

**Explanatory Note to accompany the
Payment Protection Insurance Market Investigation Order 2010**

(This note is not part of the Order)

Introduction

1. On 29 January 2009, the Competition Commission (CC) published its report (the 2009 report) on its investigation into the market for payment protection insurance (PPI), except store card PPI, to non-business customers in the UK. The 2009 report set out a remedy package to address the adverse effects on competition that it found.
2. As a result of a partially successful challenge in the Competition Appeal Tribunal, the CC was required to reconsider the inclusion of the prohibition of the sale of PPI at the point of sale of Credit and for a specified period afterwards element of the remedy package.
3. The CC published a report of its reconsidered decision on 14 October 2010 (the 2010 report) where it concluded that it was necessary to address the adverse effects on competition on the PPI market that it had found in the 2009 report to impose a remedy package which included the prohibition of the sale of PPI at the point of sale of Credit among its elements.
4. The CC has made an Order to give effect to these remedies.
5. For PPI other than Retail PPI the remedy package the CC has imposed consists of:
 - (a) a prohibition on selling PPI at and before the point of sale of the credit and for a specified period afterwards ('the point-of-sale prohibition');
 - (b) an obligation to provide a Personal PPI Quote;
 - (c) an obligation to provide information about the cost of PPI and 'key messages' in a Marketing Communication;
 - (d) an obligation to provide information to the Office of Fair Trading (OFT) and the Consumer Financial Education Body (CFEB) for monitoring and publication; and an obligation to provide information about Claims Ratios to any person on request;
 - (e) a recommendation to the CFEB that it uses the information provided to it to populate its PPI Comparison Tables;
 - (f) a prohibition on the selling of Single-Premium PPI policies and charges of similar economic effect;
 - (g) an obligation to provide an Annual Review of the cost of PPI and a reminder of the Consumer's right to cancel; and
 - (h) compliance reporting requirements to support the remedies package set out in sub-paragraphs (a) to (g) above.
6. For Retail PPI, the remedy package the CC has imposed consists of:

- (a) an obligation to offer PPI separately from Merchandise Cover if both are offered as a bundled product;
- (b) an obligation to provide information about the cost of PPI and 'key messages' when marketing Retail PPI;
- (c) an obligation to provide information to the CFEB for publication and to provide a Claims Ratio to any party on request;
- (d) an obligation to provide a Personal PPI Quote to customers before no later than 14 days after the sale of the Retail PPI policy;
- (e) an obligation to provide customers who have spent more than £50 on Retail PPI premiums in the preceding 12 months with a written annual review of PPI costs including a reminder of the customer's right to cancel;
- (f) an obligation to provide an Annual Reminder to all active customers who do not receive an Annual Review of their cancellation rights and of key messages; and
- (g) a prohibition on selling Single-Premium PPI policies and on charges which have a similar economic effect.

Possible consequences of not complying with the Order

- 7. [Section 167](#) of the Enterprise Act 2002 (the Act) places a duty on any person to whom this Order applies to comply with it. Subject to the defences in the section, any breach of this duty which causes a person to sustain loss or damage is actionable by that person through civil proceedings for breach of statutory duty.
- 8. [Section 167](#) of the Act also provides that the OFT and the CC can seek to enforce this Order by civil proceedings for an injunction or for any other appropriate relief or remedy.

Review of this Order

- 9. The OFT has a general duty to monitor the operation of the Order under [section 162](#) of the Act. This includes the duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances. Part 5 and Schedules 5 and 6 of the Order require PPI Providers to provide the OFT with information to allow it to monitor and review the operation of the Order.

Status of this Explanatory Note

- 10. This Explanatory Note is not legally binding. In the event of a conflict between this Explanatory Note and any provision of the Order, the Order shall prevail.

Structure of the Order

- 11. The Order is divided into six Parts and six Schedules.
- 12. Part 1 contains general provisions, which include specifying when articles in the Order come into force, definitions that are used throughout the Order and which are also used in this Explanatory Note and the scope of application of the Order.

13. Part 2 contains obligations to provide information about PPI in Marketing Communications, to provide the Annual Review and the Personal PPI Quote, to provide information to the CFEB and to provide information on Claims Ratios.
14. Part 3 contains the prohibitions of the sale of PPI before the sale of Credit, or at the point of sale of Credit and for a specified period after the sale of Credit and the prohibition of requiring payment by Single Premium.
15. Part 4 contains the requirement to offer Retail PPI separately when it is offered as part of a package of insurance including Merchandise Cover.
16. Part 5 contains the compliance obligations which are to submit Compliance Reports, appoint a Compliance Officer, report on the clarity of Marketing Communication and conduct a mystery shopping exercise.
17. Part 6 sets out the CC's powers to make directions as to compliance.
18. Schedules 1 and 2 relate to Article 3. They specify what constitutes a Marketing Statement, and the information which Article 3 requires to be included in Marketing Communications.
19. Schedules 3 and 4 relate to Article 4 and contain the templates for the Annual Reviews and the Personal PPI Quotes and the instructions on how to complete these documents. Schedule 3 also contains the wording of the Annual Reminder for Retail PPI.
20. Schedules 5 and 6 relate to the compliance requirements contained in Articles 12 to 15. They contain instructions on the contents of the Compliance Reports, specifications for the mystery shopping exercise and the requirements for the provision of information to the OFT.

