

The Consumer Credit (Advertisements) (Amendment) Regulations 2007 - Impact Assessment

Annex 1

1. Title of proposal

To amend regulations 1(2) and 8(2) of the Consumer Credit (Advertisements) Regulations 2004 (SI 2004/1484).

Devolution: These changes will apply in the UK.

2. Purpose and intended effect of measure

(i) The objective

To make a technical amendment to the Regulations to close a loophole that is being exploited by an ever increasing number brokers (and lenders acting as brokers) to the detriment of consumers.

The current wording may be open to more than one possible interpretation and this amendment proposed in option 2 is intended to remove the existing ambiguity and make the wording more clearly aligned with the policy intention. In particular, it is designed to dispel any notion that the requirements relating to annual percentage rates (APRs) do not apply to advertisements published by credit brokers because they do not enter into agreements as such but merely facilitate agreements between borrowers and lenders.

The amendments will help to ensure that consumers will be able to compare the costs of loans so that they can make informed purchasing decisions. This will also encourage more competitive lending, and enable those brokers who are currently interpreting the Regulations in line with the policy intention to compete on a level playing field with those who are not.

(ii) The background

It was the intention of the Regulations to create a headline figure that would make comparing loans easier for consumers. The typical APR (TAPR) is intended to be a rate at or below which the advertiser reasonably expects that credit will be provided under at least 66% of agreements entered into as a result of the advertisement. Where triggered, the TAPR must be prominently displayed in an advertisement.

In practice, some brokers have relied on the possible ambiguity in the Regulations in order to advertise TAPRs at rates that very few respondents to the advertisement will actually receive. A consumer may be induced to respond because of a low TAPR but his application is likely to be rejected and he is then passed on to another lender with much higher APRs which are not reflected in the original advertisement.

The sector is divided between those brokers who follow the spirit and intention of the Regulations and those who do not. Some publish a TAPR which only a few applicants would qualify for in the knowledge that most applicants will only be able to receive loans at a much higher rate through their initial application with them. This creates distortion in the market which is detrimental to consumers since advertised TAPRs are neither realistic nor comparable.

It was the intention of the legislation that consumers should have access to better comparative information but this has not been reflected in the implementation.

(iii) Risk assessment

There is evidence that the current ambiguity in the Regulations is creating considerable consumer detriment arising from misleading advertising. It is also giving rise to significant distortions in the market, to the detriment of brokers seeking to comply with the spirit and intention of the Regulations.

3. Options

Option 1: Do nothing. This would mean continued consumer and business detriment. It is likely that more and more businesses will seek to follow the practice of using artificially low TAPRs thus misleading consumers and creating further distortion of the market.

Option 2: Make an amending statutory instrument that will correct the problem. The definition of 'typical APR' in regulation 1(2) of the Advertising Regulations would be amended as follows:

"The typical APR is an APR at or below which ~~an~~the advertiser reasonably expects, at the date on which ~~an~~the advertisement is published, that credit would be provided under at least 66% of the agreements ~~he will enter~~ which will be entered into as a result of the advertisement. In the case of an advertisement which falls within section 151(1) of the Act, "advertiser" means the person carrying on the business of credit brokerage."

Corresponding changes would be made to regulation 8(2) which makes provision for credit advertisements indicating a range of APRs.

4. Benefits

Option 1: None. Compliant companies may also be forced to amend their advertising in order to compete effectively or risk serious damage to their business, thus compounding existing consumer detriment and uncertainty as to the effect of the Regulations.

Option 2: The Regulations will be brought in line with the original policy intention. Brokers will have to advertise TAPRS which reflects the business that would be entered into as a result of the advertisement and it would be clear that the requirement applies to brokers' adverts. Consumers will be able to make more informed choices in the marketplace.

Business sectors affected

This will only affect lenders and brokers offering consumer credit products which are subject to the Consumer Credit Act advertising regime.

Issues of equity and fairness

This will increase the ability of consumers to make an informed choice when looking for loans.

5. Costs

(i) Compliance costs

Option 1: None.

Option 2: None above the cost of the original regulation as it was costed on the basis of 100% compliance. The amendment will ensure that all brokers (and lenders acting as brokers) apply the regulation as intended.

(ii) Other costs

None.

(iii) Costs for a typical business

None more than that of the original legislation.

6. Consultation with small business: the Small Firms' Impact Test

None apart from those considered in the RIA for the 2004 Advertisement Regulations (see attached).

7. Competition Assessment

This amendment will allow the OFT to enforce the Regulations in an environment where the legislation is open to a single interpretation. This will mean that current distortions in the market will reduce and the OFT and its enforcement partners in local authority Trading Standards Services (TSS) will be able to intervene by taking action as appropriate against businesses that continue to be non-compliant. Such intervention (and the threat of such intervention) will encourage all brokers in the sector to comply with the true intention of the Regulations, leading to a level playing field for businesses and a more competitive market in which consumers can make informed choices between competing products and suppliers.

8. Enforcement and sanctions

The OFT and TSS have responsibility for enforcing the Regulations but are currently constrained from doing so as the Regulations as drafted are open to more than one possible interpretation.

9. Monitoring and review

The legislation is subject to a two-year baseline review.

10. Consultation

(i) Within government

OFT.

(ii) Public consultation

We have received representations on this issue from the Finance Industry Standards Association (FISA) and the British Bankers Association (BBA).

11. Summary and recommendation

This is a straightforward change to the legislation that will close a potential loophole that has been exploited by some brokers, to the detriment of consumers and fair-dealing businesses.

By removing an ambiguity in the current legislation, the amendment will make it easier for

firms to comply and remove a major cause of business uncertainty. It will thereby reduce burdens on businesses seeking to comply with the Regulations.

12. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed (This remains blank until the legislation is to be sent to Parliament. It then becomes a final RIA)

Date

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