

**CONSULTATION ON PROPOSALS  
FOR IMPLEMENTING THE  
CONSUMER CREDIT DIRECTIVE**

---

APRIL 2009

**CONSULTATION ON PROPOSALS FOR IMPLEMENTING THE CONSUMER CREDIT DIRECTIVE**

<b><i>Contents</i></b>	<b><i>Page</i></b>
Foreword	3
<b><i>Section A: General Information</i></b>	
Executive summary	4
How to respond	6
Additional copies	6
Confidentiality	6
Help with queries	7
What happens next?	7
List of consultation questions	8
<b><i>Section B: Background to the Consumer Credit Directive</i></b>	
<b><i>Section C: The Proposal</i></b>	
1) Scope, definitions and subject matter	16
2) Article 4 – Standard information to be included in advertising	22
3) Article 5 – Pre-contractual information	30
4) Article 5.6 – Adequate explanations	42
5) Article 8 – Creditworthiness	52
6) Article 9 – Database access	57
7) Article 10 – Contractual information	60
8) Article 11 – Information concerning the borrowing rate	69
9) Article 13 – Open-end credit agreement	74
10) Article 14 – Right of withdrawal	77
11) Article 15 – Linked credit agreements	84

12) Article 16 – Early repayment	88
13) Article 17 – Assignment of rights	99
14) Article 19 – APR calculations	101
15) Article 20 – Regulation of creditors	105
16) Article 21 – Credit intermediaries	106
17) Overdrafts and overrunning	112
18) Implementing measures	120
19) Transposition and final provisions	122
20) Impact Assessment	123
<b><i>Annex A: Code of Practice on Consultation</i></b>	124

## **Foreword**

The Consumer Credit Directive has been a long time coming, having originally been conceived in 2002. After protracted negotiations it was finally adopted last year and we have arrived at the point of consulting on its implementation at a very appropriate time. Given the difficulties which credit markets have faced over the last year and a half, it is useful to have this opportunity to consider some further improvements to our consumer credit legislation.

I want implementation of the Directive to contribute to the very important twin objectives of improving consumer understanding through clear and comparable information and promoting responsible lending and responsible borrowing.

Although on its own this Directive will not achieve a single market in consumer credit, it does represent a step in the direction of a more open and competitive EU market, removing the barriers caused by different information requirements and lack of consumer confidence.

**Responses to this consultation will ensure that our approach to implementing the Directive is the right one, improving consumer protection in a way that is workable and practical for business.**

I look forward to your responses and thank you for taking the time to respond to this consultation.

A handwritten signature in black ink, appearing to read 'Gareth Thomas', written in a cursive style.

**GARETH THOMAS** - MINISTER FOR CONSUMER AFFAIRS

## **SECTION A: GENERAL INFORMATION**

### **Executive summary**

1. This consultation document seeks your comments on BERR's proposals for the transposition of the Consumer Credit Directive (CCD) into UK law, including the likely costs and benefits of the Directive indicated in our Impact Assessment. Your views will help inform the final regulations.
2. The CCD was agreed by the EU institutions in April 2008 and each Member State is required to implement the Directive's provisions into domestic law by June 2010. Unlike the existing Directive (87/102/EEC), the revised Consumer Credit Directive is a Single Market Directive and is therefore based on maximum harmonisation principles. This means that when each Member State transposes the provisions into domestic law, they cannot provide greater rights or broader or more stringent requirements than those set out in the CCD.
3. The UK has a long established and well developed framework of consumer credit law, covering a broader range of consumer credit agreements than those to which the CCD applies. In many cases, the individual provisions of the CCD are similar to requirements that already exist in UK law covering:
  - the pre-contractual, contractual and post-contractual information that must be given to consumers;
  - information to be included in advertisements;
  - liability of the lender to the consumer where a credit agreement has been used to purchase goods or services;
  - rights for consumers to repay an agreement early, in full or part (UK consumers currently have a right of full early repayment but not partial); and
  - calculation of the APR
4. In other areas, the CCD's provisions are substantially new:
  - a duty on the lender to provide adequate explanations about the credit on offer to the consumer;
  - an obligation on the lender to check creditworthiness before offering or increasing credit;
  - requirements concerning credit reference databases;
  - a right for consumers to withdraw from a credit agreement within 14 days, without giving any reason;
  - requirements to inform consumers when debts are sold on; and
  - requirements for credit intermediaries to disclose fees and links to creditors

5. Section C of this document sets out our proposals for implementing the CCD. In each chapter, we summarise the provisions of individual articles, set out existing UK law in the area and outline our proposals for implementing the article. In some cases, there is little flexibility over how an article must be implemented. In other cases, we have choices over how we implement the article and have asked for views on the various options.

6. In taking forward our development of these proposals, BERR would be very grateful for your views in response to some or all of the questions asked (we appreciate that not everyone will have views on all of the issues). BERR would also be grateful for views on the costs and benefits set out in the Impact Assessment (see Section C: Chapter 20).

### **How to respond**

1. When responding please state whether you are responding as an individual or whether you are representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.
2. The consultation was published on 14 April, 2009. The consultation period will run for 8 weeks, and the closing date for responses is 10 June, 2009. However, we encourage responses as early as possible to assist us in accelerating the process of considering replies.
3. This consultation is running for 8 rather than the normal 12 weeks. This is due to the nature of the CCD, and the need for the implementing regulations to be made as early as possible because of the lead-time lenders need in order to prepare for the new legislation.

A response can be submitted by letter, fax or email to:

Tord Johnsen  
Consumer and Competition Policy Directorate  
Department for Business, Enterprise & Regulatory Reform  
1 Victoria Street  
London  
SW1H 0ET

Fax: 020 7215 0357

Email: [consumercreditdirective@berr.gsi.gov.uk](mailto:consumercreditdirective@berr.gsi.gov.uk)

4. This consultation will be of interest to: business; consumer organisations and advisers; consumer enforcement bodies; and individual consumers.

### **Additional copies**

5. This consultation can be found at: <http://www.berr.gov.uk/consultations/index.html> and is also available from BERR Publications Orderline, ADMAIL 528, London SW1W 8YT, Tel: 0845 010 0010, Fax: 0845 015 0020, Minicom: 0845 015 0030. You may make additional copies without seeking permission.

### **Confidentiality and data protection**

6. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004. If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things with obligations of confidence.

7. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system will not, of itself, be binding on the Department.

### **Help with queries**

8. Questions about the policy issues raised in the document can be addressed to Tord Johnsen, Department for Business, Enterprise and Regulatory Reform (contact details as above).

9. If you have any comments or complaints about the way this consultation has been conducted, these should be sent to:

Sameera de Silva  
Consultation Co-ordinator  
Department Of Business, Enterprise and Regulatory Reform  
Better Regulation Team  
1 Victoria Street  
London SW1H 0ET  
E-mail: Sameera.de.silva@berr.gsi.gov.uk  
Tel: 020 7215 2888  
Fax: 020 7215 0235

10. A copy of the Government's Code of Practice on Consultation is attached at Annex A.

### **What happens next?**

11. The UK Government will use the responses received to help shape its implementing legislation.

12. Decisions taken in light of the consultation will be publicised along with a summary of the responses received.

13. Stakeholders will be able to follow developments on this Directive following the consultation on the BERR website at [www.berr.gov.uk](http://www.berr.gov.uk).

## **Consultation questions**

### ***Scope, definitions and subject matter***

Q1. Do you agree with the approach in relation to the exemptions set out in Article 2.2?

Q2. Should the requirements concerning adequate explanations and right of withdrawal be applied to business lending agreements; and should the requirements concerning adequate explanations be applied to loans above €75,000 (£60,260)?

Q3. Do you agree with the approach to specific products which fall outside the scope of the CCD? Are there other specific categories of agreements outside the CCD's scope that would justify distinct treatment under the amended legislation? If so, how?

Q4. Do you agree with the approach to the existing UK exemption regime?

### ***Article 4 – Standard information to be included in advertising***

Q5. Do you agree that the Advertisements Regulations (as amended to implement the CCD) should continue to apply to the existing range of credit agreements?

Q6. Should an APR be required for all credit advertisements? If not, would there be merit in requiring it for any specific categories of loan – e.g. high-cost loans?

Q7. Do you agree with the proposals concerning the requirement for a representative example of the standard information for advertising - and in particular the proposals concerning the representative APR and the use of the €1,500 (£1,200) assumption in respect of the representative APR? Should a different figure be considered?

Q8. Do you have views on the presentation of information required under Article 4.2?

Q9. Do you have views on the proposals to amend Regulations 5 and 6 of the Advertisements Regulations, while retaining other requirements concerning matters not in scope, e.g. health warnings?

Q10. Do stakeholders envisage any particular problems in this sector (TV/radio/internet)? If so, how should these be addressed within the confines of the CCD?

### ***Articles 5, 6 and 7 – Pre-contractual information***

Q11. Do you agree with the proposal to allow lenders the flexibility to provide pre-contractual information either via the SECCI or under the existing Disclosure of Information rules in respect of the agreements outside of the scope of the Directive as referred to in paragraph 3.14?

Q12. Do you have views on whether there should be special treatment for particular categories of agreements not within the scope of the CCD, such as pawnbroking? If so, which categories should benefit and how?

Q13. Bearing in mind the constraints regarding presentation and order of information, do you have views on the language used in the SECCI and any suggestions that would help improve consumers' understanding of the form?

#### ***Article 5.6 – Adequate explanations***

Q14. Do you agree with the proposed approach to implementing Article 5.6? Please comment on the general approach as well as its application to specific products and loans sizes.

Q15. To avoid a situation in which knowledgeable consumers are nevertheless forced to receive unwanted explanations, should consumers be allowed to decline them? If so, should the lender be required to test the consumer's level of understanding or should he probe if he has reasonable grounds to suspect that the consumer has not understood key features of a credit product?

#### ***Article 8 – Creditworthiness***

Q16. Do you agree with the proposed approach to implementing Article 8? Please comment on the general approach as well as its application to specific products and loans sizes.

#### ***Article 9 – Database access***

Q17. Do you have any comments on our proposals for implementing Article 9?

#### ***Article 10 – Contractual information***

Q18. Do you agree with the proposed approach on the presentation of contractual information?

Q19. Do you agree with the proposal to retain a signature and signature box?

Q20. Would amendment of the Agreements Regulations' provisions on electronic signatures help facilitate the conduct of electronic agreements? Can you suggest any alternative approaches?

Q21. Which approach do you think would be best regarding the proposals to reform the requirements to provide a copy of the credit agreement? Can you suggest alternative approaches?

Q22. Should we retain the requirement to provide a copy of the agreement within seven days of the agreement being signed?

Q23. Do you agree with the proposal to amend the section 64 requirements regarding the provision of cancellation notices?

Q24. Do you agree that the section 77/78 provisions to request an additional copy of a credit agreement should be revised? If so, how?

Q25. Should the approach to the description of the total amount of credit as set out in Schedule 1 Paragraph 8 of the Agreements Regulations be retained?

Q26. Do you agree with the approach regarding statutory statements, in particular the proposal to revise the missing payments warning?

Q27. Do you agree with the proposal to retain the approach to the provision of information on modifying agreements as set out in schedule 8 of the Agreements Regulations?

### ***Article 11 – Information concerning the borrowing rate***

Q28. Do you agree with the proposals concerning the scope of the Variation Regulations?

Q29. Should the Variations Regulations be amended in respect of business lending in order to conform more closely with the draft Payment Services Regulations?

Q30. Should we retain the existing rules regarding a 7 day notice period? If a time period is not specified should guidance be issued as to what would be considered good practice in terms of the length of the notice period?

Q31. Are there any particular issues raised by the need to give individual notice or by the content requirements?

Q32. Should the legislation seek to define the term “periodically” in Article 11.2, or is this best dealt with in guidance?

Q33. Do you agree with the approach in respect of the giving of notice by newspaper advertisement and branch notice?

Q34. Do you agree with the approach in respect of agreed variations?

Q35. What problems could arise if the Regulation 3 procedure cannot be retained in its current form for existing agreements; and should the above procedure remain in place for agreements not falling within the scope of the CCD?

### ***Article 13 – Open-end credit agreement***

Q36. Should the legislation refer to “terminate” or “terminate or suspend” in respect of the consumer’s right to drawdown? What are the advantages/disadvantages of these alternatives?

Q37. Do you agree with the approach in respect of defining “objectively justified reasons”? Are there other reasons that should be listed?

Q38. Do you agree with the approach in respect of informing the consumer of a termination in the right to drawdown on an agreement?

### ***Article 14 – Right of withdrawal***

Q39. Do you have any comments on our proposals to extend the right of withdrawal in Article 14 to certain agreements outside the scope of the CCD? Please be specific about the type of agreement in your comments. In particular, do you think that the right of withdrawal in Article 14 should be extended to loans up to £25,000 to certain small businesses? Please explain why or why not.

Q40. Would it be helpful if we provide that the relevant parts of sections 72 and 73 on the return of goods will apply where the consumer has exercised his right to withdraw and both the consumer and the supplier agree that the goods will be returned?

Q41. Do you have any comments on our proposals on exercising the right of withdrawal and repaying the money?

### ***Article 15 – Linked credit agreements***

Q42. Do you have any comments on our proposal to implement Article 15.2? In particular, do you think the split between the two parts of the new regime will be clear? Can you think of any situations where it won't be clear whether an agreement is covered or by which part? Do you think the legislation should be specific about what extent and under what conditions the new Article 15.2 right can be exercised? If so, please explain in what way it should be specific.

### ***Article 16 – Early repayment***

Q43. Do you agree with our proposal to replace the 30 days/one month deferral with 30 days/one month's interest on the amount repaid early in the early repayment calculation (where the credit is to be repaid over more than a year)? If not, please explain why. Should this now be standardised as 30 days or one month? Do you agree with the proposal to apply this and the 28 day settlement date to partial early repayment? If not, please explain why.

Q44. Do you have any comments on the proposed formula for partial early repayment? Do you think it would be helpful for consumers and lenders if we specify a method of calculating the rescheduled payments following partial early repayment? Please explain why or why not. Do you agree that this formula works? If not, please explain why and suggest an alternative if possible.

Q45. Do you agree with the proposal to allow notice of early repayment to be given in another durable medium or orally as well as in writing? If not, please explain why.

Q46. Do you agree with our proposal to require lenders to provide consumers with information on the effect of a partial early repayment notified or made? If not, please explain why.

