered under BCOBS rule 4.1.1 and guidance 4.1.4(5)G.³³ We are satisfied that there is no material difference in coverage of the Order compared with the combination of the requirements of the CCD, the PSD and BCOBS in the provision of information on interest and charges when opening a PCA. We understand that through the PSRs and BCOBS the FSA monitors and enforces the provision of information on current account charges and transaction charges (see Appendix A).

³³BCOBS 4.1.4(5)G states that the pre-contractual information provisions of BCOBS include 'any charges at any time payable by or on behalf of a banking customer in relation to each retail banking service and any changes to those charges'.

Article 7: Duty to provide details of charges and interest rates on statements

4.11 Article 7 of the Order requires a bank to provide customers as part of each statement with the details of charges and interest rates.

4.12 We propose to revoke Article 7 of the Order in full because it exceeds or duplicates the requirements of PSD Articles 44, 47 and 48 and CCD Articles 12 and 18. However, unlike the Order, the PSD and the CCD do not require a full reminder of the tariff of charges and interest rates on each statement; they require notification of adverse changes in some but not all of the interest rates or charges covered by the Order (see Appendix A).³⁴ In our view this approach is less effective in remedying the AEC found in the Northern Ireland PCA market than a full reminder of the tariff of charges and interest rates on each statement.

4.13 We found that any gaps in coverage of the CCD and the PSD in comparison with the Order would not be mitigated by other existing codes or voluntary arrangements:

(a) The LSB told us that there were no current provisions in the Lending Code requiring regular provision of tariff interest rates and charges on authorized and unauthorized overdrafts.

(b) The OFT's voluntary initiatives for enhanced monthly information cover some of the same ground as the Order with respect to monthly management fees and information about debit and credit interest rates.³⁵ However, these voluntary initiatives were not extended to the Northern Ireland banks because the Order was in place at the time the voluntary initiatives were being discussed.

³⁴The PSD and PSRs set out the requirements for notification of changes to a framework contract. The circumstances in which notification of any change in the tariff of charges or interest rates must be given may depend upon the terms of the framework contract. However, changes in interest or exchange rates which are more favourable to payment services users may be applied without prior notice.

³⁵*Personal current accounts in the UK: A follow up report*, October 2009, OFT, paragraph 4.31.

4.14 In light of the gaps in coverage of the PSD, the CCD and other codes or voluntary arrangements in comparison with Article 7 of the Order, we believe it would be helpful to customers for banks to continue to provide customers with a tariff of interest rates and charges on statements on a regular basis. Where possible, we are keen to see such arrangements incorporated within the relevant voluntary code of practice.

Article 8: Duty to provide an annual summary

4.15 Article 8 of the Order sets out that at least once a year banks must provide customers with an annual summary for each PCA showing the total amount of charges and interest applied to the PCA.

4.16 We propose that Article 8 is revoked because the requirement of Article 8 of the Order to provide an annual summary exceeds the requirement of the PSD Articles 47 and 48, which require that post-contractual information is provided 'without undue delay', and also CCD Articles 12 and 18,

4.17 We are pleased to see that, under the OFT's voluntary initiatives, banks intend to provide annual summaries to customers before or around the end of 2011. We hope that the OFT's voluntary initiatives will encourage banks to provide annual summaries but, given the terms of the PSD and the CCD, we are unable to be more prescriptive. Thus, although the OFT's voluntary initiatives have no enforcement powers, they provide as effective a solution as is available to us. The OFT told us that it intended to monitor the PCA market and would publish update reports on a regular basis until 2012, when it expected to consider a further review of the market and the impact of the range of initiatives introduced following the 2008 market study. We consider that the risk of public censure for not producing the annual summaries may provide sufficient incentives to the banks.

Article 9: Duty to notify a customer of overdraft charges and debit interest

4.18 Article 9 has two separate requirements: first, Articles 9(1), 9(2) and 9(3) require the notification of authorized and unauthorized overdraft charges and/or debit interest within one month of being incurred; and second, Articles 9(4) and 9(5) require that banks cannot deduct overdraft charges and/or debit interest until 14 days after such notification.