Scope of this Explanatory Note

21. This Explanatory Note deals with each of the articles in the Order.

Part 1 – General

Article 1 – Title, commencement, application and scope

22. Article 1 gives the Order its name and sets out the timescale over which the articles come into force.
23. The Order comes into force on the date it is signed with Articles 1, 2 (Interpretation), 12 (Obligation to Submit a Compliance Report), 13 (Obligation to conduct a mystery shopping exercise), 14 (Obligation to report on clarity of Marketing Communication), 15 (Obligation to appoint a Compliance Officer) and 16 (Directions by the CC as to compliance) having effect from that date.
24. Articles 3 (Obligation to provide information about PPI), 5 (Obligation to provide information to the CFEB) and 6 (Obligation to disclose Claims Ratio) come into force 6 months from the date of the Order.
25. Articles 4 (Obligation to provide an Annual Review or Annual Reminder), 7 (Obligation to provide a Personal PPI Quote), 8 (Prohibition on the sale of PPI after the start of a Credit Sale), 9 (Prohibition on the sale of PPI before the start of a Credit

Sale), 10 (Prohibition of payment by Single Premium and requirement to pay a rebate) and 11 (Obligation to provide Retail PPI separately when sold in a package of insurance) come into force 12 months from the date of the Order.

26. The timescale of the commencement of the articles is in accordance with the CC's decision in the 2009 report to allow 12 months for implementation of most of the package of remedies with an exception for Articles 3, 5 and 6 (which relate to the increased provision of information), which are to be implemented within 6 months.
27. The Order applies to any PPI Provider or Administrator of a PPI policy which in the UK provides PPI to a Consumer or administers a PPI policy on behalf of a PPI Provider.

Article 2 – Interpretation

28. Article 2 contains the definitions for the capitalized terms used throughout the Order or in the Schedules (and the same terms are used in this Explanatory Note. Terms that are relevant to only one article, are defined in that article.
29. The definition of PPI and the individual product types such as Credit Card PPI (CCPPI), Personal Loan PPI (PLPPI), second-charge mortgage PPI (SMPPI) and first-charge Mortgage PPI (MPPI), Short-Term Income Protection Insurance (Short-Term IP) and Stand-Alone PPI are key definitions. These terms are defined by reference to the essential characteristics of the type of insurance. These definitions therefore set the scope of the Order which does not include long-term income protection (also known as permanent health insurance or income protection) or critical illness cover.
30. The Order does not apply to Store Card PPI – this is subject to the remedies put in place following the CC's market investigation into Store Cards (see Store Cards Market Investigation Order, 27 July 2006), nor does it apply to PPI for overdrafts.
31. The Order does, however, apply to Short-Term IP, which reflects the findings in the 2009 report that Short-Term IP was a form of PPI. Short-Term IP is included in the definition of PPI and is separately defined by reference to its characteristics to distinguish it from long-term income protection.
32. In addition to defining the providers of the various types of PPI, Article 2 defines two other PPI market participants. Those are an Administrator which provides services to PPI customers on behalf of PPI Providers, and Associates of Credit Arrangers (see Part 3) which may also provide PPI to Consumers.
33. Key terms in the Part 2 Information requirements such as Prescribed Statement, Marketing Statement and Marketing Communication are defined and set the scope of the Order; only Marketing Statements which satisfy the definition are within the scope of the Order.
34. Other definitions are drawn from the glossary in the CC's 2009 and 2010 reports or accepted industry definitions such as those in the FSA Handbook glossary and credit legislation.

