

EXPLANATORY MEMORANDUM TO
THE CONSUMER CREDIT (AMENDMENT) REGULATIONS 2010

2010 No. 1969

1. 1.1 This explanatory memorandum has been prepared by the Department for Business, Innovation & Skills and is laid before Parliament by Command of Her Majesty.

1.2 This explanatory memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations correct errors in three of the five sets of regulations which were made in March 2010 to implement an EU Directive on consumer credit, more specifically:

- The Consumer Credit (EU Directive) Regulations 2010, SI 2010/1010
- The Consumer Credit (Disclosure of Information) Regulations 2010, SI 2010/1013
- The Consumer Credit (Agreements) Regulations 2010, SI 2010/1014.

2.2 They do not change the policy intention of those implementing regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 As these Regulations are making corrections to earlier instruments, copies of these Regulations will be provided free of charge to those who purchased any of the earlier regulations.

4. Legislative Context

4.1 The following regulations were made in March 2010 to implement the 2008 EC Consumer Credit Directive:¹

- The Consumer Credit (EU Directive) Regulations 2010, SI 2010/1010 (the EU Directive Regulations)
- The Consumer Credit (Total Charge for Credit) Regulations 2010, SI 2010/1011
- The Consumer Credit (Advertisements) Regulations 2010, SI 2010/1012 (the Advertisements Regulations)
- The Consumer Credit (Disclosure of Information) Regulations 2010, SI 2010/1013 (the Disclosure Regulations)
- The Consumer Credit (Agreements) Regulations 2010, SI 2010/1014 (the Agreements Regulations 2010)

¹ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L133, Page 66, 22 May 2008).

4.2 The EU Directive Regulations make a number of amendments to the Consumer Credit Act 1974 (CCA 1974) and associated secondary legislation. The other four sets of implementing regulations replace existing secondary legislation made under the CCA 1974 in respect of most types of credit agreements. The Directive is maximum harmonisation and therefore the UK has had limited flexibility in how to implement it. Member States cannot impose different or additional requirements in those areas covered by the Directive. The UK already has a detailed consumer credit framework. Some of the Directive's requirements are new to the UK but many are already covered in whole or part by existing law. Where possible we have maintained existing requirements and made only the necessary changes to existing UK law.

4.3 These Regulations make various corrections to the EU Directive Regulations², the Disclosure Regulations and the Agreements Regulations, amending both the CCA 1974 and associated secondary legislation. Changes are also needed to the Advertisements Regulations. Since those regulations do not come into force until 1 February 2011 they are being revoked and replaced. A separate set of regulations³ is being laid at the same time as these Regulations.

4.4 With the exception of the Advertisements Regulations, the UK introduced a transitional period for the first four sets of implementing regulations in order to give lenders time to make the necessary changes to comply with the new regulations. Lenders were able to start complying with the legislation from 30 April 2010, although they do not have to comply until 1 February 2011. Although the amendments are being made before lenders have to comply with the implementing regulations, it is possible that some lenders have chosen to comply with them early. Accordingly transitional provisions have been included in these Regulations (see regulation 46).

4.5 A Transposition Note was attached to the EM for the implementing regulations and can be found at <http://www.opsi.gov.uk/si/si201010>. None of the changes made by these Regulations required the Transposition Note to be updated.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. Although consumer credit is transferred to Northern Ireland, it has been agreed that these Regulations shall extend to Northern Ireland.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for Employment Relations, Consumer and Postal Affairs, Edward Davey, has made the following statement regarding Human Rights:

In my view the provisions of the Consumer Credit (Amendment) Regulations 2010 are compatible with the Convention rights.

² We have obtained approval from Parliamentary Counsel for the corrections that change amendments to primary legislation.

³ The Consumer Credit (Advertisements) Regulations 2010 No. 1970

7. Policy background

- *What is being done and why*

7.1 These Regulations correct errors in some of the implementing regulations to ensure that those regulations have the intended impact and the provisions are clear. They do not change the policy or the intention of the implementing regulations but ensure that the intention is correctly expressed and the regulations are clear for those who will use them.

7.2 The majority of the changes are to correct a number of minor and typographical errors. The more significant changes are listed below:

Consumer Credit (EU Directive) Regulations 2010 No.1010

- 7.2.1 We have amended regulation 3 to make it clearer that the oral provision of the information in subparagraphs 2(a), (b) or (e) of section 55A triggers the oral provision of the information in subparagraphs 2(c) and (d) rather than of all the information in paragraph 2 (see regulation 6);
- 7.2.2 Regulation 13 has been amended so that the end of section 66A(2) reads “beginning with the day after the relevant day” so ensuring that the right of withdrawal extends to 14 full days as intended (see regulation 8);
- 7.2.3 In regulation 21, “in writing” has been added to section 74A(3) to make it clear how information must be provided (see regulation 9);
- 7.2.4 In regulations 21 and 22, sections 74A and 74B have been clarified to ensure that their scope is consistent with the rest of the CCA 1974 and that they only extend to regulated consumer credit agreements (see regulations 9 and 10);
- 7.2.5 In regulation 25, a new subsection (8) has been added to make it clear that section 75A does not apply to agreements secured on land as was intended (see regulation 11);
- 7.2.6 Regulation 52 has been replaced by a new paragraph to clarify the meaning of the term “Total Charge for Credit Regulations” in relation to the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553) (see regulation 12);
- 7.2.7 Regulation 53 has been amended to correct the application of the Consumer Credit (Agreements) Regulations 1983. They should only apply to agreements secured on land, for amounts over £60,260 and for business use, except to the extent that the Agreements Regulations 2010 apply (see regulation 13);
- 7.2.8 In regulation 55 amendments have been made to Schedule 2 to the Consumer Credit (Agreements) Regulations 1983 to clarify that examples of partial early repayment are only required in the case of agreements secured on land and to enable the creditor to omit certain statements where the agreement is for charge cards (see regulation 15);
- 7.2.9 A new regulation 67A, amending the Consumer Credit (Exempt Agreements) Order 1989 (SI 1989/869), has been inserted to make it