- *Notification*

4.19 We propose to revoke Articles 9(1), 9(2) and 9(3) of the Order because they are broadly duplicated by CCD Articles 12 and 18. The CCD requires that customers are 'kept regularly informed by means of a statement of account' of 'any [authorized overdraft] charges that have been applied' (Article 12) and 'in the event of a significant overrunning [ie an unauthorized overdraft] exceeding a period of one month' are informed 'without delay' of 'any penalties, charges or interest on arrears applicable' (Article 18).

- *Fourteen-day window*

4.20 We propose to continue to require a 14-day pre-notification of taking charges and interest because:

(a) Articles 9(4) and 9(5) of the Order are outside the scope of the CCD as no harmonized provisions exist in relation to pre-notification of taking charges and interest.

(b) The Lending Code does not contain a requirement for charges to be pre-notified (although paragraph 60 of the Lending Code requires customers to be given at least 14 days' notice of the taking of interest in respect of current account overdrafts). The LSB told us that many banks choose to give notice of both charges and the taking of interest. The LSB's submission to the independent review of the Lending Code, currently under way, has called for pre-notification of unauthorized

overdraft charges but these, if accepted, will not become effective until 1 April 2011.

4.21 At present, the 14-day no-charge window is 'triggered' by the notification of the liability for the charge or interest occurring. As this notification is a requirement duplicated by the CCD which we propose to be removed from the Order (see paragraph 4.19), we need to ensure that an effective trigger can be retained without being in conflict with the CCD. We propose to tie the requirements of Article 9(4) of the Order to the provision of information of charges in whatever format made in accordance with CCD Articles 12 and 18.

Article 5: Duty to communicate clearly

4.22 Article 5 requires that the information provided under Articles 6, 7, 8 and 9 are easy to understand by the average customer. This requirement can be met by ensuring that information is found to be easily understandable either through certification by an independent organization specializing in plain English or by testing with customers.

4.23 As set out in paragraphs 4.6 to 4.21, we propose to revoke the information requirements of Articles 6, 7, 8 and 9, with the exception of the requirements to provide information to assist customers when choosing a PCA (Article 6(1)(a)). This means that Article 5, in so far as it relates to those information requirements that are being revoked, is no longer necessary and the scope of Article 5 is considerably narrower, relating only to information provided when choosing a PCA.

4.24 As we provisionally found that choosing a PCA is outside the scope of the PSD and the CCD (see paragraphs 4.8 and 4.9), we have considered whether it is practicable and proportionate to continue to require banks to have 'standard text' certified by an independent organization and tested with customers.

- 4.25 We found that it would not be proportionate for the requirements when choosing a PCA to have a higher standard of duty to communicate (ie requiring independent certification and testing with customers) than the PSD or the CCD because it would not provide a clear regulatory framework within which banks should operate. We also noted the progress in clearer communication since the Order was made. In particular, the role of the LSB and the FSA in clearer communication is now prominent (see, for example, 'Money made clear' publications).
- 4.26 We propose to align the requirements of the Order in terms of the standard of communication with those of the PSD and the CCD to both pre-contractual and post-contractual information. The effect of this would be to:
- (a) change the requirement of Article 5 to communicating in 'easily understandable words and in a clear and comprehensible form' (see PSD Article 41, for example); and
 - (b) revoke the requirements for independent certification and for standard text to be tested with customers.

Article 10: Provision of switching information

- 4.27 Article 10 requires that banks must provide customers with clear and prominent wording on an annual summary advising them about the switching process. Banks must also include a leaflet explaining how to switch a PCA to another bank.
- 4.28 The provision of switching information is outside the scope of the PSD and the CCD. However, the provision of switching information in the Order is 'triggered' by the requirement to provide an annual summary in Article 8. As set out in paragraph 4.16, we propose to revoke Article 8. This means that an alternative way of describing the 'trigger' for the switching information needs to be found in order for the requirements of Article 10 of the Order to remain effective.

An alternative 'trigger'

4.29 We propose to require that the rights reminder and switching leaflet are given once a year with a form of statement. This requirement could be fulfilled by provision of the information with the OFT's voluntary annual summaries, but could also be fulfilled by providing the information with a particular monthly statement once during the year. In our view, this is a practical and effective way to vary the Order given the effect of the change of circumstances on the existing 'trigger':

(a) First, this approach best fits with the intention of the 2007 report which set out that:

the rights reminder would be most effective if it were provided as part of the same communication as the annual summary and breakdown of charges and interest. This would mean that customers would receive a reminder of the ability to switch at the same time as they had received information on the costs of operating their PCA.³⁶

(b) Second, as the banks have agreed with the OFT to provide annual summaries, this approach should ensure that the intention of the 2007 report is maintained and at no additional cost.