Part 2 – Information requirements

Article 3 – Obligation to provide information about PPI

35. Article 3.1 applies to the provision of all types of PPI except Retail PPI and requires certain minimum disclosures to be made in a Marketing Communication whenever PPI is promoted to Consumers. Those disclosures are that the cost of PPI must be given using the common price metric (the Monthly Cost of PPI for every £100 of Monthly Benefit) along with the Prescribed Statement which is set out in Schedules 1a and 1b. Both Monthly Cost and Monthly Benefit are defined terms.
36. These requirements reflect the CC's decision in the 2009 report to encourage the development of a common currency for PPI and for a small number of core disclosures to be made in order to assist Consumers in searching for and comparing PPI products.
37. Article 3.2 sets out information obligations for Retail PPI and reflect the conclusions in the 2010 report. Disclosures which must be made in written Marketing Communications are the Monthly Cost for every £100 of Monthly Benefit, the Monthly Cost for every £100 of the balance outstanding on the account each month, along with the Prescribed Statement which is set out in Schedule 1a. For oral marketing, only the Prescribed Statement which is set out in Schedule 1a must be made.
38. The statements which are required to appear in Marketing Communications containing a Marketing Statement are set out in Schedules 1a and 1b. Schedule 1a applies to Distributors and Intermediaries including Retail PPI Providers. Schedule 1b applies to Stand-Alone PPI Providers and Short-Term IP Providers.
39. Article 3.3 sets out the additional requirement on CCPPI providers to display the monthly cost of PPI for every £100 of the balance on the account each month.
40. Article 3.4 requires an Additional Statement (which is set out in Schedule 2) to be made if a policy pays a Monthly Benefit for less than 12 months. This obligation only applies to the provision of Retail PPI policies if the Marketing Statement is made in a written Marketing Communication.
41. Article 3.5 provides that the obligation in Article 3.4 does not apply to the provision of Retail PPI if the Consumer's total outstanding balance is always cleared within 12 months of the Consumer making a claim. For example, if a Retail PPI policy is designed to always pay off an entire outstanding balance and would do so in less than 12 months, it would not be necessary to make the Additional Statement required by Article 3.4.
42. Article 3.6 provides that where an Intermediary markets a PPI policy which is provided by another PPI Provider, the obligations set out in Articles 3.1, 3.2, 3.3 and 3.4 do not apply to the Intermediary so long as the Intermediary relies on the Marketing Communication produced by the other PPI Provider. If the Intermediary produces the Marketing Communication itself then Articles 3.1, 3.2, 3.3 and 3.4 do apply to the Intermediary. Article 3.7 provides that when an Intermediary markets a PPI policy which is available only from that Intermediary or Intermediary Network, that Intermediary or Intermediary Network is responsible for ensuring that the Marketing Communication is compliant with the obligations set out in Article 3.
43. Article 3 generally requires the Prescribed Statements to be included prominently in a Marketing Communication. Article 3.8 sets out what is meant by 'prominently' which is determined by reference to the Marketing Communication as a whole. The

obligations in Article 3 apply in addition to any other statutory or regulatory requirements which may from time to time apply to the promotion or advertisement of PPI.

Article 4 – Obligation to provide an Annual Review or Annual Reminder

44. Article 4 sets out requirements in the 2009 report for the provision of an Annual Review for all PPI policies except a Retail PPI policy, and the requirements to provide either an Annual Review or an Annual Reminder for Retail PPI policies as set out in the 2010 report. The obligations apply to all PPI policies which are entered into after the start of the Order and, with the exception of PLPPI and Single-Premium SMPPI, those policies which are already in place (ie the 'back book') when the Order starts. Article 4 commences 12 months after the start of the Order.
45. Article 4.1 sets out when an Annual Review must be sent to a Policyholder for any PPI policy, except a Retail PPI policy, held by a Policyholder which commences on or after the date of commencement of this article. Article 4.4 sets out the requirements for the back book.
46. For PPI policies which have an annual renewal date or are paid for by Annual Premium, the Annual Review must be sent not less than two weeks and not more than four weeks before the renewal date or payment due date.
47. For PPI policies paid by Monthly Premium, the first Annual Review must be sent at any time during the first 13 months from the start of the PPI Policy and each subsequent Annual Review must be sent either two weeks before or two weeks after the anniversary of that date. The CC decided on the period of 13 months to enable PPI Providers to send an Annual Review covering PPI payments over a full 12-month period.
48. Whether an Annual Review or Annual Reminder is sent for a Retail PPI policy is determined by the amount of premium paid in the preceding 12 months. Article 4.2 sets out the conditions triggering an Annual Review and when it must be sent for any Retail PPI policy which commences on or after the date of commencement of Article 4 of the Order.
49. An Annual Review must be sent during the 13th month following commencement of the Retail PPI policy where the total amount of Premium which the Consumer paid amounts to £50 or more during the first 12 months of the Retail PPI policy.
50. Thereafter, if the total amount of Premium paid by the Consumer is £50 or more in the preceding 12-month period, the Annual Review must be sent at any time during the month following the 12-month anniversary of the commencement of the policy. However, if the total amount of Premium which the Consumer paid in the preceding 12-month period is less than £50, then an Annual Reminder must be sent to the Policyholder (in accordance with Article 4.5(b) of the Order) instead of an Annual Review.
51. Article 4.3 sets out the circumstances in which an Annual Reminder must be sent for any Retail PPI policy which commences on or after the date of commencement of Article 4 of the Order. Where the total amount of Premium which the Policyholder has paid is less than £50 as at the first anniversary of the commencement of the Retail PPI policy an Annual Reminder must be sent to a Retail PPI Policyholder with the next Retail Credit Account statement. If, on each subsequent anniversary of the Retail PPI policy, the amount of Premium which the Retail PPI Policyholder has paid

is less than £50, the Annual Reminder must be sent with the next Retail Credit Account statement. Retail Credit Account is a defined term in the Order.