Q47. Can you suggest any other costs that would be directly linked to early repayment but only be incurred where the early repayment falls within a period for which the borrowing rate is fixed? Do you agree with our proposal to leave it to creditors to decide how to calculate compensation for changes in interest rates in the event of early repayment, where this is being claimed? If not, please explain why.

Q48. Do you have any comments on our proposals regarding the Member State options in Article 16.4?

Q49. Do you agree that section 96 should cover partial early repayment on the basis we have proposed? Can you see any problems with this? If so, please give details.

Q50. Do you agree with our proposals to extend the scope of the agreements to which the right of early repayment will apply? If you do not agree, please be specific about the type of agreement that should not be covered and why. Are there any particular difficulties with extending the right to partial early repayment to pawnbroking? If so, please explain why.

### ***Article 17 – Assignment of rights***

Q51. Do you have any concerns regarding which party provides notice of assignment and whether this requires clarification in legislation?

Q52. Do you agree that no changes to UK law are required to implement Article 17.1? If not, please explain why and give an indication of the changes that you think are needed.

### ***Article 19 – APR calculations***

Q53. Do you agree that there are no gaps in the assumptions set out in Article 19 and Annex I and/or do you think that in any given situation there could be significant variation in the answer produced by the APR calculation given the higher level assumptions of the CCD?

Q54. Do you agree with our proposed positions on the APR assumptions (b), (d) and (e) in Annex I? If not, please explain why.

Q55. Does the removal of the existing UK APR tolerances raise any issues?

Q56. Do you agree with our proposal to extend the scope of Article 19 to all CCA-regulated credit agreements with the exception of 2<sup>nd</sup> charge secured loans? If not, please explain why, with reference to different types of credit agreements outside the CCD scope.

### ***Article 21 – Credit intermediaries***

Q57. Do you think businesses in this sector would fall within both the definition of credit intermediary and credit brokerage? If not, how many businesses would fall within the definition of credit intermediary but not credit brokerage? What kind of services are these businesses currently offering? What would be the impact on individual businesses of being brought within the definition of credit brokerage?

Q58. Do you think it would be helpful if we defined the term “independent” in legislation or would an explanation of the term be better left to guidance? Do you have any comments on a possible definition? Do you think there is a better way to ensure that the requirement is applied consistently than to define the term?

Q59. Do you have any comments on our proposals for implementing the requirements in Article 21? If you do not agree with our proposals, please explain why and where possible suggest an alternative proposal.

Q60. Do you have any comments on our proposals regarding the scope of Article 21? If you do not agree with our proposals, please explain why.

### ***Overdrafts and overrunning***

Q61. Do you agree with our intention to restrict the CCD light touch regime available for Overdrafts to those overdrafts provided by banks only, which are repayable on demand or within 3 months?

Q62. Do you agree with our proposal not to require APRs to be shown in Advertisements relating to overdrafts and if not, why?

Q63. Do you have any comment to make on our various proposals relating to the transposition of the CCD's requirements on the provision of the pre-contractual information?

Q64. Do you foresee any difficulties stemming from the changes proposed to contractual information on overdrafts?

Q65. With regard to frequency of statements, do you agree with the proposal that such statements should be supplied on a "regular" basis?

Q66. Do you agree with the proposal as to when the consumer should be informed of a significant overrunning; and - Do you agree with the proposal that the statements required under Article 18.1 should be supplied on an annual basis?

### ***Implementing Measures (Transposition)***

Q67. Do you think there are provisions in the Directive with which lenders should be able to comply before June 2010? If so, which provisions?

### ***Impact Assessment***

Q68. Do you agree with the assumptions, figures and impact assessments made in the Impact Assessment at Annex B? This Impact Assessment is based on initial consideration of the key issues for the UK of the original CCD draft. Do you have any comments on the costs and benefits of the options for implementation discussed in the Impact Assessment and in the consultation document? Please provide as much supporting evidence as possible.

## **SECTION B: BACKGROUND TO THE CONSUMER CREDIT DIRECTIVE (CCD)**

1. The existing Consumer Credit Directive<sup>1</sup> was adopted in 1986 and, although amended twice since then, is still substantially as drafted in the mid-1980s. The European Commission concluded from consultations in 2001 that the existing Directive, aimed at creating a common market in credit and introducing minimum standards on consumer protection, was no longer in step with current credit markets and needed to be revised. The Commission identified that there had been little growth in cross-border transactions and as a result they concluded that the Directive needed to be reviewed in order to allow consumers and companies to take full advantage of the single market. On 11th September 2002, the Commission adopted a proposal for a revised Directive concerning credit for consumers.
2. A lengthy period of negotiation followed during which the European Commission twice amended its proposal. The CCD was finally adopted in April 2008.
3. The key aims of the CCD are to:
  - Introduce protective measures to bolster consumer confidence in the market, both at national and cross-border levels;
  - Establish a regulatory framework that is sufficiently robust and sophisticated to persuade Member States that they no longer require their own additional protective measures;
  - With the combination of the above initiatives, create the conditions that will bring about a pan-EU internal market for the benefit of creditors and consumers alike.

### **Outline of the CCD's proposals**

4. The Directive:
  - covers the current credit market landscape albeit excludes certain specific forms of credit (e.g. lending secured on land, sureties and guarantees and hire purchase/leasing agreements) and restricts others to a lighter touch regime (e.g. overdrafts);
  - harmonises the requirements for advertising consumer credit products and the pre-contractual and contractual information requirements throughout the EU to make them more comparable for consumers ;
  - improves access by lenders to data on a borrower to permit a more accurate assessment of risk and ability to pay;
  - improves consumer protection measures, including introducing a duty to provide adequate explanations about credit products and to check creditworthiness along with a universal 14-day right of withdrawal from the credit agreement;
  - further standardises the calculation of the APR by clarifying costs which must be included and assumptions used in the calculation;

---

<sup>1</sup> 87/102/EEC

- introduces throughout Europe a right for a consumer to settle or part settle credit early and entitles them to an equitable reduction in the cost of credit; and
  - introduces new provisions on linked credit agreements while maintaining existing provisions on joint and several liability.
5. All of the above matters are considered in more detail in the chapters on individual Articles in Section C. The policy proposals discussed have evolved during the transposition period to date and in many cases already reflect key stakeholder input.

## **SECTION C: THE PROPOSALS**

### **1. Article 2 and 3 – Scope, definitions and subject matter**

#### Summary

1.1. The scope of the CCD does not match exactly the scope of existing UK consumer credit legislation. Certain consumer credit agreements fall outside the scope of the CCD, which also sets a threshold and ceiling, and the definition of "consumer" to which the provisions of the CCD apply is narrower than is the case in UK legislation.

1.2. Similarly, the existing exemption regime provided for in Section 16 of the Consumer Credit Act (CCA) and the Consumer Credit Agreements (Exempt Agreements) Order 1989 (the "Exempt Agreements Order") does not fit exactly with the exemption regime in Article 2 of the CCD. Section 16 of the CCA and the Exempt Agreements Order exempt a number of different categories of agreement. Some of these are impacted by the CCD and are discussed in more detail in paragraphs 1.16-1.20 below.

1.3. Article 2(1) states that the CCD applies to credit agreements. "Credit agreement" is defined in Article 3(c) as:

- "an agreement whereby a creditor grants or promises to grant a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments".

1.4. "Consumer" is defined in Article 3(a) as "a natural person who, in transactions covered by the CCD, is acting for purposes which are outside his trade, business or profession".

1.5. Article 2(2) details various agreements to which the CCD does not apply, while Articles 2.3 and 2.4 provide for a "light touch" treatment in respect of overdrafts and overrunning agreements. Article 2.5 contains special rules regarding credit unions (which can however be exempted altogether). Article 2(6) also provides for light touch treatment in respect of credit agreements which provide for arrangements to be agreed by the creditor and the consumer in respect of deferred payment or repayment methods, where the consumer is already in default on the initial credit agreement and where:

- such arrangements would be likely to avert the possibility of legal proceedings concerning such default; and
- the consumer would not thereby be subject to terms less favourable than those laid down in the initial credit agreement.

1.6. These provisions are considered in more detail below.

1.7. An analysis of the CCD's scope suggests that the following kind of agreements regulated under the CCA are not within the scope of the Directive:

- lending to small businesses, partnerships and unincorporated bodies
- loans below €200 ( £160)
- loans above €75,000 (£60,260)
- second charge mortgages
- hire purchase agreements (but it would appear that conditional sale agreements are within scope)
- credit with no interest or other charges and credit repayable within three months with no interest and only insignificant charges
- pawnbroking
- consumer hire agreements.

### Our policy proposals

1.8. Broadly speaking, where the scope of the CCD differs from the scope of existing UK consumer credit legislation, our options are:

- to apply the CCD's provisions
- to retain existing UK consumer credit provision
- to modify the CCD's requirements for that type of agreement

1.9. In general, we propose that if a credit agreement is covered by existing UK consumer credit legislation, the most practical solution is to apply the amended provision of the UK legislation equally to all credit agreements<sup>2</sup> in order to maintain a comprehensive, homogenous set of rules. On the other hand, we recognise that there are good arguments as to why it probably would not make sense to apply wholly new requirements introduced by the CCD to credit agreements which fall outside its scope. On this basis we propose to adopt a case-by-case approach as to whether or not to apply specific provisions within the CCD to out of scope agreements.

1.10. There are also cases where we understand that it would not be helpful from the lender's point of view to have different rules applying to different types of credit agreement depending upon whether or not they were in the scope of the CCD. For example, in the case of pre-contractual and contractual information it would be complex to apply the changes required by the CCD to some agreements while leaving others outside of scope subject to existing UK rules. As discussed in the chapters on consumer information, we think that in these cases it would make sense for lenders to have a choice to comply with either the existing UK requirements or to comply with the new requirements of the CDD.

### Proposals for dealing with the Article 2 exemptions

1.11. The following briefly sets out our proposed approach in respect of the specific exemptions provided for in Article 2. Further discussion of the treatment of specific types of agreement falling outside the scope of the CCD follows at paragraph 15.

- 2.2 (a) and (b) We propose to continue to exempt first charge mortgages from our consumer credit legislation and we do therefore not propose to apply the CCD's provisions to those secured credit agreements which are already excluded from the scope of the CCA. On the other hand,

---

<sup>2</sup> We do not propose to make changes to any of the distinct provisions in existing legislation relating to hire agreements

we do not propose to take advantage of the purpose test (to acquire or retain property rights in land) in 2.2(b).

- 2.2 (c) We do not propose to apply the €200 (£160) threshold in the CCD but intend to maintain the existing light touch treatment for loans below £50. Similarly, for the most part we do not intend to apply the €75,000 (£60,260) ceiling.
- 2.2 (d) We do not propose to apply the exemption for hire purchase agreements. Such agreements would remain subject to regulation under the CCA (see also the discussion of hire purchase agreements in the chapter 10 on right of withdrawal).
- 2.2 (e) We do not propose to take advantage of the exemption for overdraft facilities where the credit has to be repaid within one month (see chapter 17 on overdrafts).
- 2.2 (f) Unlike the CCA, the CCD exempts agreements that are free of charges and interest, or where only insignificant charges are payable and the credit has to be repaid within 3 months. This exemption is relevant to the existing derogation in the CCA for credit which has to be repaid within 12 months by not more than four instalments. We propose to retain this exemption, but with modifications (see paragraph 1.17 below). Article 2.2(f) is also be relevant to charge cards (see paragraph 1.15 below).
- 2.2 (g) We intend to take advantage of the exclusion of credit granted by an employer to his employees as a secondary activity free of interest or at an annual percentage rate lower than those prevailing on the market and which are not offered to the public generally. Such loans are currently covered by Article 4(1)(b) and (c) of SI 1989/869. However, this will require amendment to reflect the fact that the CCD requires such lending to be a "*secondary activity*".
- 2.2 (h) The agreements referred to in this article are covered in separate financial services legislation which in turn is the result of a European harmonising Directive (MIFID). We do not propose to alter the requirements for such loans.
- 2.2 (i), (j) and Article 2.6 We do not propose to take advantage of the exemptions in (i) and (j) or the light touch treatment in Article 2.6. In the UK we distinguish between "agreements", on the one hand, and unilateral concessions by lenders/court orders, on the other hand. We believe anything which would constitute an agreement in the UK should continue to be caught by the full provisions of the CCA, whereas unilateral concessions by lenders/court orders would already fall outside the definition of an agreement in UK legislation.
- 2.2 (k) Generally speaking we are not proposing to exempt pawnbroking agreements from the requirements of the CCD. Such agreements should continue to be subject to the CCA as amended by implementing legislation. However, some changes to information requirements could be justified because of the way in which pawnbroking works and the fact that the information requirements in the Directive are not therefore wholly suitable to pawnbroking. See also chapters 3 and 7 on consumer information. We are also proposing to exempt pawnbroking from the requirement in Article 8 to assess creditworthiness (see chapter 5).
- 2 (l) The exemption for loans granted to a restricted group under a statutory provision (and at more favourable terms than those prevailing on the market) is similar to the existing 1989 Exemptions Order (Article 4(1) (b)

and (c)) but the latter will need to be amended to align with this provision in the Directive. (It is envisaged that the amended Article 4 will continue to apply to student loans.)

### **Q1. Do you agree with the approach in relation to the exemptions set out in Article 2.2 - 2.6?**

#### *Articles 2.3 and 2.4*

1.12. In addition to the Article 2.2 exemptions, Articles 2.3 and 2.4 provide that in certain situations a Member State may determine that only certain provisions of the CCD will apply to a particular type of agreement. These provisions relate to overdrafts (Article 2.3 and overrunning (Article 2.4) and are dealt with in chapter 17.

#### *Article 2.5*

1.13. Credit unions in the UK are eligible for exemption from the application of the CCD because they meet the conditions set out in this part of Article 2. The UK intends to apply this exemption, and we are currently considering whether we need to make any specific provisions on the face of the exempt agreements order in order to be compliant with Article 2.5, or whether it will be sufficient to simply notify the Commission about the choice we have made in accordance with Article 26 (Information to be supplied to the Commission).

