

This Statutory Instrument supersedes SI 2010/1012 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2010 No. 1970

CONSUMER CREDIT

The Consumer Credit (Advertisements) Regulations 2010

<i>Made</i>	- - - -	<i>3rd August 2010</i>
<i>Laid before Parliament</i>		<i>5th August 2010</i>
<i>Coming into force</i>	- -	<i>1st February 2011</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 44, 151(1) and 182(2) of the Consumer Credit Act 1974(1).

Citation, commencement, revocation and interpretation

1.—(1) These Regulations may be cited as the Consumer Credit (Advertisements) Regulations 2010 and shall come into force on 1st February 2011.

(2) The Consumer Credit (Advertisements) Regulations 2010(2) are revoked.

(3) In these Regulations, unless the context otherwise requires—

“the Act” means the Consumer Credit Act 1974;

“advance payment” includes any deposit but does not include a repayment of credit or any insurance premium or any amount entering into the total charge for credit;

“ancillary service” means a service that relates to the provision of credit under the consumer credit agreement and includes in particular an insurance or payment protection policy;

“APR” means the annual percentage rate of charge for credit determined in accordance with the Total Charge for Credit Regulations and the Schedule to these Regulations;

“cash price” in relation to any goods, services, land or other things means the price or charge at which the goods, services, land or other things may be purchased by, or supplied to, the debtor for cash, account being taken of any discount generally available from the dealer or supplier in question;

“cost of the credit” means any costs, including interest, commissions, taxes and any other kind of fees which are required to be paid by or on behalf of the debtor or a relative of the debtor

(1) 1974 c.39.

(2) S.I. 2010/1012.

in connection with the consumer credit agreement, whether payable to the creditor or to any other person, and which are known to the creditor, except for notarial costs;

“credit advertisement” means an advertisement to which Part 4 of the Act applies by virtue of it falling within section 43(1)(a), or which falls within section 151(1) of the Act in so far as section 44 is applied to such an advertisement;

“dealer” means, in relation to a hire-purchase, credit sale or conditional sale agreement under which he is not the creditor, a person who sells or proposes to sell goods, land or other things to the creditor before they form the subject matter of any such agreement and, in relation to any other agreement, means a supplier or his agent;

“the representative APR” is an APR at or below which the advertiser reasonably expects, at the date on which the credit advertisement is published, that credit would be provided under at least 51% of the consumer credit agreements which will be entered into as a result of the advertisement. For these purposes, in the case of a credit advertisement which falls within section 151(1) of the Act, “advertiser” means the person carrying on the business of credit brokerage;

“standard information” means the information listed in regulation 5(1);

“supplier” has the meaning assigned to it by section 189(1) of the Act, except that it does not include, in relation to a hire purchase, credit sale or conditional sale agreement, a creditor to whom goods, land or other things are sold or proposed to be sold by a dealer before becoming the subject matter of such an agreement;

“total amount of credit” means the credit limit or the total sums made available under a consumer credit agreement;

“total amount payable” means the sum of the total charge for credit and the total amount of credit payable under the consumer credit agreement as well as any advance payment;

“total charge for credit” means the total charge for credit determined in accordance with the Total Charge for Credit Regulations and the Schedule to these Regulations;

“the Total Charge for Credit Regulations” means the Consumer Credit (Total Charge for Credit) Regulations 2010(3);

“the 2004 Regulations” means the Consumer Credit (Advertisements) Regulations 2004(4).

(4) In these Regulations—

- (a) a reference to repayment of credit is a reference to repayment of credit with or without any other amount;
- (b) a reference to the name of any person is—
 - (i) in the case of any person covered by a standard licence, a reference to any name of his specified in the licence;
 - (ii) in the case of any other person, a reference to any name under which he carries on business.

Duty to comply

2. A person who causes a credit advertisement to be published shall ensure that the advertisement complies with all applicable requirements of these Regulations.

(3) S.I. 2010/1011.

(4) S.I.2004/1484, as amended by S.I. 2004/2619, S.I. 2006/2383, S.I 2007/827 and S.I. 2008/1277.

General requirements

3. Every credit advertisement shall—
- (a) use plain and intelligible language,
 - (b) be easily legible (or, in the case of any information given orally, clearly audible), and
 - (c) specify the name of the advertiser.