52. The end result is that Retail PPI Policyholders receive either an Annual Reminder or an Annual Review each year.
53. Article 4.4 sets out when an Annual Review must be sent for PPI policies, except Retail PPI, which are already in force at the date of commencement of Article 4 of the Order.
54. For SMPPI policies which are not Single Premium, CCPPI policies and MPPI policies, the first Annual Review must be sent any time during the 12 months after commencement of this article. Subsequent Annual Reviews must be sent within the period which spans two weeks before and two weeks after the anniversary of the date on which the first Annual Review was sent.
55. Article 4.5 sets out when an Annual Review must be sent for Retail PPI policies which are already in force at the date of commencement of Article 4 of the Order.
56. If, on the first anniversary of the commencement of the Retail PPI policy, the total Premium which the Policyholder has paid is £50 or more, the first Annual Review should be sent at any time during the month following the first anniversary.
57. For each 12-month period thereafter, if the total Premium paid by the Policyholder is £50 or more, the Annual Review should be sent at any time in the month following the anniversary of the Retail PPI policy. However, if in any subsequent 12-month period the total Premium paid by the Policyholder is less than £50, an Annual Reminder must be sent in accordance with Article 4.6(b).
58. Article 4.6 sets out when an Annual Reminder must be sent for Retail PPI policies which are already in force at the date of commencement of Article 4 of the Order.
59. If, on the first anniversary of the commencement of the Retail PPI policy, the total Premium which the Policyholder has paid is less than £50, the first Annual Reminder must be sent with the next Retail Credit Account statement.
60. For each 12-month period thereafter, if the total Premium paid by the Policyholder is less than £50, the Annual Reminder should be sent with the next Retail Credit Account statement. However, if the total Premium paid rises to £50 or more, an Annual Review must be sent to the Policyholder.
61. Article 4.7 sets out the circumstances in which a PPI Provider need not send an Annual Review or an Annual Reminder.
62. Article 4.8 provides that the requirement to send an Annual Review or Reminder does not apply to an Intermediary which no longer maintains contact with the Policyholder after the sale of the PPI. In these circumstances, the obligations fall on to the PPI Provider or Administrator which does maintain the direct contact. In those circumstances the Intermediary is required by Article 4.8 to provide the PPI Provider or Administrator with such information that the PPI Provider or Administrator requires in order to comply with the requirements of Article 4.
63. Article 4.9 indicates the form of Annual Review and Annual Reminder which must be used for each type of PPI. The forms are set out in Schedules 3, 3a, 3b(i), 3b(ii), 3c, 3d(i), 3d(ii) and 3e, along with instructions to complete which indicate where there is flexibility in the format. There is a separate form for joint mortgage holders.

64. Reflecting the decision in the 2009 report in paragraph 10.311 that the Annual Review should be provided to Consumers separate from any material relating to the credit, Article 4.10 provides that the Annual Review may not be sent together with any information relating to the credit but may be included with PPI policy renewal documents and other information relating to the PPI. Additionally, to ensure that the Annual Review reaches the Policyholder, Article 4.10 also provides that the Annual Review may be sent electronically only at the Policyholder's specific request. PPI Providers are not prevented from asking a Policyholder about the preferred form of receipt of the Annual Review, but may not send it electronically unless the Policyholder has made that specific request.
65. Schedule 3 includes a separate form for joint mortgages but Article 4.11 provides that where there are joint Policyholders, it is not necessary for the PPI Provider or Administrator to provide a separate Annual Review to each Policyholder, so long as the Policyholders have elected in writing which of them is to receive the Annual Review.
66. Article 4.12 provides for circumstances where a PPI Provider or Administrator requires information from another PPI Provider or Underwriter in order to produce an Annual Review. In those circumstances the other PPI Provider or Underwriter is required to provide the requested information within 7 days of receipt of the request.

Article 5 – Obligation to provide information to the CFEB

67. Article 5.1 requires PPI Providers to give data to the CFEB and in the format the CFEB needs in connection with the preparation of and publication by the CFEB of PPI Comparison Tables.
68. The Order does not specify either the data or the format because this is something on which the CFEB will advise market participants in due course.