#### *Article 2.6*

1.14. See the above discussion (paragraph 1.11) in relation to the exemption at Article 2.2(i) and (j).

#### Summary of Treatment of Key Agreements Outside of the Scope of the Directive

1.15. Below is a more detailed summary of how we intend to treat certain types of credit agreements falling outside the scope of the CCD:

Business lending (up to £25,000) is caught by UK consumer credit legislation (Consumer Credit Act). We propose to apply the amending provisions of the CCD to such business lending with the exception of:

- advertising requirements (not currently covered by UK legislation);
- mandatory use of the SECCI and mandatory compliance with the Article 10 requirements (although pre-contractual and contractual information would still have to be provided - see chapter 3.14 and chapter 7.19);
- the requirement to provide amortisation tables on demand.

We are also seeking your views on whether the requirement to provide adequate explanations should apply (because small business loans generally involve bilateral discussions between lender and borrower, anyway) and also whether the new provisions on right of withdrawal should apply to business lending;

Loans above €75,000 (£60,260) should be subject to the CCD's requirements. But, except where a loan is for consolidation purposes (and the consumer is therefore likely to be in the same position as consumers with smaller loans and very probably already in difficulty), we propose not applying the following provisions of the CCD:

- mandatory use of the SECCI and mandatory compliance with the Article 10 requirements (although pre-contractual and contractual information would still have to be provided (see chapter 3.14 and chapter 7.19);
- the right of withdrawal;
- the requirement to provide amortisation tables on demand

We are also seeking your views on the requirement to provide adequate explanations (because in the case of a loan of this size (other than a consolidation loan) the borrower is likely to be relatively well-informed and, very likely, taking legal advice).

**Q2. Should the requirements concerning adequate explanations and right of withdrawal be applied to Business lending agreements; and should the requirements concerning adequate explanations be applied to loans above €75,000 (£60,260)?**

Charge cards – the CCD allows us to retain the existing exemption from consumer credit regulation for charge cards provided that only insignificant charges are payable (regardless of whether the card is used to pay for goods/services or to withdraw cash) . Such cards are currently regulated in the United Kingdom only insofar as they allow cash advances (which attract a charge and are therefore akin to credit products). Article 2.2(f) may be relevant to charge cards. To the extent that it is, we recognise that any exemption will need to be qualified so that it only applies where "only insignificant charges are payable". We are still considering whether the CCD's exemption at Article 2.2(f) will enable the UK to continue to exempt charge cards in the manner currently permitted under the CCA, as well as the possible interaction for this product with the PSD.

Second charge mortgages should continue to be subject to existing CCA provisions because this sector is currently under review and it would not therefore make sense to impose changes at this stage. However, as with business lending and loans above €75,000 (£60,260), we think it is sensible to allow the lender to provide pre-contractual information and contractual information in the manner required by the CCD if they wish.

**Q3. Do you agree with the approach to specific products which fall outside the scope of the CCD? Are there other specific categories of agreements outside the CCD's scope that would justify distinct treatment under the amended legislation? If so, how?**

## Existing UK exemptions

1.16. The following exemptions are affected by the CCD. To avoid complexity, our proposal is that where an exemption requires amendment, that amendment should apply to all CCA regulated agreements qualifying for the exemption and not just to agreements falling within the scope of the CCD.

### *Number of payments (section 16(5) CCA and regulation 3 of the Exempt Agreements Order)*

1.17. As discussed in relation to Article 2.2(f), the existing derogation for credit which has to be repaid within 12 months by not more than four instalments will have to be modified to align with the CCD. Under the CCD, it should now only apply to credit agreements where the credit is granted free of interest and without any other charges and where the credit has to be repaid within a year. Modifying the current exemption would mean that it would only apply to credit free of interest and charges which must be repaid within 12 months by not more than four instalments.

### *Low cost agreements) section 16(5) CCA and regulation 4 of the Exempt Agreements Order)*

1.18. The exemptions in Article 4(1) (b) and (c) of the 1989 Order are similar to the one contained in Article 2.2(l) of the CCD. However, as set out in paragraph 1.11 above, they will need some amendment.

### *Agreements with a connection outside the UK (regulation 5 of the 1989 order)*

1.19. There is no relevant exemption in Article 2 that would allow the exemption in Articles 5(a) and (b) of the 1989 Order to remain in place.

### *High net worth (section 16A CCA)*

1.20. The exemption set out in section 16A and Articles 2-5 of the 2007 Exemption Order will need to be amended so that the exemption can only apply to agreements above €75,000 (£60,260).

## **Q4. Do you agree with the approach to the existing UK exemption regime?**

## ***2. Article 4 – Standard information to be included in advertising***

### Summary of the article

2.1. Article 4 deals with the standard information to be included in advertising. It requires that prescribed information is to be given where an indication of an interest rate or any figures relating to the cost of credit are included in an advertisement. While, there is no specific definition of the term “cost of credit” in the CCD, our understanding is that this phrase covers an indication in the credit advert of the total cost of the credit to the consumer (as defined in Article 3(g)) or an indication in the advert of one or more of the elements of the total cost of credit to the consumer (the elements are set out in Article 3(g) and recital 20, for example, commission or a tax payable by the consumer).

2.2. The items to be included as part of the standard information makes for a relatively short list. Four items will always be required:

- Borrowing rate, whether fixed or variable, or both
- Charges included in the total cost of credit
- Total amount of credit
- APR<sup>3</sup>.

2.3. Other items may also be required where applicable:

- Duration of the credit agreement
- Cash price/advance payment for goods/services in case of credit in the form of a deferred payment
- Total amount payable and amount of instalments.

2.4. The standard information is to be given in a clear, concise and prominent way, by means of a representative example.

2.5. Article 4.1 paragraph 2 provides that if national legislation requires the indication of an APR in a credit advertisement that does not otherwise contain cost information within the meaning of the first paragraph of Article 4.1, the obligation to include the standard information set out in paragraph 4.2 does not apply. This paragraph is intended to allow Member States like the UK to continue to require an APR (without triggering the requirement for full information) to be given in advertisements that, for example, indicate that credit is available to persons who might otherwise consider their access to credit restricted.

2.6. Article 4.3 provides that where the conclusion of a credit agreement is dependent upon an ancillary service, in particular insurance, and the cost of the ancillary service cannot be determined in advance, the advertisement must make clear this obligation. (If the cost of the ancillary service is known and that service is compulsory or a condition of obtaining the credit, the APR required under Article 4.2(c) must refer to the entire cost of the credit, which would include the cost of the ancillary service).

---

<sup>3</sup> Subject to the discretion provided in Article 4.2 (c) for Member States to not require an APR for credit agreements in the form of an overdraft. The UK intends to apply this derogation.

2.7. Recital 18 and Article 4.4 make clear that these provisions are without prejudice to the Unfair Commercial Practice Directive (UCPD), which contains more general provisions designed to protect consumers against traders who mislead or who fail to inform consumers of material information they need to know in order to make informed purchasing decisions.

2.8. Recital 18, final sentence, refers to Member States being free to regulate information requirements in their national law concerning advertising which does not contain information on the cost of the credit. In our view, this Recital allows Member States to regulate aspects of advertising other than information regarding the cost of credit, e.g. by requiring the advertiser's name and postal address to be included. The Recital is not intended to imply that Member States can impose other information requirements only on advertisements that do not contain any specific information on the cost of credit, i.e. advertisements that are out of scope of Article 4.

#### Existing UK legal requirements

2.9. The Consumer Credit (Advertising) Regulations 2004 (the 2004 Regulations) refined the approach set out in the earlier 1989 Regulations. The 2004 Regulations replaced the previous categories of Simple, Intermediate and Full Credit advertisements with new requirements as to how much information must be shown, and when, in order to ensure transparency for consumers in the way that key financial information is used and presented.

2.10. The 2004 Regulations apply to credit advertisements (except those which are exempt) published by or on behalf of the following types of business:

- Consumer credit – businesses that lend money or offer any other form of credit or give people time to pay for goods or services, for example, banks, finance houses, credit card issuers or shops offering their own credit; and
- Credit brokerage – businesses that introduce customers to lenders or other brokers, or arrange credit on their behalf, for example, financial advisers, retailers or motor dealers.

2.11. The 2004 Regulations do not apply to advertisements to the extent that they are regulated under the Financial Services and Markets Act 2000 by the Financial Services Authority.

2.12. Under the 2004 Regulations, all advertisements have to include the name of the lender. Where an interest rate is quoted, the APR must also be displayed. The inclusion of an APR does not require the provision of other financial information. However, where other financial information is given, APRs have to be located with, and be twice the size of any other financial information in the advertisement. The APR quoted in an advertisement has to be typical of the business that it is expected to generate. This means that the advertisement must quote the highest APR that at least 66% of the eventual number of consumers formally accepting a credit agreement in response to the advertisement are expected to be given – the typical APR (TAPR) requirement.

2.13. Under the 2004 Regulations, an advertisement may also indicate the range of APRs charged by specifying with equal prominence, both the lowest APR at which credit will be provided under not less than 10% of the agreements entered into and

the highest APR at which credit will be provided under any of the agreements entered into as a result of the advertisement.

2.14. If a 'from APR' is shown in an advertisement, the 'to APR' must also be shown with equal prominence, with the typical APR being more prominent.

2.15. The typical APR is required if the advertisement includes any of the following triggers:

- Non-status indications
- Comparative indications
- Incentives

### Our policy proposals

#### *Scope*

2.16. Certain credit advertisements are exempt from the 2004 Regulations and we do not intend to make changes to the exemption regime. It is, therefore, our intention that the amended Advertising Regulations will continue to have the same coverage as at present, and would therefore apply to certain agreements not falling within the scope of the Directive, including hire purchase agreements, credit agreements under €200 (£160) and above €75,000 (£60,260). The amended regulations will continue to exempt credit advertised for business purposes.

2.17. As with other areas of implementation, the exception to this policy is in respect of second charge secured lending regulated by the CCA, where we intend to retain the existing advertising regime in respect of second charge loan advertisements.

### **Q5. Do you agree that the Advertisements Regulations (as amended to implement the CCD) should continue to apply to the existing range of credit agreements?**

#### *Triggering the APR*

2.18. As discussed above, the CCD allows Member States to require adverts to contain an APR (without triggering other cost information) in certain circumstances. The UK intends to continue to require an APR (although "representative" rather than "typical" – see below) for advertisements that contain non-status indicators, comparative indicators or incentives. However, unlike the 2004 Regulations, under the Directive the quoting of an interest rate will trigger the rest of the standard information. Therefore, it will no longer be possible to quote an interest rate without triggering the requirement to display the rest of the standard information.

2.19. In relation to the second paragraph of Article 4.1, we have also considered whether we should require an APR in all circumstances regardless of whether or not implied claims etc were made – i.e. all advertisements, including basic adverts that are not covered by the Article 4 provisions, must at least provide a representative APR.

2.20. At this stage we are not convinced that such a requirement would be particularly meaningful for consumers but would be grateful for views on this issue from consultees.

**Q6. Should an APR be required for all credit advertisements? If not, would there be merit in requiring it for any specific categories of loan – e.g. high-cost loans?**

*A representative example*

2.21. The CCD requires the standard information to be specified in a clear and concise manner by means of a representative example. There has been some uncertainty as to the exact meaning of a representative example but our view is that it is intended to comprise one over-arching example of a particular offer, which would include all of the relevant pieces of standard information. Lenders could give more than one example but, if they do, each example has to include all the relevant standard information. (It is important to bear in mind that Article 4 concerns only information which Member States must require lenders to provide and does not prevent lenders from providing other information in advertisements).

2.22. In giving effect to this requirement, we propose to use the language set out in Article 4.2 concerning the standard information being set out in a clear, concise and prominent way by means of a representative example.

*The Standard Information*

2.23 The CCD requires the standard information to be specified in a clear and concise manner by means of a representative example. There has been some uncertainty as to the exact meaning of a representative example but our view is that it is intended to comprise one over-arching example of a particular offer, which would include all of the relevant pieces of standard information. Lenders could give more than one representative example but, if they do, each example would have to include all the relevant standard information. It is important to bear in mind that Article 4 concerns only information which Member States must require lenders to provide. Therefore, lenders could include other general information, including on the range of credit available in respect of specific promotions, in addition to the standard information that makes up the representative example. Similarly, a lender could provide further general information concerning the range of interest rates applicable to the offer. However, unlike information on the range of credit available, displaying information on the range of interest rates would of itself trigger the requirement to provide a representative example because that would be classed as information relating to the cost of the credit.

2.24 In giving effect to the requirement to provide a representative example, we propose to use the language set out in Article 4.2 concerning the standard information being set out in a clear, concise and prominent way by means of a representative example. We intend to define "representative example", in relation to the borrowing rate, charges and the APR so that "representative" means that the terms of an offer (or better) should be provided under at least 50% of agreements entered into as a result of the advertisement.

*The Standard Information*

2.25 Article 4.2(a) covers the borrowing rate and charges. For the purposes of the example, representative here would mean that at least 50% of consumers who enter into an agreement as result of the advertisement should pay no more than a charge

indicated and should get an interest rate at or below the interest rate indicated. However, please see the following paragraph on the amount of credit.

2.26 Article 4.2 (b) deals with the total amount of credit. Unlike the 2004 Regulations, the CCD requires a specific example of an amount of credit to be included in the representative example. We believe that credit offers need to be compared on a like for like basis therefore, where the amount of credit is not known at the advertising stage, we propose to determine what is "representative" in this respect. We believe that €1,500 (£1,200) would be reasonably representative of lending in general (including both revolving and fixed sum credit).

2.27 As discussed above, we will make clear that lenders can display further examples of credit offers that are not based on the €1,500 (£1,200) amount of credit, provided these are genuinely representative. In the case of such additional examples the amount of credit shown would itself have to be "representative" – i.e. that amount would be provided under at least 50% of agreements entered into as a result of the advertisement. We also propose to make clear that other examples of credit cannot be displayed in a more prominent manner than the mandatory representative example – i.e. the one based on the €1,500 (£1,200) assumption.

2.28 Article 4.2 (c) requires a representative APR. The information to be provided here would follow from the calculations based on the information used in respect of Article 4.2(a) and (b). As discussed above, where the amount of credit is not yet known, this should be worked out on the basis of a credit offer of €1,500 (£1,210). In setting the total amount of credit at this level we have, in addition to viewing this as representative of overall borrowing, taken account of the Directive's APR assumption in Annex I ((III)(g)) when deciding what the representative APR should be based on in respect of the advertised agreement.