Content of advertisements

4.—(1) Where a credit advertisement includes a rate of interest or an amount relating to the cost of the credit whether expressed as a sum of money or a proportion of a specified amount, the advertisement shall also—

- (a) subject to paragraph (2), include standard information by means of a representative example in accordance with regulation 5, and
- (b) specify a postal address at which the advertiser may be contacted, except in the case of credit advertisements—
 - (i) published by means of television or radio broadcast,
 - (ii) in any form on the premises of a dealer or creditor (not being advertisements in writing which customers are intended to take away),
 - (iii) which include the name and address of a dealer, or
 - (iv) which include the name and a postal address of a credit broker.

(2) Paragraph (1)(a) shall not apply where regulation 6(1) applies and the credit advertisement does not indicate a rate of interest or other amount relating to the cost of the credit other than the representative APR.

Representative Example

5.—(1) Subject to paragraph (5), the representative example referred to in regulation 4(1)(a) shall comprise the following items of information—

- (a) the rate of interest, whether fixed, variable or both,
- (b) the nature and amount of any other charge included in the total charge for credit,
- (c) the total amount of credit,
- (d) the representative APR,
- (e) in the case of credit in the form of a deferred payment for specific goods, services, land or other things, the cash price and the amount of any advance payment, and
- (f) except where the consumer credit agreement is an open-end agreement—
 - (i) the duration of the agreement, and
 - (ii) the total amount payable by the debtor and the amount of each repayment of credit.

(2) For the purposes of the representative example, the information referred to in sub-paragraphs (a) to (c), (e) and (f) of paragraph (1) shall be that which the advertiser reasonably expects at the date on which the credit advertisement is published to be representative of consumer credit agreements to which the representative APR applies and which are expected to be entered into as a result of the advertisement. For these purposes in the case of a credit advertisement which falls within section 151(1) of the Act, “advertiser” means the person carrying on the business of credit brokerage.

(3) For the purposes of paragraph (2), “agreements to which the representative APR applies” in the case of paragraph (1)(e) means agreements providing credit for the purchase of specific goods, services, land or other things to which the representative APR applies.

(4) For the purposes of paragraph (1)(a), where the consumer credit agreement provides different ways of draw down with different rates of interest, the rate of interest shall be assumed to be the highest rate applied to the most common draw down mechanism for the product to which the agreement relates.

(5) Paragraphs (1)(d) and (2) shall not apply to a credit advertisement relating to an authorised non-business overdraft agreement.

(6) The standard information contained in the representative example shall be—

- (a) specified in a clear and concise way,
- (b) accompanied by the words “representative example”,
- (c) presented together with each item of information being given equal prominence, and
- (d) given greater prominence than—
 - (i) any other information relating to the cost of the credit in the credit advertisement except for any statement relating to an obligation to enter into a contract for an ancillary service referred to in regulation 8(1), and
 - (ii) any indication or incentive of a kind referred to in regulation 6(1).

(7) In this regulation a reference to a rate of interest is a reference to the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down.

Other advertisements requiring representative APR

6.—(1) A credit advertisement shall specify the representative APR if the advertisement—

- (a) indicates in any way, including by means of the name given to a business or of an address used by a business for the purposes of electronic communication, that—
 - (i) credit is available to persons who might otherwise consider their access to credit restricted, or
 - (ii) any of the terms on which credit is available is more favourable (either in relation to a limited period or generally) than corresponding terms applied in any other case or by any other creditors, or
- (b) includes any incentive to apply for credit or to enter into an agreement under which credit is provided.

(2) For the purposes of this regulation, the representative APR shall be given greater prominence than any indication or incentive of a kind referred to in paragraph (1).

(3) This regulation does not apply to a credit advertisement relating to an authorised non-business overdraft agreement.

APR

7.—(1) An APR shall be denoted in a credit advertisement as “%APR”.

(2) Where an APR is subject to change it shall be accompanied by the word “variable”.

(3) The representative APR shall be accompanied by the word “representative”.

Ancillary services

8.—(1) Subject to paragraph (3), a credit advertisement shall include a clear and concise statement in respect of any obligation to enter into a contract for an ancillary service, where—

- (a) the conclusion of that service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions advertised, and

- (b) the cost of that ancillary service cannot be determined in advance.
- (2) The statement referred to in paragraph (1) shall—
 - (a) be no less prominent than any standard information included in the credit advertisement, and
 - (b) be presented together with any representative APR included in the advertisement.
- (3) This regulation does not apply to a credit advertisement relating to an authorised non-business overdraft agreement.

Security

9. Where the subject matter of a credit advertisement is a facility for which security is or may be required, the advertisement shall—
- (a) state that security is or may be required, and
 - (b) specify the nature of the security.