Article 6 – Obligation to disclose Claims Ratios

69. Article 6.1 requires a PPI Provider to produce a Claims Ratio for each PPI product within 3 months of the end of its Business Year. The definition of Claims Ratio in Article 2 indicates how it is to be calculated, as the ratio of Incurred Claims to Earned Premiums, both of which are also defined in Article 2. The CC has consulted the FSA in developing these definitions.
70. The 2009 report required Claim Ratios to be disclosed to the OFT and then to any other person on request. Article 6.2 provides for disclosure of a Claims Ratio to the OFT and Article 6.4 provides for the format of disclosure to any person other than the OFT. Recognizing the commercially confidential nature of this information, disclosure to any person other than the OFT may be made in 10 percentile bands up to 80% and then in one aggregate banding.
71. Article 6.3 provides that disclosure may be made on a provider's website again in 10 percentile bands. There is no requirement to make disclosure on a website; it is an option available to providers to assist them in complying with their obligations under Article 6.4 if they have a website.
72. Article 6.5 sets out how a request for disclosure of a Claims Ratio is to be answered and includes the option of directing enquirers to information on a website.

73. Article 6.6 provides that where a PPI Provider needs information from another PPI Provider or Underwriter in order to produce a Claims Ratio, this information must be provided within 7 days of the receipt of the request.

Article 7 – Obligation to provide a Personal PPI Quote

74. A key element of the remedy package outlined in the 2009 report and confirmed in the 2010 report is the requirement to give each PPI customer a Personal Quote.
75. Article 7.1 sets out when the requirement to give a quote is triggered. This is when a PPI Provider makes a Marketing Statement to a Consumer either when selling Credit or when offering to sell PPI. The PPI Provider is then required to give the Consumer a Personal PPI Quote either on that occasion or ‘as soon as practicable afterwards’ in recognition of distance marketing legislation.
76. The 2010 report varied the remedy for Retail PPI and this is reflected in Article 7.2 which sets out the requirements for Retail and Stand-Alone PPI. In each case the quote must be given either on the same occasion as selling the policy or no later than 14 days after. This will allow Consumers to use the quote to shop around during the 30 day cooling-off period for the PPI.
77. Article 7.3 sets out the circumstances in which the PPI Provider is not required to give the Consumer a Personal PPI Quote. As an anti-circumvention measure, PPI Providers which rely on any of the circumstances will be required, should the OFT request it, to disclose all of the circumstances giving rise to the exemption.
78. Article 7.4 directs PPI Providers to the correct form of quote (as set out in Schedule 4) which must be given for each type of PPI and requires PPI Providers to take account of the instructions set out in Schedule 4 when completing the forms. The instructions indicate where flexibility in the format is permitted.
79. Article 7.5 explains how a PPI Provider may ‘give’ the Consumer a Personal PPI Quote.
80. Article 7.6 requires a Personal PPI Quote to remain valid for at least 14 days, commencing on the date that the Consumer receives that quote; it is acceptable for the quote to remain valid for longer.
81. Article 7.7 requires the PPI Provider to give a Consumer a new Personal PPI Quote if the PPI Provider becomes aware, either by way of notification from the Consumer or otherwise, that the Consumer is or may no longer be eligible for the PPI Policy for which a Personal PPI Quote was given. A new quote must also be given if the price of the relevant PPI policy has changed, such that the quote which was given to the Consumer is no longer accurate.
82. Article 7.8 contains the deeming provisions for the date of receipt by the Consumer of the Personal PPI Quote if it is not given in person or by recorded receipt.

PART 3 – The prohibitions

83. Part 3 includes the prohibitions: the prohibition on the sale of PPI at the point of sale of Credit, the prohibition on the pre-sale of PPI before the sale of Credit and the prohibition of Single-Premium policies. Specific key terms are used in the prohibitions which define the scope of the prohibitions.

84. The prohibitions on pre-sale of PPI and sale at the point of sale of Credit apply only to the Distributor or Intermediary selling or arranging Credit for a Consumer, so the collective term 'Credit Arranger' is used. The term is defined in Article 2.
85. The prohibition at the point of sale of Credit applies to the Credit Arranger but has been extended as a necessary anti-avoidance measure to an Associate of the Credit Arranger.
86. An Associate is defined in Article 2 and is a person who has a Commercial Referral Relationship with the Credit Arranger for the sale of PPI and either is mentioned by the Credit Arranger to the Consumer during the Credit Sale for the purposes of buying PPI or is given or allowed access by the Credit Arranger to information concerning a particular Credit Agreement for the purposes of selling PPI to a Consumer.
87. In both cases it is necessary for a Commercial Referral Relationship to exist between the Credit Arranger and Associate. A Commercial Referral Relationship is defined as an arrangement whereby one party receives payment or other benefit from the other as a result of the Consumer purchasing PPI.