Article 11: Switching provision

4.30 Article 11 requires that any customer switching a PCA must be offered an interest- and charge-free overdraft with the new bank for at least three months.

4.31 We do not propose to make any significant changes to the switching provisions of Article 11 of the Order because they are largely outside the scope of the PSD and the CCD. We found that the requirements of the Order are more specific than any of the alternative mandatory regulations or voluntary arrangements (for example, the

³⁶2007 report, paragraph 6.158.

European Switching Principles) and would continue to serve a specific purpose in remedying the AEC identified in the Northern Ireland PCA market.

- 4.32 We propose to revoke Article 11(2)(b), which is the requirement for a new bank to offer a customer an authorized overdraft at a level that takes into account the expected number and level of direct debits and standing orders that the customer would make on his PCA, because it exceeds the CCD. In revoking Article 11(2)(b), we did not find that the effect of the Order would be materially diminished because a new bank is still required to offer a customer an authorized overdraft at a level that applies the new bank's usual credit assessment criteria under Article 11(2)(a).

Summary of proposed variations and remaining parts of Order

- 4.33 Based on paragraphs 4.4 to 4.32, Table 2 sets out the proposed variations to the Order and those requirements that would remain following these variations.

TABLE 2 Summary of proposed variations to Articles 5 to 11 of the Order and remaining requirements

Article	Proposed variations to Order and other regulations or voluntary arrangements which cover the revoked requirements	Remaining requirements of Order
Article 6	Revoke the requirements relating to provision of details of charges and interest rates to customers when <i>opening</i> a PCA. These requirements are largely duplicated by the PSD and the CCD. Any gaps in the PSD and the CCD are covered by BCOBS.	Provision of details of charges and interest rates to customer when <i>choosing</i> a PCA and in advertising and promotions. This requirement would relate to information not deemed 'pre-contractual information' under the PSD and the CCD. The requirements would cover literature in store and online. This ensures that information on unauthorized overdraft charges are provided to customers prior to signing the PCA agreement. It is also based on our view that we have reasonable grounds to conclude that choosing a PCA is not covered by the PSD and the CCD.
Article 7	Revoke in full the requirements to provide details of charges and interest rates on statements. These requirements duplicate or exceed the PSD and the CCD.	None
Article 8	Revoke in full the requirement to provide an annual summary, which exceeds the requirements of the PSD and the CCD. The requirement to provide an annual summary is covered by the OFT's voluntary initiatives with banks.	None
Article 9	Revoke the requirement to notify overdraft charges and debit interest. This requirement is duplicated by the PSD and the CCD.	Provision of a 14-day period between notifying overdraft interest and charges and deducting them from a customer's account.
Article 5	Vary requirement to communicate clearly so that it is aligned with the requirements of the PSD and the CCD ('given in easily understandable words and in a clear and comprehensible form') and no longer includes a requirement for independent certification of text.	Provision to communicate clearly when meeting Article 6 (but the standard for provision would be aligned with the PSD and the CCD).
Article 10	Vary requirement to provide switching information so that it is triggered by the provision of a statement rather than an annual summary, noting that this requirement can be satisfied by providing the information with the OFT's voluntary annual summary.	Provision of a switching rights reminder and switching leaflet.
Article 11	Revoke the requirement for a new bank to offer a customer an authorized overdraft level that takes into account the expected number and level of direct debits and standing orders. This requirement exceeds the CCD.	Switching provisions, save for the minor modification set out in the previous column.

Source: CC analysis.

Note: Article 5 is listed after Articles 6 to 9 as the changes are a consequence of the changes to Articles 6 to 9.

Other changes to the Order

4.34 In reviewing the Order, we also identified a number of other Articles that can be revoked or varied:

(a) Article 2 will need to have some definitions amended which are no longer relevant.

(b) Article 3 can be revoked as it is no longer relevant as Article 8 and Article 9(2), to which it refers, have been revoked.

(c) Articles 12 and 13 can be revoked because they have time-expired.

- *Monitoring*

4.35 The reduced requirements of the Order have also allowed us, in consultation with the OFT and the LSB, to consider how monitoring of a varied Order should occur in future.