2.29 In summary, where the amount of credit is not known, at least 50% of consumers should receive the terms set out (or better) in the advertisement if they were to be offered a €1,500 (£1,200) loan, regardless of whether or not €1,500 (£1,200) was itself representative of the level of borrowing on that particular product. We realise there is a question about what would happen where the specific amount of credit is not known but where it is clear that the amount on offer will invariably be below €1,500 (£1,210) – for example, where the lender in question only lends amounts smaller than €1,500. In such cases we propose that the amount of credit used in the representative example should be based on the lower amount which the lender actually offers. Another option would be to apply the 50% rule in such circumstances.

2.30 The remaining information at Article 4.2 will not be required in all situations and we do not propose to apply the 50% rule to items (d) – (f).

2.31 In respect of Article 4.2(d), we propose to require that, in order for it to be "representative", the duration of the agreement should correspond to the average duration of the credit on offer, where applicable.

2.32 In respect of Article 4.2(e) and (f), the information on cash, price, advance payments, total amount payable and amount of instalments would presumably already be known by the creditor and would not therefore be merely "representative".

**Q7. Do you agree with the proposals concerning the requirement of a representative example of the standard information for advertising - and in particular the proposals concerning the representative APR and the use of the €1,500 (£1,200) assumption in respect of the representative APR? Should a different figure be considered?**

*Presentational issues*

2.33 Regulation 6 of the 2004 Regulations goes beyond what is permitted under Article 4 in respect of the manner in which the APR should be presented. It is clear that the CCD requires all the standard information to be "prominent", which we interpret as meaning that the standard information must stand out from any other information contained in the advertisement. Given that this requirement applies to all the standard information, rather than merely to the APR, it would go against the CCD's requirements if we singled out the APR for greater prominence than other standard information.

2.34 However, we intend to retain the rules set out in the general requirements in Regulation 3 regarding intelligible language, legibility etc. We believe these are consistent with the requirements of the CCD that the information must be specified in a clear, concise and prominent way. We will also specify that the prescribed standard information must be prominent.

**Q8. Do you have views on the presentation of information required under Article 4.2?**

Other existing UK legal requirements

2.35 The 2004 regulations require additional information as compared with Article 4. In particular, Regulation 4(1) (b) requires the name and postal address (in most cases) of the advertiser. Given the meaning of Recital 18, it seems likely that we propose to continue to require the name and postal address of the advertiser, since this comprises information about advertisements not containing financial information, which, as discussed in paragraph 2.8, we interpret as covering aspects of advertisements that do not relate to the cost of the credit.

2.36 Regulation 9 of the 2004 Regulations also make restrictions on the use of particular expressions - : "overdraft", "interest-free", "no deposit", "loan guaranteed", "pre-approved", "weekly equivalent" and "gift", "present" or similar expression. There is no equivalent restriction specified in Article 4. Again, on the basis that Regulation 9 is concerned with information other than that relating to the cost of the credit, we consider there to may be no need to amend this aspect of the Regulations to the extent that the terms do not relate to the cost of the credit.

2.37 Regulation 7 contains a number of wealth warnings. Many of these relate to advertisements where loans are secured on the borrower's home. The requirements also apply to other forms of security such as a guarantee provided by a third party. We intend to retain these warnings either on the basis that they relate to agreements outside of scope or on the basis that Member States are free to regulate requirements in advertisements that are not concerned with costs.

2.38 Regulations 5 and 6 contain special provisions in relation to credit advertisements in dealers' publications where the publication is published by or on behalf of the dealer and relates to goods and services sold or supplied by that dealer. Both these regulations would now seem incompatible) with the CCD, given that it does not contain any special provisions for such advertisements – these Regulations will therefore have to be deleted.

#### **Q9. Do you have views on any of the above proposals?**

##### TV/radio and internet advertisements

2.39 The CCD's provisions on advertising apply to broadcast and website advertisements. Although we are aware that the requirement for a representative example may be more difficult to comply with in the case of broadcast media advertisements, the CCD does not allow Member States any flexibility to devise alternative requirements for such advertisements.

2.40 We are aware of a particular issue that has arisen in terms of internet advertisements. This is the question as to whether homepages and banner or pop-up advertisements would need to contain the standard information or if it is acceptable to access the standard information by "clicking" between items.

2.41 BERR's view is that as far as the CCD is concerned, "clicking" between items in order to access key information may be acceptable and may not be in conflict with the requirements of Article 4. However, this will depend on how exactly the site works – an obscure button hidden away on a web page probably would not suffice. Given that there is now no requirement for information to be presented in a particular order (as was the case in earlier versions of the CCD), this implies that Member States do not have discretion to require that information must, for example, be presented together on the same page or in the same part of the page, although this will in any event be necessary given the way the representative example is intended to work. On the other hand we need to bear in mind the "prominent" requirement – hence it might be acceptable to have to click for key information provided it is equally easy/difficult to get to every element of the prescribed standard information and this information is itself not less accessible than other information. On this basis we do not propose to create any specific rules for this form of credit advertising; the issues discussed above will however be dealt with in guidance.

2.42 Another issue is to what extent the CCD's provisions will apply to on-line credit brokers, such as price comparison websites. Our view is that the CCD is intended to apply to all advertisements, including those made via price comparison websites. In our view this means that it is the individual adverts within a price comparison website which (where necessary) will need to display the standard information through a representative example but not the site as a whole (unless, of course, an advertisement is advertising a comparison website).

#### **Q10. Do stakeholders envisage any particular problems with internet advertisements? If so, how should these be addressed within the confines of the CCD?**

#### *Article 4.4*

2.43 Article 4 is without prejudice to the regulations implementing the Unfair Commercial Practices Directive. There is, therefore, some read-across between the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the CCD rules on advertising. However, Recital 18 indicates that it is for the CCD to set out the detailed rules on advertising of credit products, notwithstanding the more general provisions in the UCPD. Therefore, although there are provisions in the UCPD that may seem relevant to Article 4, these cannot override the more specific provisions in the CCD relating to advertisements, although there may however still be circumstances where omission or inclusion of other information within a consumer credit advertisement will be found to be misleading under the CPRs.

### **3. Articles 5,6 and 7 – Pre-contractual information**

#### Summary of the Article

3.1. Article 5 sets out pre-contractual information requirements for consumers who are considering entering into credit agreements. It is one of the most (if not the most) prescriptive parts of the CCD as the information has to be provided in the exact format set out in the Standard European Consumer Credit Information (SECCI) sheet which is contained in Annex I of the CCD.

3.2. Article 5.1 sets out a list of what the information in question must specify. Given that this is a maximum harmonisation directive, it is not possible for a Member State to require creditors or credit intermediaries to provide more or less pre-contractual information than that specified in Article 5 relative to those agreements to which Article 5 applies.

3.3. The final paragraph of Article 5.1 says that the creditor may voluntarily provide additional pre-contractual information to the consumer (as does Recital 30). In other words, while Member States cannot require the provision of additional information, creditors can provide it voluntarily, but any such voluntary information must be given in a separate document which may be annexed to the SECCI.

3.4. Article 5 also contains provisions relating to the Distance Marketing of Consumer Financial Services Directive (Directive 2002/65/EC). Article 5.1 provides that the creditor is deemed to have fulfilled the information requirements in Article 3(1) and (2) of Directive 2002/65/EC if he has supplied the SECCI. Hence the SECCI includes a section covering information required for the distance marketing of financial services.

3.5. Article 5.2 elaborates on the requirements in the CCD in respect of voice telephony communications, in particular the requirement in Article 3(3)(b) of Directive 2002/65/EC that a description of the main characteristics of the financial service be given. Article 5.2 provides that, in the case of voice telephony communications, the description of the main characteristics of the financial service which has to be provided must include at least the following information:

- the total amount of credit and the conditions governing the drawdown;
- the duration of the credit agreement;
- in the case of a credit in the form of deferred payment for a specific good or service and linked credit agreements, that good or service and its cash price;
- the borrowing rate, the conditions governing the application of the borrowing rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedure for changing the borrowing rate; if different borrowing rates apply in different circumstances, the above-mentioned information on all the applicable rates;
- the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement;
- the annual percentage rate of charge illustrated by means of a representative example; and
- the total amount payable by the consumer.

3.6. Article 5.3 stipulates that if an agreement has been concluded at the consumer's request using a means of distance communication which does not enable the information to be provided in accordance with Article 5.1, in particular voice telephony, the creditor shall provide the consumer with the SECCI immediately after the conclusion of the credit agreement. The SECCI will need to include section 5 which sets out the additional information required in the case of distance marketing of financial services.

3.7. Article 5.4 requires the consumer to be provided, free of charge, with a copy of the draft agreement on request. This is in addition to the SECCI (this right does not apply if at the time of the request the creditor is unwilling to conclude the agreement).

3.8. Article 5.5 is concerned with agreements that do not give rise to an immediate corresponding amortisation of the total amount of credit drawn down under the credit agreement. Here, the pre-contractual information is required to contain a statement that such agreements do not provide a guarantee of repayment of the total amount of credit down under the agreement (unless such a guarantee is given).

#### Existing UK legal requirements

3.9. The information required under Article 5 is similar to the current pre-contractual information requirements as set out in the Consumer Credit (Disclosure of Information) Regulations 2004.

3.10. The following information required by the Disclosure Regulations is not stipulated in Article 5.1, although in many cases something broadly equivalent is required:

- A description of the goods, services, land etc the acquisition of which is to be financed by the credit under the agreement – this is partly covered by Article 5.1(e) which requires information about the good or service in the case of credit in the form of a deferred payment for a specific good or service or in a linked agreement,
- Cash price - as above, Article 5.1(e) covers the cash price for a specific good or service where the credit is in the form of a deferred payment for the purchase of that good or service
- Total charge for credit and the constituent parts - although there is no direct equivalent to this requirement in Article 5.1, there are requirements in 5.1(c) and 5.1(g) concerning the total amount of credit and the total amount payable by the consumer. The difference between the sum stated under Article 5(1) (g) and that stated under Article 5(1) (c) will be the total cost of the credit to the consumer.
- Early repayment examples - these are the examples (based on the amount of credit to be provided under the agreement or the nominal amount of either £1,000 or £100) that show the amount that would be payable at certain points in time if the debtor exercised his right under section 94 of the CCA 1974 to discharge his indebtedness. Although we could no longer require pre-contractual information to set out early repayment examples, Article 5.1(p) requires the pre-contractual information to include, where applicable, information concerning the creditor's right to compensation in the event of early repayment and the way in which that compensation will be determined in accordance with Article 16.

- Statements of protection and remedies – in particular, a statement that, if certain requirements of the Act are not complied with when the agreement was made, the agreement cannot be enforced without a court order, and how to find out more about a consumer’s rights under the CCA. Although it would seem that such statements can no longer be required by national law, information on redress is required at the pre-contractual stage in the case of distance selling.

3.11. Article 5 contains certain pre-contractual information requirements not covered (or not covered to the same extent) by the Disclosure Regulations:

- the conditions governing the drawdown of the credit.
- where applicable, the charges for maintaining one or several accounts recording both payment transactions and drawdowns, unless the opening of an account is optional, together with the charges for using a means of payment for both payment transactions and drawdowns, any other charges deriving from the credit agreement and the conditions under which those charges may be changed.
- the right to be informed of the result of a database consultation carried out for the purpose of assessing creditworthiness. Although not a legislative requirement, under the Banking Code guidance to subscribers, lenders are required to consider information from credit reference agencies before making a lending decision. The Banking Code itself requires that if a consumers’ request to borrow money is turned down, the lender should explain the main reason why if asked to. The Finance and Leasing Association Lending Code contains similar provisions

3.12. In addition to the requirements for specific information, the Disclosure Regulations indicate what specific information is required in respect of particular types of agreements, e.g. for fixed-sum credit agreements. Regulation 4 also sets out detailed requirements concerning the manner in which the information must be disclosed. There are legibility and equal prominence requirements. All of the information and statements of protection and remedies must be of equal prominence, with the exception of headings. The APR must not, therefore, be more (or less) prominent than any interest rate or other financial information. There is also a prohibition on interspersing other information (except certain very limited information) with the required statutory information.

3.13. The Distance Marketing of Financial Services Directive (DMD), which was implemented by the Financial Services (Distance Marketing) Regulations 2004 (DMR), roughly coincided with the introduction of the Disclosure of Information Regulations. To avoid duplication the Government decided to incorporate the relevant consumer credit provisions within the DMR. These Regulations require pre contractual information, as described in Article 3 of the DMD, for all distance sale consumer credit contracts (and therefore apply to a wider range of agreements than the CCD. The DMR’s pre-contractual information provisions compliment the equivalent requirements for non-distance regulated consumer credit agreements in the Disclosure of Information Regulations.

## Our policy proposals

### *General/Scope*

3.14. The requirement to provide pre-contractual information under the Disclosure Regulations will be replaced by a requirement to provide such information in the manner set out in the SECCI. We propose that common treatment consistent with the existing coverage under the Consumer Credit Act should be maintained in respect of the provision of pre-contractual information. For example, the requirements in the Disclosure Regulations already apply to hire purchase agreements, loans above €75,000 (£60,260) and loans for small businesses (up to £25,000), and it is our intention that the legislation in this field, as amended by the CCD, would continue to apply to these areas. This would achieve a consistent approach to pre-contractual information across a range of credit products. However, we recognise that there is an argument that from a cost compliance point of view, it would be easier for industry (or parts of it) to retain the existing regime for products outside the scope of the CCD because of the different systems etc used in respect of documentation for specific types of agreement. On this basis, we propose that it should be permissible for the pre-contractual information to be given either via the SECCI or in the form currently required under the Disclosure regulations in respect of business lending, secured lending regulated under the CCA and for regulated agreements worth more than €75,000 (£60,260) (except where these were for consolidation purposes). In taking forward this policy, we propose that there should be consistency of approach – i.e. either the CCD's requirements regarding pre-contractual information and contractual information must be complied with, or the existing requirements as set out in the Disclosure and Agreements Regulations. But it would not be permissible to in effect, mix and match between the two sets of requirements (see also chapter 7.22).

3.15. One area where we think pre-contractual information may be less useful is in respect of pawn-broking agreements. This is because customers would usually have already decided whether or not to pawn an item (and a large percentage of customers are repeat borrowers and therefore familiar with the terms and conditions). Given that the customer must be provided with the credit agreement/pawn receipt, it could be argued that the provision of pre-contractual information at the same time simply results in information overload and confusion for customers (e.g. customers sometimes discard the main agreement and keep the pre-contractual information believing that they can redeem their articles with it) One approach would be to require pre-contractual information only where the customer specifically requests it (or perhaps for it to be prominently displayed in store). The alternative would be to tailor the SECCI so that it would be more suitable for pawn-customers or to leave the existing in regime in tact.