Article 8 – Prohibition on sale of PPI at the Credit Sale

88. Article 8.1 prohibits the sale of PPI from the start of a Credit Sale until the end of the Prohibition Period. The 2009 report noted that the sale of credit was a process involving a number of stages: the initial enquiry, the application, the confirmation that the Credit Provider is content to proceed and then actual draw down of the credit. Article 8.2 sets out how to determine when a Credit Sale has started and when it has ended. This is necessary in order to determine when the Prohibition Period starts and ends.
89. The Order does not prescribe how any stage must occur. For example, it does not prescribe when or how an application for Credit is made; it merely recognizes that at some point in the process a Consumer will make a request for Credit and that for the purposes of the Order this is the start of the Credit Sale.
90. Similarly the conclusion of the Credit Sale is not prescribed beyond when the Credit Provider is 'bound unconditionally' to provide the credit. No attempt was made to precisely define when a Credit Provider would be 'bound unconditionally' because it is recognized that a Credit Sale is not completed at the same point for all sales of Credit. In some cases a Credit Arranger may consider itself bound to provide the Credit when it signs the documents and gives these to the Consumer to sign and return and in other cases a Credit Arranger may consider itself bound to provide the Credit only when the Consumer returns the signed documents. The Order therefore deliberately fixes the end point of the Credit Sale at the point that the Credit Provider considers that the Credit has been to all intents and purposes approved, which is also a point that the Credit Arranger will be able to determine from its own procedures.
91. The Order recognizes that there may be some additional steps in the process before the Credit Provider is unconditionally bound in law to provide the Credit, but for the purposes of the Order these are not relevant. This is because the 2010 report (and 2009 report) recognized that it was necessary to fix a point for the Prohibition Period to start which was no longer than necessary for the effectiveness of this element of the remedy package.

92. Article 8.2 therefore provides when determining the end of the Credit Sale that no account should be taken of certain conditions which may be necessary to complete before a credit agreement is finalized in law. Examples are:
- (i) a Mortgage which is subject to a title check on land or certain repairs undertaken to the property;
 - (ii) the Consumer needs to contact the Credit Provider to activate the Credit Card (and this constitutes acceptance of the terms and conditions on which Credit has been extended); and
 - (iii) the Credit Provider needs a third party (ie not connected with the loan) to do something so that the loan can be finalized, such as local council approval/ certification or an employer to provide proof of earnings.
93. Article 8.3 sets out how the Prohibition Period is determined. It starts at the end of the Credit Sale and ends either 7 days later or 7 days after the Consumer receives a Personal PPI Quote, whichever is the later. A Personal PPI Quote may be provided to the Consumer during the Prohibition Period.
94. Article 8.4 sets out when the prohibition in Article 8.1 does not apply: to the provision of Retail PPI and Stand-Alone PPI or sale of any PPI deemed to be Stand-Alone and when the provision of PPI satisfies all the conditions in Article 8.7.
95. Article 8.5 sets out when the provision of any type of PPI is deemed to be Stand-Alone PPI for the purposes of this article. In order to ensure there would be a period when a Credit Arranger could sell PPI for its own Credit, without being subject to the Prohibition Period (and encourage the major PPI Providers also to provide PPI on a Stand-Alone basis). Article 8.5 deems the sale of PPI by the Credit Arranger to the Consumer one month after the end of the Credit Sale to be Stand-Alone PPI and the requirement for a sale of Stand-Alone PPI to apply; namely that the Consumer is provided with a Personal PPI Quote either at the time of the sale of PPI or no later than 14 days after the sale of PPI. This allows the Consumer to shop around during the cooling-off period for the PPI.
96. Although these sales are deemed to be Stand-Alone for the purposes of not imposing a Prohibition Period, the quote that the Consumer must be given must reflect the actual type of PPI which is provided.
97. Article 8.7 sets out the conditions which must be satisfied for a further exemption from the prohibition in Article 8.1. This exemption is for Consumer-initiated sales of PPI which may be completed the day after the Credit Sale provided that all the specified conditions are satisfied. The conditions are that the sale of PPI is initiated by the Consumer either by telephone or over the Internet, the Credit Arranger or Associate has not prompted the Consumer to initiate the sale of PPI, the Consumer has been given a Personal PPI Quote beforehand and the Credit Arranger or Associate is able to satisfy the OFT (should the OFT ask) that all the conditions have been met.
98. The means by which the Consumer could initiate the sale were deliberately restricted as an anti-circumvention measure and Article 8.8 as another anti-circumvention measure sets out when a Consumer does not initiate the sale. Although confirmation of pre-arranged sale would not be a genuine Consumer-initiated sale, this does not prevent a Credit Arranger or Associate from recording Consumer information in order to facilitate the transaction should the Consumer decide to proceed with it. In this

situation it is expected that any pre-recorded information would be confirmed with the Consumer at the time of concluding the subsequent sale of PPI.