Restrictions on certain expressions in credit advertisements

- 10.—(1) A credit advertisement shall not include—
- (a) the word “overdraft” or any similar expression as describing any agreement for running - account credit except an agreement enabling the debtor to overdraw on a current account,
 - (b) the expression “interest free” or any similar expression indicating that a customer is liable to pay no greater amount in respect of a transaction financed by credit than he would be liable to pay as a cash purchaser in relation to the like transaction, except where the total amount payable by the debtor does not exceed the cash price,
 - (c) the expression “no deposit” or any similar expression, except where no advance payments are to be made,
 - (d) the expression “loan guaranteed” or “pre-approved” or any similar expression, except where the agreement is free of any conditions regarding the credit status of the debtor, or
 - (e) the expression “gift”, “present” or any similar expression except where there are no conditions which would require the debtor to return the credit or items that are the subject of the claim.
- (2) A credit advertisement shall not include in relation to any repayment of credit the expression “weekly equivalent” or any expression to the like effect or any expression of any other periodical equivalent, unless weekly payments or the other periodical payments are provided for under the agreement.
- (3) In this regulation—
- (a) “cash purchaser” means, in relation to any credit advertisement, a person who for a money consideration—
 - (i) acquires goods, land or other things, or
 - (ii) is provided with services,under a transaction which is not financed by credit;
 - (b) “current account” means an account under which the customer may, by means of cheques or similar orders payable to the customer or to any other person or by any other means, obtain or have the use of money held or made available by the person with whom the account is kept and which records alterations in the financial relationship between the said person and the customer.

Exclusions

11.—(1) These Regulations do not apply to a credit advertisement which—

- (a) whether expressly or by implication indicates clearly that a person is willing to provide credit for the purposes of another person's business, and
- (b) does not indicate (whether expressly or by implication) that a person is willing to provide credit otherwise than for the purposes of such a business.

(2) References in paragraph (1) to a business do not include references to a business carried on by the advertiser or any person acting as a credit-broker in relation to the credit facility to which the credit advertisement relates.

(3) These Regulations do not apply to any credit advertisement in so far as it is a communication of an invitation or inducement to—

- (a) engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000⁽⁵⁾, other than an exempt generic communication;
- (b) enter into a regulated home purchase plan within the meaning of article 63F of the Financial Services and Markets Act (Regulated Activities) Order 2001⁽⁶⁾.

(4) An “exempt generic communication” is a communication to which subsection (1) of section 21 of the Financial Services and Markets Act 2000 does not apply, as a result of an order under subsection (5) of that section, because it does not identify a person as providing an investment or carrying on an activity to which the communication relates.

(5) These Regulations do not apply to a credit advertisement in so far as it relates to a consumer credit agreement secured on land.

Transitional provisions

12.—(1) Subject to paragraph (2), a person shall not be guilty of an offence under section 47(1)⁽⁷⁾ or 167 of the Act for contravention of these Regulations in respect of a credit advertisement that would have complied with the requirements of the 2004 Regulations had those Regulations not been disapplied in relation to a consumer credit agreement not secured on land by virtue of regulation 72 of the Consumer Credit (EU Directive) Regulations 2010⁽⁸⁾.

(2) Paragraph (1) only applies to—

- (a) credit advertisements published in a catalogue, diary or work of reference comprising at least 50 printed pages—
 - (i) copies of which are first published, or made available for publication in the ordinary course of business before 1st March 2011, and
 - (ii) which, in a reasonably prominent position either contains the date of its first publication or specifies a period, being a calendar or seasonal period, throughout which it is intended to have effect;
- (b) other credit advertisements—
 - (i) which are first published before 1st February 2011, and
 - (ii) which cease to be published before 1st March 2011.

(5) 2000 c.8.

(6) S.I. 2001/544; section 63F was inserted by articles 2 and 18 of S.I. 2006/2383.

(7) Section 47(1) was amended by regulation 30 of and Schedule 4 to the Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277).

(8) S.I. 2010/1010.

3rd August 2010

Edward Davey
Minister for Employment Relations, Consumer
and Postal Affairs
Department of Business, Innovation and Skills

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Regulation 1(3)

PROVISIONS RELATING TO CALCULATION AND DISCLOSURE OF TOTAL CHARGE FOR CREDIT AND APR

1 Assumptions about running-account credit

- (a) (a) In the case of a credit advertisement relating to running-account credit, the assumption in paragraph (b) below shall have effect for the purpose of calculating the total charge for credit and any APR in place of the assumption in regulation 6(o) of the Total Charge for Credit Regulations that might otherwise apply.
- (b) In a case where the credit limit applicable to the credit is not yet known on the date the credit advertisement is published but it is known that it will be less than £1,200, the credit limit shall be assumed to be an amount equal to that maximum limit.