4.36 Although two banks submitted that no monitoring of the Order would be required, the other banks made a number of proposals for changes to monitoring should the requirements of the Order be reduced. These included:

(a) internal monitoring with an annual statement of compliance (mentioned by three banks);

(b) annual mystery shops by a financial institution (mentioned by two banks); and

(c) OFT to be able to review customer complaints (mentioned by three banks).

4.37 The OFT told us that it preferred a combination of measures (a) and (c). This might be achieved by including information on customer complaints in annual compliance reports. Having considered the options above, we have provisionally decided that monitoring of an Order based on the variations in Table 2 no longer requires an explicit role for the LSB. Instead, monitoring of the reduced requirements can be achieved through an annual statement of compliance to the OFT, which would include information on customer complaints in the relevant areas. This proposed change to the monitoring framework has the effect of Articles 15 and 16 being varied so as to revoke Articles 15(1)(a), 15(1)(c), 15(2) and 16.

Assessment of effectiveness and proportionality

4.38 In taking remedial action, the CC is required to achieve as comprehensive a solution as is reasonable and practicable to the AEC and any adverse effects resulting from it.

To fulfil this requirement, the CC chooses the least costly and least intrusive remedy package that is effective in addressing the AEC and its resulting adverse effects. In this section, we therefore assess the effectiveness and proportionality of the varied Order (based on the variations in Table 2 and paragraphs 4.34 and 4.37).

Effectiveness

- 4.39 In the 2007 report, the CC found that the remedy package, which was implemented by the Order, was effective in remedying the AEC. In our view, it is clear that the removal of a substantial part of the remedy package would mean that it would become only partially effective in addressing the AEC.
- 4.40 As set out in Table 2, the effect of the implementation of the PSD and the CCD is that the Order needs to be varied. We can no longer maintain the full remedy package identified in the 2007 report. However, we still see a need for some measures in Northern Ireland over and above the provisions of the PSD, the CCD, and other regulatory and voluntary arrangements in order to continue to remedy the AEC as best we can given the change of circumstances. We have also looked at other ways in which the same or similar measures will still be delivered.
- 4.41 The overall effect of the changes to the Order is that:
- (a) Almost all of the transparency requirements of the Order will continue to be provided in some way through a combination of the PSD and PSRs, the CCD and CCRs, BCOBS, the OFT's voluntary initiatives and the Lending Code, as well as the varied Order. We also noted that many banks are intending to continue with the requirements of the Order on a voluntary basis as these are already embedded in their business processes.
 - (b) The switching requirements in the Order will be largely retained.

(c) The main gap in coverage in comparison with the Order is in the frequency of notification of charges and debit interest in Article 7 (see paragraphs 4.11 to 4.14).

4.42 We made two observations regarding the monitoring and enforcement of the broader regulatory framework:

(a) Elements of the Order will be spread across the regulations and guidelines of several different monitoring bodies—the FSA, the OFT and the LSB. This is inevitably less cohesive than monitoring by a single body.

(b) The Order provided a formal enforcement mechanism under section 94 of the Act. In particular, the Order imposed a statutory duty on banks in Northern Ireland and the duty was owed to anyone who would be affected by a breach of the Order. In contrast, although some of the voluntary arrangements cover similar ground to the Order, the way in which these voluntary arrangements can be enforced do not meet the same standard as the Order. For example, the enforcement powers relating to BCOBS and the Lending Code are not the same as a right of action for consumers.

4.43 We concluded that the varied Order, as described in Table 2, is the most comprehensive solution as is reasonable and practicable in mitigating the AEC taking into account the effect of the change of circumstances.

Proportionality

4.44 In this section, we assess the proportionality of the varied Order (based on the variations in Table 2 and paragraphs 4.34 and 4.37). We begin by reviewing how the 2007 report examined proportionality of the remedy package and then assess proportionality of the varied Order.

The 2007 report

4.45 The 2007 report looked at both the costs of the remedy package and the detriment caused by the AEC. The CC found that the remedy package was not disproportionate to the AEC or detriment.

4.46 The CC estimated annual costs of £9.55 million for all banks.³⁷ The estimates of the costs the CC used for each remedy are set out in Table 3. It shows that most of the annual costs of the remedies related to three of the seven remedies: Articles 7, 8 and 9.