99. In order to qualify as a genuine Consumer-initiated sale, the transaction must be initiated by the Consumer free from any inducement to do so by either the Credit Arranger or Associate.
100. Although the means by which the transaction is initiated are restricted, there is no restriction on how the sale can be completed. For example, a Consumer telephoning the day after the Credit Sale to make an appointment to come into a branch to buy the PPI would satisfy the condition.
101. The PPI Provider must have received confirmation from the Consumer that the Consumer has received the Personal PPI Quote before the sale of the PPI Policy can be concluded. There is no restriction on how the Credit Arranger may receive that confirmation.
102. Because a Consumer-initiated sale is an exemption to the prohibition in Article 8.1, any person relying on the exemption must be able to satisfy the OFT that all the relevant conditions were met should the OFT subsequently ask them to do so.
103. Article 8.10 is an anti-avoidance clause, and provides that any insurance arrangement which has the same effect as PPI and is designed to avoid the operation of the Order, or has that effect, is to be regarded as PPI and will be caught by the Order. Article 8.10 does not apply to any arrangements which are not insurance arrangements.

Article 9 – Prohibition on sale of PPI before the start of the Credit Sale

104. Article 9 is an anti-circumvention measure intended to prevent the revision of sales processes to avoid the point-of-sale prohibition. It prohibits the sale of PPI to a Consumer who is expected to make an application for Credit before that application is made.
105. Article 9.1 contains the prohibition: where a Credit Arranger has discussed Credit with a Consumer and believes that the Consumer will make an application for that Credit within 7 days of the discussion, the Credit Arranger is not permitted to sell a PPI Policy for that Credit prior to the application for Credit being made.
106. Article 9.2 sets out the circumstances in which Article 9.1 does not apply. Article 9.1 does not apply to Retail PPI or where a Credit Arranger has made reasonable inquiries of the Consumer and of its internal records and does not have reasonable grounds to believe that the Consumer will make an application for Credit. 'Reasonable inquiries' in this context might involve, for example, checking with the Consumer and on the Credit Arranger's internal records whether a customer has been provided with specific documents within the previous 7 days, such as a SECCI or a Key Facts illustration or a written quote, that demonstrate a serious intent on the part of the Consumer to take out the Credit in the near future. It is not anticipated that the exemption at Article 9.2(b) would apply to situations in which Credit and PPI are offered for sale on the same occasion.
107. Article 9.3 sets out circumstances when a Credit Arranger shall be taken to have reasonable grounds to believe that a Consumer will make an application for Credit.

Article 10 – Prohibition of payment by Single Premium and requirement to pay a rebate

108. Article 10.1 sets out the prohibition on requiring payment for a PPI policy by Single Premium. Single Premium is a defined term and is distinguished from Annual Premium.
109. The remainder of the article sets out the requirements that PPI premiums may only be charged on either a monthly or annual basis; payment for a PPI policy to cover a loan which is 12 months' duration or less may be only by way of Monthly Premium; and the inclusion of administration, set-up or termination charges in the price of any PPI policy is prohibited.
110. Article 10.5 provides for a pro-rata/proportional rebate to be paid when a Consumer terminates a policy paid by Annual Premium in the course of year.

Part 4 – Requirement as to separate supply

Article 11 – Duty to offer Retail PPI separately when sold in a package of insurance

111. Article 11.1 sets out the requirement to offer Retail PPI as a separate policy where it is offered as part of a package containing Merchandise Cover and requires that the unbundled product must be promoted with equal prominence in all written Marketing Communications. There is no requirement to promote the unbundled product with equal prominence in oral marketing such as telephony sales.
112. Article 11.2 requires a Retail PPI Provider to sell the unbundled product through all sales channels including telephony.

Part 5 – Compliance

113. Articles 12 to 15 set out the compliance requirements.
114. Article 12 sets out the requirements for compliance reporting.
115. Articles 12.1 and 12.2 provide that PPI Providers which attained certain specific GWP amounts in 2007 are required to submit a Compliance Report to the OFT on the first anniversary of the Order coming into force and then for each 6 months thereafter for 2 years. After that time the Compliance Report must be submitted annually on the anniversary of the Order starting. If GWP falls below the 2007 levels, then there is no obligation to submit a Compliance Report under these articles but the obligation may arise under Article 12.3.
116. Articles 12.3 and 12.4 provide that commencing on the second anniversary of the start of the Order, if a PPI Provider achieves the GWP amounts set out in Article 12.3 in a preceding year, the PPI Provider will be required to submit a Compliance Report annually on the date corresponding with the anniversary of the Order coming into force.
117. Articles 12.5 and 12.6 provide that commencing on the first anniversary of the Order coming into force a PPI Provider which does not achieve the GWP amounts set out in Articles 12.1 or 12.3 but attains a total annual GWP of £10 million or more in a preceding year must submit a Compliance Report to the OFT which sets out the annual breakdown of GWP by each PPI Product Type, Stand-Alone PPI and Short-

Term IP. The Report must be submitted annually on the anniversary of the start of the Order. This less detailed Annual Compliance Report enables the OFT to monitor the development of a broader section of the PPI market, without imposing the detailed reporting obligations that apply to the largest PPI Providers.