**Q11. Do you agree with the proposal to allow lenders the flexibility to provide pre-contractual information either via the SECCI or under the existing Disclosure of Information rules in respect of the agreements referred to in paragraph 3.14?**

**Q12. Do you have views on whether there should be special treatment for particular categories of agreements not within the scope of the CCD, such as pawnbroking? If so, which categories should benefit and how?**

### *Rules on presentation of information*

3.16. The existing UK rules on legibility and equal prominence as described in paragraph 3.12 would appear to be out of line with the requirements in Article 5.1 for the relevant information to be set out in accordance with the SECCI. Unlike the Disclosure Regulations, the SECCI does provide for a specified order in which information must be set out, and is sub-divided according to the type of information requirement, but not by type of agreement. There is no express requirement that the information shall be equally prominent. On the other hand, given the prescriptive nature of the SECCI and the requirement at the end of Article 5.1 that any additional information which the creditor may provide to the consumer shall be given in a separate document, it is clear that interspersing of any other information is prohibited. Therefore, the detailed rules in the Disclosure Regulations regarding the manner of disclosure would appear to be incompatible with Article 5.1 and will need to be repealed in respect of agreements falling within the scope of the CCD and replaced by a requirement to use the SECCI.

#### *Language used in the SECCI*

3.17. The language used in the SECCI is not particularly consumer-friendly and we have been exploring with the Commission the scope for substituting some of the more obscure terms used for words that are more likely to mean something to the average consumer. We are currently proposing to make minor changes to some of the terms used. Our initial proposals can be found at the end of this section (after paragraph 3.31)

3.18. We also intend to make clear that lenders should delete those rows where it specifically says "if applicable". On the other hand, there are other instances, for example mandatory insurance, where the lender has to state whether or not something is required rather than simply deleting the row concerned.

#### **Q13. Bearing in mind the constraints regarding presentation and order of information, do you have views on the language we are proposing to use in the SECCI and any suggestions that would help improve consumers' understanding of the form?**

#### *In good time*

3.19. A key feature of Article 5 is the requirement that the consumer should be given the information "in good time" and before being bound by an agreement. Arguably this goes further than the existing requirement in the Disclosure Regulations as the latter do not provide that the information has to be provided "in good time", but only before an agreement is made.

3.20. What constitutes "in good time" will depend on the precise circumstances of the transaction. In certain retail credit situations, a decision whether to defer would undoubtedly be driven by the desire of the consumer to purchase any goods in question on the spot. In our view, the CCD does not preclude the consumer from proceeding straight to the conclusion of the agreement following provision of the pre-contractual information if that is what they want to do, provided they are given adequate opportunity to pause, reflect and are not subjected to undue pressure to conclude a credit agreement and can take the information away if they want to.

3.21. As far as the implementing legislation is concerned, we have been considering whether to simply copy out this phrase or seek to elaborate on its meaning, for example, (1) to make clear that the phrase must mean that the creditor cannot unreasonably delay the provision of pre-contractual information, and (2) that it must always be possible for the consumer to take the information away for further consideration if they so wish. The legislation could also make clear that the creditor cannot unreasonably delay the provision of pre-contractual information and that the information should be provided at the earliest opportunity and in all cases (except telephone) before the conclusion of the agreement. A possible disadvantage of this approach is that there is no such elaboration in other similar EU legislation such as the DMD.

*Total amount of credit- Article 5.1 (c)*

3.22. This requires the pre-contractual information to specify the total amount of credit and the conditions governing the drawdown. We understand that this information may not always be known at the time the pre-contractual information is provided to the consumer. Regulation 3(2) of the Disclosure Regulations allows lenders to make use of estimated information where the information that will be included in the agreement is not known, provided the assumptions are reasonable in all the circumstances of the case. Section 2 of the SECCI says that the total amount of credit means the ceiling or the total sums made available under the credit agreement. But it does not refer to such information being estimated, as would seem appropriate at the pre-contractual stage, especially in the case of running account credit. In order to deal with this concern we propose that the provisions that give effect to Article 5.1 (c) can specify that where it is not possible to state a particular amount of credit at the pre-contractual stage, the duty to provide this information can be fulfilled by stating that the amount is to be confirmed and the manner by which the consumer will be informed. This approach is consistent with the existing approach under UK legislation in respect of running account agreements (paragraph 8 of schedule 1 of the Agreements Regulations).

*A representative APR – Article 5.1 (g)*

3.23. This requires the pre-contractual information to set out the APR and the total amount payable by the consumer, illustrated by means of a representative example. The question of a representative APR is also discussed in paragraphs 2.21-2.29 on the Advertising provisions (Article 4) and in paragraphs 14.18-14.20 on the APR assumptions (Article 19).

3.24. We want to adopt a consistent approach to the calculation of the APR to avoid consumer confusion and lenders having to make different calculations at different points in the process. Therefore, for the purposes of Article 5.1 (g) our intention is to require lenders to base their representative APR using the €1,500 (£1,200) assumption set out in Annex I.II(g), where the credit limit is not known. However, as with advertising, lenders would be able in addition to quote (if they wish) a further representative APR based on an amount other than €1,500 (£1,200).

## *Distance marketing*

3.25. Implementation of the CCD will require amendments to the Financial Services (Distance Marketing) Regulations 2004 (DMR).

3.26. Article 5.1 provides that the creditor shall be deemed to have fulfilled their obligations to provide pre-contractual information as set out in Article 3 paragraphs 1 and 2 of the DMD by supplying the SECCI. The equivalent provisions in the DMR appear at Regulation 7 and in Schedule 1 and these provisions would need to be amended to specifically refer to the SECCI.

3.27. To comply with Article 5.2, the DMR will also need to be amended in order to specify the type of information that must be provided in the case of voice telephony agreements. The relevant provisions would appear to be Regulation 7 (4)(b) and Schedule 2.2 of the DMR.

3.28. The DMR will need further amendment to reflect Article 5.3 whereby if an agreement has been concluded at the consumer's request using a means of distance communication which does not enable the information to be provided in accordance with Article 5.1, in particular voice telephony, the creditor shall provide the consumer with the SECCI immediately after the conclusion of the credit agreement.

## *Article 6*

3.29. Article 6 allows Member States to apply less stringent pre-contractual information requirements for certain credit agreements as described in Article 2.3, 2.4 and 2.6. Issues relating to these Articles are discussed in more detail in the chapters on Overdrafts (chapter 17) and Scope (chapter 1).

## *Article 7*

3.30. Article 7 simply confirms that the provisions of Articles 5 and 6 do not apply to suppliers of goods or services who act as a credit intermediary only in an ancillary capacity. This Article was added to the CCD in recognition that there could be practical difficulties associated with the provision of pre-contractual information by those kinds of intermediaries who would be insufficiently qualified to give information about consumer credit matters given their lack of expertise. However, this Article makes clear that creditors themselves still have an obligation to provide pre-contractual information in these circumstances. The important thing is that consumers should receive pre-contractual information.

3.31. In considering this Article, it is important to note that Article 3(f) has been amended from earlier versions of the CCD. As such it narrows the scope of the definition of credit intermediary to exclude non-professional agents and also co-branding/affinity partners. In respect of Article 7, we believe the narrowing of the definition is helpful on the basis that, as is currently the case in the UK, it is necessary to differentiate between credit brokers who basically advise the consumer on the most advantageous credit offers available in the market and other, essentially amateur operators like mail order agents, for whose actions the principal company assumes responsibility.

**ANNEX II**  
**STANDARD EUROPEAN CONSUMER CREDIT INFORMATION**

**1. Contact details**

Creditor Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]
If applicable Credit intermediary Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]
(*) This information is optional for the creditor.	

Wherever 'if applicable' is indicated, the creditor must fill in the box if the information is relevant to the credit product or delete the respective information or the entire row if the information is not relevant for the type of credit considered.

Indications between square brackets provide explanations for the creditor and must be replaced with the corresponding information.

**2. Description of the main features of the credit product**

Type of credit	
The total amount of credit <i>This means the total amount available under the credit agreement or the credit limit</i>	
<i>How and when you will obtain the money.</i>	
The length of the credit agreement	
Instalments and, where appropriate, the order in which instalments will pay off your borrowing	You will have to pay the following: [The amount, number and frequency of payments to be made by the consumer] Where relevant. Your repayments will pay off what you owe in the following order :
The total amount you will have to pay <i>This means the amount you have borrowed plus interest and any costs</i>	[Sum of total amount of credit and total cost of credit]

<i>(where known) related to your borrowing</i>	
If applicable The credit is to pay for the following goods or services Cash price	Description of goods and services
If applicable Security required <i>This is a description of the security you must provide in order to obtain the credit.</i>	[Nature and description of security]
If applicable <i>Repayments will not immediately reduce the amount you owe .</i>	

### 3. Costs of the credit

The borrowing rate or, if applicable, different borrowing rates which apply to the credit agreement	[ % — fixed or, — variable (with the index or reference rate, if any, applicable to the initial borrowing rate), — periods],
Annual Percentage Rate of Charge (APR) <i>This is the total cost expressed as an annual percentage of the total amount of credit.</i> <i>The APR is there to help you compare different offers.</i>	[ % A representative example mentioning all the assumptions used for calculating the rate set out here]
If applicable  You [are/are not] required as a condition of obtaining the credit to take out [insurance] [another contract] as follows: <i>If we do not know the costs of these they are not included in the APR.</i>	Nature and description of any insurance or ancillary service contract required]
Related costs	
If applicable You must have a separate current account	Amount of charge
If applicable An additional charge will apply if you make repayments by [specify means of payment]	Amount of charge
If applicable	Description and amount of other charges

Other costs	
If applicable Conditions under which the above costs related to the credit agreement can be changed	
If applicable Legal fees	Description and amount of any fee
Charges for missed or late payments <i>Missing payments could have severe consequences for you (e.g. forced sale) and make obtaining credit more difficult in the future</i>	You will be charged [..... (applicable interest rate and arrangements for its adjustment and, where applicable, default charges)] for missing payments.

#### 4. Other important legal aspects

Cancellation rights <i>You have the right to withdraw from the credit agreement within a period of 14 calendar days after you have received a copy of the concluded agreement..</i>	Yes/no
Early repayment <i>You have the right to repay all or part of the credit early at any.</i>	
If applicable We are entitled to compensation in the case of early repayment	[Determination of the compensation (calculation method) in accordance with the provisions implementing Article 16 of Directive 2008/48/EC]
Consultation of a database <i>We must inform you immediately and without charge of the identity of the database consulted if we reject your credit application on the basis of a consultation of a credit database.</i>	
Right to a draft credit agreement <i>You can ask for a copy of the draft credit agreement free of charge, unless we have decided not to lend to you..</i>	
If applicable The period of time during which the creditor is bound by the pre-contractual information	This information is valid from ... until ...

If applicable

### 5. Additional information in the case of distance marketing of financial services

(a) concerning the creditor	
<p>If applicable</p> <p>Our representative in your Member State of residence</p> <p>Address</p> <p>Telephone number (*)</p> <p>E-mail address (*)</p> <p>Fax number (*)</p> <p>Web address (*)</p>	<p>[Identity]</p> <p>[Geographical address to be used by the consumer]</p>
<p>If applicable</p> <p>Registration</p>	<p>[The trade register in which the creditor is entered and his registration number or an equivalent means of identification in that register]</p>
<p>If applicable</p> <p>The supervisory authority</p>	
(b) concerning the credit agreement	
<p>If applicable</p> <p>How to cancel your agreement.</p>	<p>[Practical instructions for exercising the right of withdrawal indicating, <i>inter alia</i>, the period for exercising the right, the address to which notification of exercise of the right of withdrawal should be sent and the consequences of non-exercise of that right]</p>
<p>If applicable</p> <p>The law taken by the creditor as a basis for the establishment of relations with you before the conclusion of the credit contract</p>	
<p>If applicable</p> <p>Clause stipulating the governing law applicable to the credit agreement and/or the competent court</p>	<p>[Relevant clause to be set out here]</p>
<p>If applicable</p> <p>Language to be used in connection with your agreement</p>	<p>Information and contractual terms will be supplied in [specific language]. With your consent, we intend to communicate in [specific language/languages] during the duration of the credit agreement.</p>
(c) redress	

Access to out-of-court complaint and redress mechanism	[Whether or not there is an out-of-court complaint and redress mechanism for the consumer who is party to the distance contract and, if so, the methods of access to it]
--	--

(\*) This information is optional for the creditor.

#### **4. Article 5.6 – Adequate explanations**

4.1. Article 5.6 requires Member States to ensure that creditors and, where applicable, credit intermediaries provide adequate explanations to consumers in order to enable them to assess whether proposed credit agreements are adapted to their needs and financial situation. It requires that, where appropriate, this should be done by explaining the standard pre-contractual information, the essential characteristics of the products proposed and the specific effects they may have on the borrower, including the consequences of default.

4.2. Recital 27 suggests that, where appropriate, the relevant pre-contractual information and the essential characteristics of the products proposed should be explained in a personalised manner so that the consumer can understand the effects which they may have on his economic situation.

4.3. Member States are given considerable freedom to determine how to implement these provisions. Article 5.6 allows Member States to adapt the manner by which and the steps speech the extent to which assistance is given, as well as by whom it is given, to the particular circumstances of the situation in which the credit agreement is offered, the person to whom it is offered and the type of credit offered. Recital 27 says that Member States can determine when and to what extent such explanations are to be given, taking into account the particular circumstances in which the credit is offered, the consumer's need for assistance and the nature of individual credit products.

4.4. Article 5.6 makes clear that it is the consumer's responsibility to determine whether or not a proposed credit product is suitable for his needs and financial situation and that the creditor's responsibility is limited to providing such explanations as might be necessary in order to put the consumer in a position to make this decision. Nevertheless, we have freedom to decide the lengths to which lenders should go to achieve the stated aim.

#### Existing UK legal requirements

4.5. There are no specific requirements in UK legislation for creditors to give adequate explanations about the credit on offer, although some lenders will provide something akin to this depending on the exact circumstances. Despite the existence of pre-contractual and contractual information, many consumers do not actually read the information they are given and some consumers do not understand the significance of key aspects of agreements they are entering into. Against this background implementation of Article 5.6 provides an opportunity to enhance understanding in a way which could reduce the incidence of consumers entering into unsuitable agreements or taking on unsustainable levels of debt. In this sense the requirement to provide adequate explanations complements the requirement in Article 8 of the CCD for lenders to check consumers' creditworthiness: adequate explanations will ensure that consumers can better determine whether or not a loan is affordable while the requirement to check creditworthiness will ensure that lenders reach their own view on whether or not a consumer is creditworthy.