TABLE 3 CC's estimated costs per remedy in 2007 report

<i>Remedy</i>	<i>Total one-off costs for all banks</i>	<i>CC estimated annual cost per bank</i>	<i>Total annual costs for all banks</i>
(a) Easy to understand terminology (Article 5)	£1m	£50,000*	£500,000*
(b) Explanations of the levels of charges and interest rates and how and when they are applied (Article 6)			
(c) Information on statements (Article 7)	£11–14m	£200,000	£2m
(d) Summary and breakdown of charges and interest (Article 8)	£10–16m	£240,000	£2.4m
(e) Advance notice of charges and debit interest incurred (Article 9)	£14–23m	£440,000	£4.4m
(f) Regular 'rights reminder' (Article 10)	£700,000	£25,000	£250,000
(g) Changes to the switching process (Article 11)	Not quantified	Not quantified but described as 'unlikely to be significant'	Not quantified
Whole package of remedies	£36.7–54.7m	£955,000	£9.55m

Source: 2007 report, paragraphs 6.50–6.51, 6.74, 6.96, 6.124–6.125, 6.154, 6.177 & 6.257.

*The bulk of the costs were associated with remedy (b).

4.47 The CC noted that, in estimating the annual cost, it took into account the requirements for banks to finance additional resources needed for monitoring the remedies. The estimates assumed no cost synergies between remedies and the CC recognized that the estimates were likely to represent the upper end of the range of costs because it found that:³⁸

³⁷The CC asked the banks for their estimates of the one-off implementation costs of each remedy and the annual implementation costs of each remedy. Taking the average of the costs supplied by the banks that provided estimates, the CC then multiplied the figure by ten, as there were ten banking groups that had more than 10,000 PCA customers in Northern Ireland and would be captured by the remedies.

³⁸See 2007 report, paragraph 6.258.

- (a) the estimates of costs were likely to be cautious;
- (b) there would be synergies between the implementation of remedies as a package —for example, remedies (a), (b), (c) and (d),³⁹ and
- (c) there would be some costs which were not purely incremental to the remedy and could be related to other regulatory changes.

4.48 The CC recognized that there was no precise way in which the detriment caused by the AEC could be calculated.⁴⁰ The CC estimated the level of detriment caused by the AEC by examining charges paid, interest on credit balances and interest on debit (overdraft) balances and found an annual post-tax detriment of £12.1 million to £24.0 million. The calculation of the benefits of the remedy package in the 2007 report assumed that all the detriment was addressed by the remedy package as the remedy package was seen to be a comprehensive solution to the AEC.

4.49 The CC expected its remedy package to remain in place over time so that benefits would accrue over a prolonged period. It estimated the costs and benefits over 20 years on a net present value basis and found benefits of £100–£200 million compared with costs of £60–£75 million.⁴¹

Banks' and third parties' views

4.50 We asked the banks about any changes in the annual costs of the remedy package since the 2007 report. No further evidence was provided on the costs of each remedy being materially different from the figures in the 2007 report. The only issues raised regarding proportionality were that:

- (a) monitoring should be proportionate to whatever remains of the Order; and

³⁹See 2007 report, paragraph 6.59.

⁴⁰See 2007 report, paragraph 6.261.

⁴¹The CC used a post-tax discount rate of 9 per cent for costs and a discount rate of 3.5 per cent for benefits.

(b) consumer testing of standard text in Article 5 may no longer be appropriate if the scope of the Order is narrowed.

4.51 We have already considered monitoring in paragraphs 4.35 to 4.37 and Article 5 in paragraphs 4.22 to 4.26.

Our approach to proportionality

4.52 We considered whether the varied Order is the least costly and least intrusive remedy package that is effective in addressing the AEC given the change of circumstances.

4.53 We found that there would be benefit in retaining the Order as varied because it would mitigate the AEC and it would deliver a better outcome than revoking the Order in full.

4.54 We then went on to consider the overall benefits and costs of the varied Order. In doing so, we used the 2007 report as our starting point:

(a) We used the costs in the 2007 report as the banks told us that these had not materially changed (see paragraph 4.50). In assessing the costs of the remedies, we ignored all one-off implementation costs (as these are sunk costs) and focused on the annual costs of each remedy. In our view, the changes to the Order set out in Table 2 and paragraphs 4.34 and 4.37 would not create any material additional costs.