118. When the GWP amounts in Article 12.1 or 12.3 are reached the Article 12.5 and 12.6 requirements will lapse in favour of the Article 12.2 or 12.4 obligations.
119. Article 12.7 provides that where two or more PPI Providers are members of the same corporate group, only one Compliance Report needs to be submitted on behalf of all but the compliance information required by Schedule 5b must be identified separately for each PPI Provider.
120. Articles 12.8 and 12.9 provide that the Compliance Report may be prepared either by an Independent Party for the PPI Provider or by the PPI Provider. If the Compliance Report is prepared by the PPI Provider it must include a certificate signed by an Independent Party that the Compliance Report is true and correct. In either case, the Compliance Report must contain a certificate which states that the Compliance Report has been prepared in accordance with the requirements set out in the Order, and that the PPI Provider has complied with the Order during the relevant period. Also, for incorporated PPI Providers, the certificate must be signed by both a director and a non-executive director; for unincorporated providers the certificate must be signed by two principals who are Approved Persons; and for a sole trader provider the certificate must be signed by an Approved Person. Approved Person is defined in the article as a person with FSA approval under section 59 of FSMA to carry on activities which are regulated by section 22 of FSMA.
121. The UK Corporate Governance Code¹ provides for independent non-executive director representation on the audit committee and that committee's functions include reviewing internal control and risk management systems. When certification on behalf of the company that certain financial or other obligations have been met is required, it is not unusual for members of the audit committee to be delegated the power to sign the certificate.
122. Schedule 5a sets out the requirements for the contents of the Six-Monthly Compliance Reports which are required by Article 12.2. Schedule 5b sets out the requirements for the contents of the Annual Compliance Reports which are required by Articles 12.2 and 12.4.
123. Article 12.11 requires a Compliance Report to be submitted within one week of its due date.
124. Article 12.12 contains definitions relevant to the article.
125. Articles 13.1 and 13.2 set out the obligation to conduct a mystery shopping exercise for those PPI Providers reaching certain GWP thresholds and require that the report on the mystery shopping exercise be included in the Compliance Report.
126. Article 13.2 further requires the PPI Provider to obtain the agreement of the OFT as to the design of the PPI Provider's mystery shopping exercise prior to conducting it.
127. The requirements for the mystery shopping exercise are set out in Schedule 5c. The sample size for mystery shopping of 60 shops for each large, multi-sales channel PPI

¹Financial Reporting Council, UK Corporate Governance Code, June 2010.

Distributor has been set to give a reasonable level of confidence that non-compliance with the Order will be detected. If 5 per cent of the Distributor's overall sales were non-compliant, this size of sample would achieve a 95 per cent probability that at least one of the sample mystery shops would also be non-compliant.

128. Article 13.3 contains definitions relevant to the article.
129. Article 14.1 provides that those PPI Providers which meet the thresholds in Article 12 and are thus required to submit a Compliance Report must include in the Compliance Report a report confirming that their Marketing Communication is easy for the average Consumer to understand.
130. Article 14.2 sets out how a PPI Provider can establish that Marketing Communication is easy to understand for a Consumer. This requirement may be satisfied either by a report from an independent organization specializing in plain English or by having the Marketing Communication tested with Consumers by an Independent Market Research Agency.
131. Article 15.1 provides that within 21 days of the Order coming into force a PPI Provider must appoint a Compliance Officer and notify the OFT that the appointment has been made and provide the name of the person who has been appointed. The Compliance Officer must be a natural person. The duties which the Compliance Officer must carry out are contained in Article 15.2. The Compliance Officer may carry out duties or functions in addition to those contained in Article 15.2.

Part 6 – The CC

Article 16 – Powers of direction

132. Article 16 is made under [section 87](#) of the Act as applied by [section 164\(2\)](#) of the Act.
133. The article gives the CC power to give directions to a person for the purpose of carrying out, or ensuring compliance with, the Order. The directions can be addressed to a specific person or to the holder for the time being of an office in a body, for example the Secretary.
134. The article enables the CC to vary or revoke any directions which it has previously given.