4.6. Our aim in this chapter is to draw out opinion on these issues with a view to identifying what kinds of explanations would be genuinely useful to consumers and the impact which their provision would have on the lending process, including any

unforeseen consequences – for example, the extent to which a given approach might in certain circumstances make it more difficult for credit to be made available or inconvenience consumers. We would also be particularly interested in any information you can provide on the likely costs of different approaches and the impact on specific sectors. To this end, as well as describing the broad range of possible options, we have set out an initial proposal on which we would welcome comments, but please note that this is intended to illustrate only one possible approach and we recognize that it could require significant modification or that an alternative approach might be preferable.

#### Range of policy options

4.7. Clearly the purpose of the provision in Article 5.6 is to ensure that the consumer has a sufficient level of understanding of credit products offered to reach a decision about their suitability. However, the degree of responsibility put on the lender could vary enormously:

**Minimum:** The absolute minimum would be to make clear in implementing legislation that it is the consumer's responsibility to decide whether or not he or she has enough information on which to make an informed decision as to the suitability of a product. It would therefore be for the consumer to decide whether or not explanations were adequate and to ask questions (possibly prompted by a pro forma/script). In some cases, particularly in situations where the individual actually selling a credit product did not have detailed knowledge about it and was only acting in an ancillary capacity, the consumer could be directed to a hotline (probably the lender's) for further inquiries.

**Maximum:** At the other end of the scale, the lender would be responsible for making a reasonable assessment of the consumer's level of understanding of at least a number of basic elements common to all credit products together with specific features of particular relevance to the type of credit being offered. This would require the lender to test the consumer's understanding and might be achieved by questioning the consumer (again, possibly initially on the basis of a standard pro forma/script).

4.8. In determining exactly what kind of explanations should be given in what form, as well as considering the degree of responsibility to be imposed on the lender, we have to consider a range of variables which might determine the approach to be taken in an individual situation. These are set out below.

#### *a) Type of credit*

The features of different types of credit product may require different kinds of explanation. In addition to generic explanations about how credit works, one could identify peculiar features (and in some cases pitfalls) of specific products. For example, in the case of credit cards, one might focus on explanation of:

- what happens if only minimum payments are made (time it could take to clear credit and total cost of longer-term borrowing);
- the different rates of charge for purchase of goods/services, on the one hand, and for cash withdrawals, on the other;
- the way in which repayments are allocated and any special restrictions/conditions (for example, in the case of 0% balance transfers the

- fact that a minimum amount of additional credit must be drawn down within a set period and that repayments will be allocated to the 0% balance first);
- possibly signposting to a relevant independent Credit Card comparison website

*b) Type of consumer/level of risk associated with specific product types*

Although it would clearly be difficult for lenders to categorise consumers by type or to reach general conclusions about levels of understanding, it is the case that certain groups of consumers find it difficult to access mainstream credit products and are therefore more likely to have recourse to sub-prime credit. We could therefore distinguish between different types of lending on the grounds that more or less vulnerable consumers commonly access them and are likely to need different levels of explanation about how the products they are offered work. Sectors of particular concern might include:

- home credit
- payday loans
- bills of sale (in so far as these constitute consumer credit agreements)
- loans for the purpose of consolidating existing debt
- non-status lending

*c) Channel*

The means by which a credit product is offered to consumers may also influence the requirements which should be imposed on lenders in two respects: first, in respect of the consumer's needs – what would be effective in improving consumer understanding in one circumstance, might not be effective in another; second, in terms of what is practicable – for example, what can be done in a bank branch equipped to arrange consumer loans might not be possible in a department store on a busy Saturday morning.

Our policy proposals

4.9. As indicated above, we have designed one possible approach to providing adequate explanations on which we would welcome views. Figures concerning the size of loans are shown in square brackets at this stage to reflect their provisional nature.

4.10. We propose that there should be a general duty in the implementing legislation for lenders (and, where appropriate, intermediaries) to provide sufficient explanation about the features of their credit products to enable consumers to make informed choices and to decide whether or not a credit product would be suited to their needs. The implementing legislation would then set out minimum standards (information requirements) with which lenders would have to comply according to the type and size of credit offered. These minimum information requirements would include a combination of explanation and examples covering features common to all credit products as well as features specific to the credit products proposed.

4.11. The information could fall into four categories: basic generic information, additional generic information, basic product-specific information and additional product-specific information. The first two categories (generic information) would be

standard for all products and would cover default, the right of withdrawal, basic information on the meaning of the APR, how interest works and how interest and charges can increase the cost of borrowing over time. The third category (basic product related information) would explain the component costs of the specific product(s) offered and, where appropriate, how interest rates might change and the effect this could have.

4.12. The information in the fourth category (additional product-specific information) would vary according to the kind of product and would take account of consumer risk and known information imperfections. For example, in the case of credit cards, the additional product-specific information would cover the dangers of making only minimum monthly repayments, how 0% balance transfers work, the order in which repayments are allocated and, if appropriate, terms and conditions for credit card cheques.

4.13. Not all categories of information would be required in all cases: it would depend upon the type and size of the credit offered. The table on pages 45-46 summarises which requirements would apply to which products (but, again, note that any figures denoting loan size are provisional at this stage and therefore in square brackets).

#### Categories of information

##### **4.14. *Basic generic information***

###### **Default**

Explain:

- that if the consumer does not keep up with repayments he/she may incur additional charges;
- that in the event of default even an unsecured loan could ultimately result in a charge on the consumer's home

Provide relevant example of default charges.

###### **Right of withdrawal**

Explain:

- right of withdrawal

Where appropriate the basic generic information should be tailored to the specific product or products proposed.

##### **4.15. *Additional generic information***

###### **Cost**

Explain with examples:

- that what you pay will depend not only on the amount you borrow, but on the interest rate and charges and how long you take to repay;

- how interest works (a percentage of the total which is charged at intervals);
- how the cost can compound over time;
- that the APR is an annualised means of showing the level of interest and charges, but that you may actually pay more or less than this

Where appropriate the additional generic information should be tailored to the specific product or products proposed.

#### **4.16. Basic product-specific information**

In all cases:

- an explanation of the costs broken down into component parts and the circumstances in which costs might increase;
- where the interest rate is variable, an explanation of what this means together with an example showing the effect of interest rate increases

#### **4.17. Additional product-specific information**

This would vary depending on the kind of product offered and is set out below according to type of loan.

#### Treatment of categories of loan

##### **A) Prime fixed-sum loans**

For loans up to [£500] only the **basic generic** and **basic product-specific** information would need to be provided. In the case of loans over [£500], in addition to the **basic generic** and **basic product-specific** information, the **additional generic** information would be provided. In all cases the consumer should have the opportunity to ask questions. In the case of written applications this could be by means of a telephone enquiry number.

##### **B) Credit cards**

Regardless of the agreed credit limit, the **basic** and **additional generic** information should be provided in all cases together with the **basic product-specific** information and supporting examples. In addition the following **product-specific** explanations should be provided:

- where appropriate, how 0% balance transfers work, including any fees and conditions which would apply;
- the dangers of making only minimum repayments;
- the order of allocation of payments;
- (if appropriate) how the terms and conditions differ for credit card cheques

Consumers could be signposted to an approved comparison website (if appropriate). In all cases the consumer should have the opportunity to ask questions. In the case of written applications this could be by means of a telephone enquiry number.

### C) Store cards

As with credit cards, in all cases the **basic** and **additional generic** and **basic product-specific** information should be provided and the consumer should have the opportunity to ask specific questions through the appropriate channel. Where staff in a store are unable to answer questions, it should be possible for the consumer to contact the principal lender via a telephone helpline. In addition the following **product-specific** explanations should be provided:

- (where the interest rate exceeds a given level) that this is an expensive form of credit and signpost to comparison website (if appropriate);
- the dangers of making only minimum repayments with example

### D) Home credit

In the case of loans below [£100] only the **basic generic** and **basic product-specific** information would be required together with the following **additional product-specific** explanations:

- (where the interest rate exceeds a given level) that this is an expensive form of credit and signpost to comparison website (if appropriate);
- the effect of extending the life of a loan (where this is proposed);
- the effect of early repayment

(Provide example(s))

In addition, the consumer should be given the opportunity to ask questions. Where the individual agent is unable to answer a question either the agent should undertake to find out the answer before proceeding or the consumer should be signposted to a helpline.

However, if at any point the total amount owed by the consumer exceeded [£100] this should trigger the **additional generic** information regardless of the size of the original loan.

Where the lender has an existing relationship with a consumer – i.e. where the loan is repeat business – the lender should only be required to give all the prescribed information at the outset and the **additional generic** and the **product-specific** information at least once a year. Nevertheless the **basic product-specific** information should always be explained at the pre-contractual stage for any new or modifying agreement.

### E) Payday loans

In the case of loans below [£100] (and where the total amount owing is less than [£100]) only the **basic generic** and **basic product-specific** information would need to be explained together with the following additional product-specific explanations:

- (where the interest rate exceeds a given level) that this is an expensive form of credit and signpost to comparison website (if appropriate);
- the dangers of rolling over loans;

- that if the consumer has a monthly cash shortfall, this will get worse each month as charges must be paid on the loan

(Provide examples.)

If the amount owed exceeds [£100] (even if the original loan was smaller than this amount) the **additional generic** information would also have to be provided.

However, as with home credit, where the lender has an existing relationship with a consumer – i.e. where the loan is repeat business – the lender should only be required to give the full information at the outset and the **additional generic** and **product-specific** information at least once a year. Nevertheless the **basic product specific** information should always be explained at the pre-contractual stage for any new or modifying agreement.

#### **F) Credit agreements secured by a bill of sale (e.g. logbook loans)**

In all cases, regardless of the size of the loan, the **basic** and **additional generic**, the **basic product-specific** information and the following **additional product-specific** explanations should be given:

- (where the interest rate exceeds a given level) that this is an expensive form of credit and signpost to comparison website (if appropriate);
- the danger of losing the vehicle on which the loan is secured, how it would be possessed and the loss this could entail

The consumer should also be given the opportunity to ask questions.

#### **G) Other sub prime fixed sum loans and loans for the purpose of consolidating existing debt**

In the case of loans below [£100] (and where the total amount owing is less than [£100]) only the **basic generic** and **basic product-specific** information would need to be explained.

However, if at any point the total amount owed by the consumer exceeded [£100] this should trigger the **additional generic** information regardless of the size of the original loan.

In addition, the consumer should be given the opportunity to ask questions.

#### **H) Linked credit (hire purchase and conditional sales)**

Except in the case of loans below [£100], where only the **basic generic** and **basic product-specific** information would have to be given, the full adequate explanations would be required, including also the **additional generic** and the following **additional product-specific** explanations:

- that goods could be repossessed in case of default (but taking account of the protected goods – "one third" – rule);
- voluntary termination rights

The consumer should be given the opportunity to ask questions. Where staff in a store are unable to deal with a consumer's question, they should be signposted to a telephone helpline.

### **I) Pawnbroking**

**Basic product-specific** information should be provided. In addition, the following **additional product-specific** explanation should be given:

- that a pledge would be sold if not redeemed and how much the consumer would get back in this case

However, where the lender has an existing relationship with a consumer – i.e. where the loan is repeat business – the lender should only be required to repeat adequate explanations once a year; nevertheless the **basic product-specific** information should always be explained.

**Q14. Do you agree with the proposed approach? Please comment on the general approach as well as its application to specific products and loans sizes.**

**Q15. To avoid a situation in which knowledgeable consumers are nevertheless forced to receive unwanted explanations, should consumers be allowed to decline them? If so, should the lender be required to test the consumer's level of understanding or should he probe if he has reasonable grounds to suspect that the consumer has not understood key features of a credit product?**

### **Scope**

4.18. As discussed in the scope chapter, we are proposing that the requirement to provide adequate explanation should apply to all credit agreements (other than secured loans) currently covered by the CCA. However we are seeking your views on whether or not it should apply to business loans up to £25,000. We are also seeking your views on whether it should apply to loans over €75,000 (£60,260) other than loans for consolidation purposes, where we believe the requirement should apply

## Article 5.6 – Adequate explanation

	Types of information			
	Basic generic information <sup>*</sup> (consequences of default with example and the right of withdrawal)	Additional generic information with examples and tailored to product (how interest rate and length of loan influence cost how interest rate)	Basic product-related information <sup>*</sup> (explanation of costs broken down to component parts and circumstances in which costs might increase; where variable interest rate explanation of this)	
<b>Types of credit</b>				
Prime fixed sum loans	✓	Only to loans over [£500]	✓	
Sub-prime fixed sum loans <sup>*</sup>	✓	Only if the total amount owed exceeds [£100]	✓	
Consolidation loans <sup>*</sup>	✓	✓		(where relevant) how 0% balance transfers work;
Credit cards	✓	✓	✓	Dangers of making only minimum repayments; Order of allocation of repayments; (where relevant) terms and conditions applying to credit card cheques if different
Store cards	✓	✓	✓	(where the interest rate exceeds a given level) that this is an expensive form of credit and signpost to comparison website (if appropriate); the dangers of making only minimum repayments with example.
Home credit <sup>*</sup>	✓	Only if the total amount owed exceeds [£100]	✓	(where the interest rate exceeds a given level) that this is an expensive form of credit and signpost to comparison website (if appropriate); the effect of extending the life of a loan (where this is proposed); the effect of early repayment.
Payday loans and cheque-cashing <sup>*</sup>	✓	Only if the total amount owed exceeds [£100]	✓	(where the interest rate exceeds a given level) that this is an expensive form of credit and signpost to comparison website (if appropriate); the dangers of rolling over loans; that if the consumer has a monthly cash shortfall, this will get worse each month as charges must be paid on the loan.

<sup>\*</sup> Types of loans commonly accessed by more vulnerable consumers  
<sup>\*</sup> This information must be given orally if F2F or telephone interaction

Bills of sale* (where this applies to credit products)	✓	✓	✓	(where the interest rate exceeds a given level) that this is an expensive form of credit and signpost to comparison website (if appropriate); the danger of losing the vehicle on which the loan is secured, how it would be possessed and the loss this could entail.
Linked credit (hire purchase and conditional sale)	✓	Only to loans over [£100]	✓	Only to loans over [£100] Goods could be repossessed in case of default (but taking account of the protected goods -- "one third" – rule); voluntary termination rights.
Pawnbroking			✓	A pledge would be sold if not redeemed and how much the consumer would get back in this case.