(b) In the absence of any evidence to suggest otherwise, we assumed that the detriment (absent any remedies) was unchanged from the 2007 report.

4.55 We took the view that the relevant proportionality assessment following the change of circumstances is whether it remains proportionate to continue to have a separate

Order making the reduced requirements in Table 2 and incorporating the revised monitoring framework, as described in paragraph 4.37. To do this, we excluded the remedies that are being revoked from the Order and considered only whether the annual costs of the varied Order are likely to be outweighed by the annual benefits.

4.56 We were able to make a reasonable assessment of the annual costs of the varied Order based on the evidence that the costs of each remedy have not increased. Table 4 shows that a reasonable estimate of the annual costs of the remedies remaining in the varied Order would be less than £1 million per year.⁴² This is a significant reduction from the ongoing annual costs of £9.55 million per year of the Order in its existing form.

TABLE 4 Revised costs of remedies in varied Order

<i>Remedy</i>	<i>Summary of variations</i>	<i>2007 estimated annual costs for all banks £m</i>	<i>Revised annual costs for all banks based only on those requirements remaining in the Order*</i>
(a) Easy to understand terminology	Revoked except for requirements when choosing a PCA	£500,000	Maximum £500,000 but likely to be much lower given reduced requirements
(b) Explanations of the levels of charges and interest rates and how and when they are applied			
(c) Information on statements	Revoked	£2m	Nil
(d) Summary and breakdown of charges and interest	Revoked	£2.4m	Nil
(e) Advance notice of charges and debit interest incurred	Notification requirements revoked; 14-day window retained	£4.4m	Maximum £150,000 but likely to be lower given the Lending Code overlaps with one of these requirements already†
(f) Regular 'rights reminder'	Retained	£250,000	£250,000
(g) Changes to the switching process	Retained	Not quantified	Not quantified
Revised package of remedies		£9.55m	Less than £1m

Source: CC analysis.

*For simplicity, these figures are based on ten banks, which was used in the 2007 report, rather than nine banks, as there are currently in Northern Ireland. The difference is not material to the assessment here.

†The figure of £150,000 is derived from the estimates banks gave the CC in the 2007 report (paragraph 6.124) of the annual costs of this remedy for all banks without linking pre-notification and the sending of a statement. This seems a reasonable estimate for the separate cost of the 14-day window although it still includes the cost of sending out the separate notification, so in fact the cost is likely to be lower.

⁴²And most likely reduced by significantly more as only part of the costs of remedies (a) and (e) would continue to apply, and remedy (e) in particular is likely to be required in any event by the Lending Code from April 2011.

4.57 We attempted to weigh up these costs against the amount of detriment that would be addressed by the varied Order. As we did not find in the 2007 report that any one remedy would be disproportionate on its own, and given that the costs of each remedy have not increased since the 2007 report, we found that the costs of £1 million per year were likely to be significantly less than the benefits of the varied Order. We have therefore provisionally concluded that the costs of the remedies in the varied Order are not disproportionate to the aims of the varied Order in mitigating the AEC as best we can given the change of circumstances.

5. Our provisional decision

5.1 We have provisionally found that the effect of the implementation of the PSD and the CCD is that the Order needs to be varied. We have provisionally decided to make variations to Articles 5 to 11 of the Order, as set out in Table 2. The varied Order, as described in Table 2, is the most comprehensive our remedies can be in mitigating the AEC taking into account the effect of the change of circumstances.

5.2 A number of other consequential or minor changes can also be made to the Order. These include deleting some of the definitions in Article 2 that are no longer relevant; revoking Article 3 which would no longer be relevant and revoking Articles 12 and 13 which have time expired.

5.3 Having considered the monitoring options based on the variations in Table 2, we have provisionally decided that there is no longer a need for an explicit role for the LSB. Instead, monitoring of the reduced requirements can be achieved through an annual statement of compliance to the OFT, which would include information on customer complaints in the relevant areas. This proposed change to the monitoring framework has the effect of Articles 15 and 16 being varied so as to revoke Articles 15(1)(a), 15(1)(c), 15(2) and 16.

5.4 We have also provisionally concluded that the costs of the remedies in the varied Order are not disproportionate to the aims of the varied Order in mitigating the AEC as best we can given the change of circumstances.