clear that share dealing accounts offered by MIFID firms⁴ continue to be exempt from the CCA 1974. Changes made to the Order to implement the Directive could have cast doubt on this (see regulation 21);

- 7.2.10 Regulation 71 has been omitted since there will not be any circumstances in which references to the Total Charge of Credit Regulations will need to be read as references to the 2010 Regulations(see regulation 22);
- 7.2.11 Regulation 75 has been amended to clarify that all overdrafts are excluded from the scope of the Consumer Credit (Disclosure of Information) Regulations 2004 (SI 2004/1481) (see regulation 24);
- 7.2.12 In regulations 100(2) and (3), regulation 22 (requirement to provide information where there has been significant overdrawing without prior agreement) has been added to the lists, to make it clear that where a borrower is overdrawn on his current account without authorisation on the day that the implementing regulations come into force, the requirements to provide information to the borrower about that overdraft will apply (regulation 29);
- 7.2.13 After regulation 101, an additional trigger has been introduced (regulation 101A) to allow lenders who are entering into credit agreements for credit that exceed £60,260 or that are for business purposes in accordance with the existing regime to comply with the amendments to that regime early. For these types of agreements creditors have a choice as to whether to continue with the existing regime or use the new regime (regulation 30);

The Consumer Credit (Disclosure of Information) Regulations 2010 No.1013

- 7.2.14 In regulation 1(2), under definition of “advance payment”, the word ‘not’ before “to be taken” has been deleted to give the intended meaning (regulation 31);
- 7.2.15 In regulation 3(1)(a), the application of regulation 3 has been clarified to exclude telephone contracts which are not distance contracts and telephone contracts which are distance contracts and where the debtor consents to limited disclosure (regulation 32);
- 7.2.16 In regulation 10, an amendment has been made to clarify what information needs to be provided in relation to an overdraft that is a distance contract but where the debtor does not consent to limited disclosure (regulation 37);

The Consumer Credit (Agreements) Regulations 2010 No. 1014

- 7.2.17 A new regulation 1(2A) and (2B) have been added to permit creditors of section 58 agreements (certain agreements secured on land) to provide an unexecuted agreement in compliance with the Agreements Regulations 2010 prior to 1 February 2011 (regulation 42);

⁴ Those covered by Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

- 7.2.18 Regulation 2 has been amended to permit creditors of section 58 agreements to choose between the old and the new regime after 1 February 2011 and to distinguish it from the choice regime for other land agreements (regulation 43);
- 7.2.19 In paragraph 14 to Schedule 1, the description of the information lenders are required to include in an agreement regarding repayments will be simplified to be consistent with the parallel requirement for pre-contractual information in the Disclosure Regulations (regulation 45).

7.3 There has been no public or media attention in the changes. Interest has been confined to those businesses that will have to comply with the changes, legal firms and enforcement agencies.

7.4 The changes are not politically or legally important.

- ***Consolidation***

7.5 The Department for Business, Innovation & Skills has no plans to consolidate the Consumer Credit Act 1974 or the secondary legislation that has been amended by these Regulations.

8. Consultation outcome

8.1 A public consultation on the policy proposals for implementing the Consumer Credit Directive ran from 14 April 2009 to 10 June 2009.⁵

8.2 Given the nature of the changes, the Department has not consulted formally on these Regulations. Many of the errors in the implementing regulations were identified by companies and legal firms who will be using the regulations. A list of proposed amendments was circulated to stakeholders for informal comment in early June.

9. Guidance

9.1 The Department will be publishing in August a plain English guide to the changes made by the implementing regulations as amended by these Regulations. The Office of Fair Trading may also publish further guidance for creditors on its approach to enforcement of the Regulations.

10. Impact

10.1 These Regulations (together with the implementing regulations) will have an impact on any business that offers credit to consumers. It is estimated that there are 3,500 – 5,000 businesses holding consumer credit licences in the UK. They have no impact on the charitable sector or voluntary bodies.

10.2 An Impact Assessment for the implementing regulations is available on the BIS website: <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/10-916->

⁵ Consultation on proposals for implementing the Consumer Credit Directive. April 2009. URN 09/876.

[implementation-impact-assessment-consumer-credit-directive.pdf](#). A separate Impact Assessment has not been prepared for these Regulations as they have no cost or benefit beyond that identified for the implementing regulations.

11. Regulating small business

11.1 The legislation applies to creditors that are small businesses.

12. Monitoring & review

12.1 The European Commission is expected to review the Directive in 2013 and if appropriate would put forward proposals to amend the Directive. The Department proposes to carry out a review of the effectiveness of the implementing legislation to a similar timescale.

13. Contact

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