2 Permissible tolerances in disclosure of an APR

2. For the purposes of these Regulations, it shall be sufficient compliance with the requirement to show an APR if there is included in the credit advertisement—

- (a) a rate which exceeds the APR by not more than one,
- (b) a rate which falls short of the APR by not more than 0.1, or
- (c) in a case to which paragraph 3 or 4 of this Schedule applies, a rate determined in accordance with those paragraphs or whichever of them applies to that case.

3 Tolerance where repayments are nearly equal

3. In the case of an agreement under which all repayments of credit but one are equal and that one repayment does not differ from any other repayment by more whole pence than there are repayments of credit, there may be included in a credit advertisement relating to the agreement a rate found under regulation 5 of the Total Charge for Credit Regulations as if that one repayment were equal to the other repayments to be made under the agreement.

4 Tolerance where interval between relevant date and first repayment is greater than interval between repayments

- (a) (a) In the case of a consumer credit agreement under which—
 - (i) three or more repayments of credit are to be made at equal intervals, and
 - (ii) the interval between the relevant date and the first repayment is greater than the interval between the repayments,

there may be included in the credit advertisement relating to the agreement a rate found under regulation 5 of the Total Charge for Credit Regulations as if the interval between the relevant date and the first repayment were shortened so as to be equal to the interval between repayments.

- (b) (i) In this paragraph “relevant date”, in relation to a credit advertisement, means—
 - (ii) in a case where a date is specified in or determinable under a consumer credit agreement at the date of its making as that on which the debtor is entitled to require provision of anything the subject of the agreement, the earliest such date, and
 - (iii) in any other case, the date of the making of the agreement.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Consumer Credit (Advertisements) Regulations 2010 (SI 2010/1012), which have not yet come into force, to address certain defects in the drafting of that instrument. They have been issued free of charge to all known recipients of that instrument.

These Regulations implement article 4 of Directive 2008/48/EC of the European Parliament and of the Council on credit agreements for consumers (OJ No L133, 22.5.2008, p66) (“the Directive”). They impose requirements concerning the form and content of advertisements that relate to the provision of credit. By virtue of regulation 11, these Regulations do not apply in relation to advertisements for loans to businesses, to financial promotions or to consumer credit agreements secured on land. The Consumer Credit (Advertisements) Regulations 2004 (“the 2004 Regulations”) will continue to apply to consumer credit agreements secured on land only.

Regulation 3 replicates the 2004 Regulations in prescribing the manner in which credit advertisements should be displayed and the specific content of all types of credit advertisement.

Regulation 4 is new. It prescribes the content of those credit advertisements that includes a rate of interest or any amount relating to the cost of credit. In particular this requires an advertisement to include standard information by means of a representative example.

Regulation 5 lists the information which the representative example must comprise and the manner in which it should be presented. It includes a requirement for a “representative APR”.

Regulation 7 sets out the manner in which an APR (including the representative APR) should be presented. As with the 2004 Regulations, the APR must be calculated on the basis of assumptions set out in the Schedule to these Regulations.

Regulations 4(2) and 6 disapply the requirement for standard information in certain circumstances.

Regulation 8 requires an obligation to enter into a contract for an ancillary service to be stated clearly in the credit advertisement, except in the case of advertisements relating to authorised non-business overdrafts (as defined in section 189 of the Consumer Credit Act 1974).

Regulations 9 and 10 replicate regulations 7(1) and 9 of the 2004 Regulations.

Regulation 12 makes transitional provision disapplying the requirements to advertisements published in a catalogue before 1st March and giving advertisers a period of one month from 1st February 2011 in which to replace other types of credit advertisement published prior to that date.

An impact assessment has not been prepared for these Regulations since they have the same effect on the costs to business and the voluntary sector as S.I. 2010/1012. An impact assessment for that instrument is available from the BIS website (www.bis.gov.uk) and was placed in the Libraries of both Houses of Parliament. A transposition note is available from the BIS website and a copy is also annexed to the Explanatory Memorandum to these Regulations, which is available alongside the instrument on the OPSI website (www.opsi.gov.uk). Copies of that note have also been placed in the Libraries of both Houses of Parliament