---

\* Types of loans commonly accessed by more vulnerable consumers

## **5. Article 8 – Requirement to check the consumer’s creditworthiness**

### Summary of this article

5.1. Article 8 requires Member States to ensure that, before the conclusion of the credit agreement, the creditor assesses the consumer's creditworthiness on the basis of "sufficient information", where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database. Member States must also ensure that the creditor updates the financial information at his disposal concerning the consumer and assesses the consumer's creditworthiness before any significant increase in the total amount of credit.

5.2. In addition, Recital 26 says that Member States should take appropriate measures to promote responsible practices during all phases of the credit relationship, taking into account the specific features of their credit market; that creditors should not engage in irresponsible lending or give out credit without prior assessment of creditworthiness; that Member States should carry out the necessary supervision to avoid such behaviour and should determine the necessary means to sanction creditors in the event of their doing so; and that creditors should bear the responsibility of checking individually the creditworthiness of the consumer. It clarifies that lenders should be allowed to use information provided by the consumer not only during the preparation of the credit agreement in question, but also during a longstanding commercial relationship. Finally, it says that Member States' authorities could also give appropriate instructions and guidelines to creditors, and that consumers should also act with prudence and respect their contractual obligations.

5.3. Recital 28 says that creditors should also consult relevant databases in order to assess the credit status of consumers, but that the legal and actual circumstances may require that such consultations vary in scope.

### Existing UK legal requirements

5.4. There is no specific requirement in UK law to check consumers' creditworthiness. However, the OFT can consider whether or not a lender has lent irresponsibly in its consideration of fitness to hold a consumer credit licence and, clearly, checking creditworthiness adequately is an aspect of responsible lending. Many lenders do check consumers' creditworthiness, but they will generally do this in order to assess the risk of default rather than the wider question of the affordability of a loan and the impact it could have on a consumer's financial well-being. There is therefore a question as to whether, particularly in the light of the outcome of borrowing patterns over recent years, lenders should be given greater responsibility for gauging whether a loan is affordable before granting credit.

5.5. Consumer over-indebtedness is a serious problem and implementation of Article 8 provides an opportunity to strengthen existing provisions on responsible lending in order to reduce the incidence of consumers taking on unsustainable levels of debt. As indicated above in the chapter on Article 5.6 (Adequate Explanations), the requirement for lenders to check consumers' creditworthiness complements the requirement in the CCD for lenders to provide adequate explanations: among other things Article 5.6 will enable consumers to understand better whether or not they can afford a loan and to borrow responsibly; the requirement to check creditworthiness will help ensure that the lender lends responsibly.

5.6. As with Article 5.6 our aim in this chapter is to draw out opinion on this issue with a view to identifying the kinds of requirements which would help ensure that creditworthiness and affordability are adequately assessed, while at the same time inviting views on the potential impact which these provisions might have on lending, including access to credit and consumer convenience. We would also be particularly interested in any information you can provide on the likely costs of different approaches or the impact on specific sectors. As with adequate explanations, as well as describing the broad range of possible options, we have set out an initial proposal on which we would welcome comments, but, again, this is intended to illustrate only one possible approach and we recognize that it might need significant modification and that an alternative approach might be preferable.

#### Range of policy options

5.7. Member States appear to be given considerable freedom to decide exactly how the requirement for lenders to check consumers' creditworthiness should be implemented. "Creditworthiness" is not defined in the CCD. Nevertheless, taken together with Recital 26, which refers to responsible lending, the provision is clearly aimed at preventing consumers taking on unaffordable credit. Recital 26 is clear that this responsibility is shared between the consumer and the lender and we can conclude that each party should therefore make its own assessment of whether or not proposed credit would be affordable, but that neither should go ahead if it believes that the credit would be unaffordable. The degree of responsibility put on the lender could vary enormously:

**Minimum:** Taking a narrow view of the meaning of "creditworthiness", the absolute minimum would be to require the lender to assess the likelihood of the consumer repaying credit either at all or within a reasonable timescale, making clear that it is the consumer's responsibility to decide whether or not credit is affordable. According to this interpretation the lender would not have to consider the wider impact of a loan on the consumer's overall financial well-being. To comply with the requirement the lender would simply have to demonstrate that he had completed certain prescribed activities (minimum standards). However, it is questionable whether this would fulfil the aim of Article 8 of the CCD – see previous paragraph.

**Maximum:** At the other end of the scale, taking a broader view of the meaning of "creditworthiness", the lender would be responsible for judging the impact which the grant of credit would be likely to have on a consumer's economic circumstances, examining affordability and making reasonable assumptions about future trends etc in order to avoid the grant of credit causing or contributing to over-indebtedness. He might be required proactively to seek information about the consumer's wider economic circumstances, including assets or income and existing financial commitments. The lender's decision could be open to scrutiny.

5.8. In determining exactly how far the lender should go to establish the affordability of a loan and, hence, the degree of responsibility to be imposed on him, we have to consider a range of variables which might determine the approach to be taken in an individual situation. They are set out below.

*a) Amount of credit*

Broadly speaking, it would make sense to include consideration of the significance of the amount being borrowed in terms of its potential impact on a consumer's finances. But, although one might generally expect greater rigour in the case of larger loans, the impact which the amount of credit would have on an individual consumer could also depend on the consumer's financial circumstances. It would probably therefore make sense to distinguish between different sectors in deciding what level of borrowing should trigger specific creditworthiness checks. (See "Type of credit/level of risk associated with specific product types" below.)

*b) Type of consumer/level of risk associated with specific product types*

More vulnerable and less financially literate consumers often find it difficult to access mainstream credit products and are therefore more likely to have recourse to sub-prime credit. We could therefore distinguish between certain types of lending on the grounds that more or less vulnerable consumers commonly access them and would be more or less sensitive to the negative impacts of taking on new credit commitments. Sectors of particular concern might include:

- home credit
- payday loans
- bills of sale (in so far as these constitute credit agreements)
- loans for the purpose of consolidating existing debts
- non-status lending

*c) Channel*

The means by which a credit product is offered to consumers may also influence the requirements which should be imposed on lenders in terms of what is practicable – for example, what can be done in a bank branch especially equipped to arrange loans might not be possible in a department store on a busy Saturday morning.

Our policy proposals

5.9. In our view if implementation of Article 8 is to add to the existing level of consumer protection in the United Kingdom it must focus to some extent on affordability – at least for all but the smallest loans. This would appear to be in line with the objective of Article 8 (see paragraph 5.7 above), which is concerned with the consumer's well-being and not merely the risk to the lender of default. As indicated above, we have designed one possible approach to checking creditworthiness on which we would welcome views. Figures concerning the size of loans are shown in square brackets at this stage to reflect their provisional nature.

5.10. The proposed approach would impose a duty on all lenders (and, where appropriate, intermediaries) – except in the case of pawnbroking (where the consumer's liability is limited to the pledged item) – to base their lending decisions on a reasonable assessment of the consumer's creditworthiness, making reasonable assumptions so as to avoid contributing to over-indebtedness. It would then set out additional minimum standards with which lenders would have to comply according to the type of credit offered.

5.11. We are proposing three levels of creditworthiness-checking which would apply according to a combination of the size of a loan and the kind of credit offered. Because, as set out above, the type of credit can act as a proxy for the degree of vulnerability of consumers at which they are targeted, we believe that this approach should take account of the relative risk of different sectors.

#### Level 1

In addition to the general duty to check creditworthiness set out above, this would set minimum standards to apply across the board to all credit in excess of [£100] other than Pawnbroking. It would require lenders either to check consumers' credit status by obtaining relevant data from a credit reference agency or to take a reasonable view of creditworthiness on the basis of information provided by the consumer concerning existing income and credit commitments.

#### Level 2

This would apply to fixed sum loans, hire purchase and conditional sale agreements over [£500], and to all credit cards, store cards, home credit, payday loans, credit secured by bills of sale, other non-status lending and loans for the purpose of consolidating existing debts. In addition to level 1, lenders would be required proactively to seek evidence from the consumer (except in the case of information which had already been obtained from a credit reference agency or other data source) sufficient to enable the lender to estimate the consumer's disposable income on the basis of total income and financial commitments. In the case of running account credit agreements, the lender would be required to base his assessment of affordability on a maximum repayment period of three years and lenders would be prohibited from relying on the possibility of extending the original term of the loan. The lender would also be required to make reasonable assumptions about future economic or other changes, particularly bearing in mind the possibility of interest rate increases in assessing affordability.

#### Level 3

This would apply to fixed-sum loans over [£1,000], credit cards and store cards where the agreed ceiling is in excess of [£500] and to payday loans, bills of sale, other non-status lending, loans for the purpose of consolidating existing debts and home credit in excess of [£300]. In addition to levels 1 and 2, lenders would be required to take appropriate steps to verify information provided by the consumer, taking a reasonable degree of responsibility for ensuring its accuracy. The lender would also take steps to ascertain whether the consumer's financial or other relevant circumstances might change and to take account of all relevant personal commitments – e.g. family. Finally, the lender would be required to ask the consumer to reveal any other information which might be relevant in so far as it could affect a decision to lend.

Scope

5.12. We are proposing that the requirement to provide adequate explanations should be applied to all consumer credit products currently covered by the CCA other than second charge mortgages and, as indicated above, pawnbroking.

**Q16. Do you agree with the proposed approach? Please comment on the general approach as well as its application to specific products and loans sizes.**

## **6. Article 9 – Database access**

### Summary of this article

6.1. Article 9.1 requires Member States to ensure access for creditors from other Member States to databases used for assessing the creditworthiness of consumers, on a non-discriminatory basis. We concur with the view that equality of access to data is important in ensuring a single and fair market, both for lenders and for consumers.

6.2. Article 9.2 says that if the credit application is rejected on the basis of consultation of a database, the consumer must be informed immediately and without charge of the result and of the particulars of the database used.

6.3. Article 9.3 says that the information does not have to be provided if the provision of such information is prohibited by EU legislation or is contrary to public policy or national security objectives. Recital 29 gives money laundering or financing of terrorism as examples of EU legislation.

6.4. Article 9.4 confirms that the Article does not override EU Data Protection legislation.

6.5. Article 9.1 relates specifically to cross border credit assessment activity, although Article 8 provides an expectation that all creditors, where necessary, will consult databases for the purposes of creditworthiness assessment. This is discussed in Chapter 5 on Article 8.

### Existing UK legal requirements

6.6. There are no current requirements in UK legislation with respect to cross border activity between Member States.

6.7. Sections 157 to 159 of the CCA require Credit Reference Agencies (CRAs) to disclose the name of the agency, to disclose filed information and to correct wrong information.

6.8. CRAs must be licensed by the Office of Fair Trading and are therefore subject to the requirement in section 25 of the CCA to be a fit person. However, there are no unique licensing requirements for CRAs.

6.9. With respect to discrimination in the way a licence holder undertakes business, section 25(2A)(d) of the CCA states that evidence of being unfit to hold a licence will include "practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with the carrying on of any business".

6.10. There is no specific current requirement in UK legislation for creditors to advise consumers as to why their application for credit has been declined. However, various Industry Codes of Conduct do cover this issue, for example, the British Banking Association Code of Conduct requires subscribers to have familiarity with the Guide to Credit Scoring and the Information Commissioner's Guidance to Credit Referencing. It also says that where lenders are unable to provide the credit requested, "... we will explain the main reason why, if you ask us to...", in writing or electronically if requested.

## Our policy proposals

### *Article 9.1*

6.11. The obligation is on Member States to ensure that creditors from other Member States can access domestic databases. We are reviewing current legislation to ensure that there are no regulations that would in any way prevent access by creditors from other Member States. The requirement to allow access on non-discriminatory conditions is satisfied by the licensing fitness requirement section 25(2A)(d) (the licensee has not "...practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business"). We consider that this approach effectively implements Article 9.1.

6.12. It is a reasonable interpretation that the term "database" used in both Article 9.1 and 9.2 means CRA databases rather than internal databases typically held by large creditors. We propose to make understanding of the term clear in the implementing legislation.

### *Article 9.2*

6.13. We will put in place a new requirement that consumers who have their applications rejected as a result of a database search are informed, immediately and without charge, of the result of the search along with the particulars (name and contact details) of the database consulted. This should not be burdensome on lenders as it builds on existing best practice.

6.14. We propose that the requirement will apply where consultation of the database occurs in the context of a specific credit application or application for an increase in credit. It could be argued that the requirement should also apply where a decision is based on information previously taken from a CRA database and held on an internal database.

6.15. In any case, it is likely that lenders may have difficulty in differentiating declines resulting solely or partly from the use of CRA data in situations where the data was accessed at a previous point in time as part of an ongoing behavioural reassessment of all existing consumer accounts.

6.16. We propose to interpret the term "particulars of the database" as meaning "name and contact details" with regard to what information must be given to consumers. We believe that this is the natural meaning of the term in the circumstances.

6.17. The creditor must inform the consumer of the result of the consultation immediately. We believe it is reasonable to interpret "immediately" consistently with how the product was applied for and the reject decision given. The production of the information should be triggered immediately, although the information would not necessarily be received immediately. For example, if the application was made by post, then the reject decision should be communicated by post. The CCD is silent on how the consumer should be informed. It is logical that this should be consistent with the method of application and should occur without undue delay - we propose to make this clear in the regulation.

### *Articles 9.3 and 9.4*

6.18. We will make it clear that the requirement that disclosure information to consumers does not apply where the disclosure is prohibited by an EU obligation.

6.19. As regards the provision that the disclose should not be made where it would be contrary to objectives of public policy or public security, we propose to spell out examples of circumstances in which the disclosure need not be made; for example, situations where providing the information may cause harm to the employee of the creditor, or where it might impact on the prevention, investigation, detection or prosecution of criminal offences

6.20. We also propose to clarify that the new requirements do not authorise any contravention of the Data Protection Act 1998.

### Penalties

6.21. We see no need to introduce any new penalty for these requirements. Infringements would be regarded as licensing fitness infringements and subject to the same penalties as other licensing fitness infringements.

### Scope

6.22. We believe these requirements should apply in respect of all CCA regulated credit agreements, both in the case of all consumer CRA information requests and all declines partly or wholly resulting from the use of CRA data.

### **Q17. Do you have any comments on our proposals for implementing Article 9?**

## **7. Article 10 – Contractual information**

### Summary of this article

7.1. Article 10 specifies the information that must be provided to the consumer at the contractual stage. The information listed in Article 10 is very similar to that listed in Article 5 (pre-contractual information).

7.2. Article 10.1 provides that credit agreements are to be drawn up on paper or on another durable medium. All parties to the agreement shall receive a copy of it, but Article 10 is without prejudice to any national rules regarding the conclusion of credit agreements.

7.3. Article 10.2 deals with the information that must be specified in a credit agreement. Unlike Article 5, there is no set form laid down for the provision of this information - Article 10 merely states that the information must be specified in a clear and concise manner.

7.4. Article 10.3 provides that a request for an amortisation table (see 10.2 (d)) can be made at any time during the lifetime of the agreement.

7.5. Article 10.4 provides that in the case of a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit – endowment type loans - the agreement shall include a clear and concise statement that such credit arrangements do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.

### Existing UK legal requirements

7.6. The form and contents of a regulated agreement are set out in Regulations made under section 60 of the CCA, namely the Consumer Credit (Agreements) Regulations 1983 (as amended) – the Agreements Regulations – and the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983 (as amended) – the CNC Regulations.

7.7. The Agreements Regulations apply to all regulated consumer credit agreements and consumer hire agreements, including modifying agreements. They provide that the agreement must contain certain financial and other information. This must be set out in a specified order, with sub-headings (e.g. key financial information) which are intended to make the nature of the agreement clearer to the consumer, and be shown together as a whole. The information must be easily legible, of a colour easily distinguished from the background and of equal prominence. This means that the terms and conditions will have to be the same size as other, more up front, information.

7.8. The Regulations prescribe the ordering of the particular sub-headings, but not the order of each piece of information within those sub-headings.

7.9. Both the borrower and the lender must sign the agreement. A copy of the executed agreement must be given to the borrower, either when he signs it or within seven days. A further copy of the unexecuted agreement may also need to be

provided. If the agreement is cancellable, notice of cancellation rights must be included in the copy agreement, and must also generally be sent by post or email to the borrower within seven days.

7.10. The provisions concerning copies of agreements are found in section 62 and 63 of the CCA. Under the existing rules, all the contracting parties will receive at least one copy of the agreement. The regulations governing the form and content of copy documents are contained in the CNC Regulations.

#### Key differences between the CCA and CCD approach to contractual information

##### *Formalities concerning the agreement*

7.11. The CCD is much less prescriptive than the regime set out in the Agreements Regulations. It does not work on the basis of an unexecuted and an executed agreement. Article 10 merely provides that all contracting parties must receive a copy of the agreement. In our view this means a copy of all terms and conditions which form part of (and are identical to) the executed credit agreement.

7.12. Article 10.2 requires the credit agreement to specify in a clear and concise manner various listed items of information. However, unlike Article 5, there is no requirement for the information to be given in a standard form. We think it unlikely that Member States can require the information to be presented in a particular order or maintain detailed rules on the prominence of that information. This, therefore, means that lenders would be free to order contractual information as they wish subject to the "clear and concise" requirement and the more general requirements on misleading practices as contained in the Consumer Protection from Unfair Trading Regulations.

7.13. The CCD does not define the different types of credit in the definitions section (nor does it replicate the boxes in the SECCI). Further, there is no express requirement under the CCD to categorise agreements by, for example, the use of sub-headings, or to state the legal provisions by which the agreement is regulated.

7.14. The CCD does not require agreements to be signed, nor does it preclude the requirement of a signature as Article 10 is without prejudice to any national rules regarding the validity of the conclusion of credit agreements. Similarly, Recital 30 states that the CCD does not regulate contract law issues related to the validity of credit agreements.

##### *Information requirements*

7.15. In terms of a comparison between information required under Article 10.2 and information required by schedule 1 of the Agreements Regulations, there is not a great deal that is different. The following information required by the Agreements Regulations is not stipulated in Article 10.2, although in many cases something broadly equivalent is required:

- A description of the goods, services, land etc the acquisition of which is to be financed by the credit under the agreement – this is partly covered by Article 10.2 (e) which requires information about the good or service in the case of credit in the form of a deferred payment for a specific good or service or in the case of a linked agreement.

- Cash price - as above, Article 10.2(e) covers the cash price for a specific good or service (but not land) where the credit is in the form of a deferred payment for the purchase of that good or service
- Total charge for credit and the constituent parts - although there is no direct equivalent to this requirement in Article 10.2, there are requirements in Article 10.2 (d) and 10.2 (g) concerning the total amount of credit and the total amount payable by the consumer. The difference between the sum stated under Article 10.2 (g) and that stated under Article 10.2 (d) will be the total cost of the credit to the consumer.
- Early repayment examples - these are the examples (based on the amount of credit to be provided under the agreement or the nominal amount of either £1000 or £100) that show the amount that would be payable at certain points in time if the debtor exercised his right under section 94 of the Consumer Credit Act 1974 to discharge his indebtedness. Although we could no longer require pre-contractual information to set out early repayment examples, Article 10.2 (r) requires the contractual information to include, where applicable, information concerning the creditor's right to compensation in the event of early repayment and the way in which that compensation will be determined.

7.16. Article 10.2 contains some requirements that do not feature in schedule 1 of the Agreements Regulations. These concern the right of a consumer to request an amortisation table for fixed duration loans (10.2 (i)); a statement showing the periods and conditions for the payment of interest and of any associated charges if charges and interest are paid without capital amortisation (10.2 (j)); the procedure to be followed to terminate the agreement (10.2 (s)); details of any out-of-court redress mechanisms (10.2(t)); other contractual terms and conditions (10.2 (u)); and details of the competent supervisory authority (10.2 (v)).

7.17. Although the Agreements Regulations do not require the inclusion of the information in the above paragraph, with regard to termination, there are statutory required wordings for all cancellable agreements and those that can be terminated (schedule 2). As regards the requirement in Article 10.2(u) to include, where applicable, other contractual terms and conditions, section 61(1)(b) of the Consumer Credit Act 1974 states that a regulated agreement is not properly executed unless the document embodies all the terms of the agreement, other than implied terms. This is therefore broadly equivalent to the provisions in Article 10.2(u). Furthermore, now that the jurisdiction of the Financial Ombudsman (FOS) has been extended to cover consumer credit issues, information about how to contact the FOS is clearly a relevant piece of information for consumers entering into credit agreements in the UK.

### Our policy proposals

#### *General/Scope*

7.18. The information requirements in schedule 1 and 8 of the Agreements Regulations will need to be amended in line with the requirements set out in Article 10.2 for agreements within the scope of the CCD.

7.19. We believe the information regime should maintain its existing coverage and the amendments required should apply to credit agreements across the board regardless of whether it is in scope of the CCD. For example, the requirements in the Agreements Regulations already apply to hire purchase agreements, loans above €75,000 (£60,260) and loans for small businesses (up to £25,000). We propose the legislation in this field, as amended by the CCD, should continue to apply to these areas except that the requirement concerning amortisation tables will not apply to regulated business lending agreements and loans above €75,000 (£60,260) (except where these are for consolidation purposes). This would achieve a consistent approach to contractual information across a range of credit products. As with pre-contractual information, we also propose to legislate to allow lenders offering products outside of scope to continue to comply with the existing regime in respect of contractual information. We therefore propose that it should be permissible in respect of small business lending, secured lending regulated under the CCA, and for regulated agreements for more than €75,000 (£60,260) (except where these were for consolidation purposes) that the contractual information to be given either in the manner set out in respect of products covered by the CCD – i.e. the Agreements Regulations as amended by the CCD - or in the form currently required under the Agreements Regulations. In taking forward this policy, we propose that there should be consistency of approach – i.e. either the CCD’s requirements regarding pre-contractual information and contractual information are complied with, or the existing requirements as currently set out in the Disclosure and Agreements Regulations. However, it would not be permissible to mix and match between the two sets of requirements (see also chapter 3.14).

7.20. In relation to any changes that are necessary to primary legislation (sections 62-63 of the CCA – see paragraphs 7.30-34 below - in respect of the entry into an agreement, here we believe that such changes should apply to all credit agreements currently regulated, but not hire agreements.

#### *Presentation of contractual information*

7.21. The requirements in the Agreements regulations that information must be set out in a particular order and without interspersing would seem to go beyond what is permitted by the CCD. It would also seem that the requirements for equal prominence are too prescriptive as it is questionable that a Member State could stipulate that one piece of information has to be of exactly the same prominence as another. As for the requirement in Schedule 1 paragraph 1 of the Agreements Regulations to provide a specified heading according to the nature of the agreement, the headings go some way to ensuring that the type of credit is specified in a clear and concise way. Our policy preference is for such headings to be retained on the basis that they are helpful to the consumer and we are giving further consideration as to whether this is compatible with the requirements of Article 10.

7.22. The CCD is silent in respect of any requirements concerning the form of copies of the agreement. However, it remains logical for there to be consistency between the requirements for presentation of information in the agreement and the presentation of information in the copy agreement. Therefore, any changes made to the Agreements Regulations in this respect will need to be mirrored by equivalent changes in the CNC Regulations.

**Q18. Do you agree with the proposed approach on the presentation of contractual information?**

*Signatures*

7.23. Section 61(1) of the CCA requires the agreement to be signed by the debtor in the manner prescribed in the Agreements regulations, whereas the CCD does not require a signature and leaves to Member States the decision whether to require a credit agreement to be signed.

7.24. It could be argued that by maintaining the requirement for a signature, UK lenders might find themselves disadvantaged as compared with other Member State (although it should be borne in mind that lenders from other Member States would have to comply with UK law if lending in the UK). On the other hand, it can be argued that consumers need certainty as to what they have agreed to. This is particularly the case when disputes about agreements occur some time after the agreement has been concluded.

7.25. On balance, we propose to retain the need for a signature (and a signature box as prescribed by schedule 5). Unlike the current situation, however, there will be no specific requirement as to where the signature box should be situated. We believe this approach is consistent with the Article 10.1 permission on national rules regarding the validity of the conclusion of the agreement.

**Q19. Do you agree with the proposal to retain a signature and signature box?**

*Electronic signatures*

7.26. Regulation 6 of the Agreements Regulations prescribes the manner in which the agreement should be signed. Regulation 6(5) was inserted by the Consumer Credit Act 1974 (Electronic Communications) 2004 Order (2004 Order) and was intended to enable agreements to be concluded electronically. We are aware that some lenders are wary of using electronic signatures for a number of reasons: firstly it appears that the advanced electronic signature methods are not viewed as being commercially practicable for mass market products; secondly, lenders are concerned that the less sophisticated methods of capturing signatures (such as the "tick to accept" box) do not produce sufficient legal certainty since it is not clear from the Agreements Regulations what amounts to an electronic signature and there is little case law; thirdly, lenders are concerned about the potential evidential problems resulting from such a method, for example, the lender cannot prove who actually clicked the button; the customer might claim that they clicked by mistake; and the lender cannot prove exactly what the consumer saw when they signed.

7.27. To deal with the point above about sufficient legal certainty it has been suggested that regulation 6(5) could be amended to make it clear that credit agreements may be validly signed for the purposes of the CCA by a simple tick/click to sign this agreement.

7.28. There is a question as to whether such an amendment is necessary given that electronic signatures have already been authorised for consumer credit agreements via the 2004 Order and the potential implications for electronic signatures more generally beyond those involving consumer credit agreements will also have to be considered.

**Q20. Would amendment of the Agreements Regulations' provisions on electronic signatures help facilitate the conduct of electronic agreements? Can you suggest any alternative approaches?**

*Prescribed terms*

7.29. In the Agreements Regulations, Regulation 6(1) states that the terms specified in Schedule 6 to the Agreements Regulations are 'prescribed terms' for the purposes of section 61(1)(a) of the CCA. Prescribed terms must be contained in a regulated agreement if it is to be properly executed. The prescribed terms relate to the amount of credit, the credit limit, the rate of interest and repayments. Since the repeal of section 127(3) under the Consumer Credit Act 2006, the key difference between a prescribed term and the other information required under Schedule 1 has been removed since an agreement which does not contain the prescribed terms can still be enforced with a court order.

*The Copy Agreement*

7.30. We are of the view that the requirement in Article 10.1 means that the consumer should receive a copy of the final agreement.

7.31. At the moment, under section 62 of the CCA, it is often the case that the consumer receives two copies of the agreement, one of which is a copy of the executed agreement that the consumer receives within seven days of them signing the agreement. The CCD does not cover the question of whether an agreement is executed or not, but the key consideration is that the consumer is supplied with a copy of the final agreement. It may therefore be necessary to revise the section 62 requirements to avoid information overload given that the consumer will have the SECCI, as well as the right to a draft of the agreement, and the final copy of the agreement.

7.32. Section 63 of the CCA provides that a copy of the executed agreement must generally be given to the debtor either when he signs it or within seven days. The CCD does not specify a time limit within which the consumer must be given a copy of the credit agreement.

7.33. Section 63(2)(b) of the CCA provides an exemption from the duty to supply a copy/draft agreement of the executed agreement to the debtor where the unexecuted agreement was sent to him for his signature and on the occasion of his signing it became an executed agreement. This exemption would appear compatible with the CCD on the basis that the consumer must have a copy of the final agreement and that the CCD does not specify whether or not that agreement is executed. The key thing is that all the terms and conditions should be correct – in our view an unexecuted agreement could become the final agreement provided nothing has changed and provided that the consumer is aware that this is now a copy of the agreement.

*Options for amending ss 62-63 CCA*

7.34. We have been considering the following options in relation to the reform of the section 62-63 regime regarding the provision of copy documents:

**Option 1** – Amend section 63 so that consumer receives (a) notification of the date on which the agreement was executed and (b) confirmation that agreement has not been changed rather than a copy of the executed agreement itself where they already have a copy of the unexecuted agreement by virtue of section 62.

**Option 2** – Amend section 62 so that the consumer does not receive a copy of the unexecuted agreement after signing the original and sending/handing it back. A potential drawback to this approach is that in some cases after signing the consumer may not have all the necessary information as to the agreement they have signed up to in the period leading up to the beginning of the 14 day right of withdrawal period and also could not compare the documents to ensure that nothing has changed.

**Option 3** – Repeal section 62 and replace section 63(1) with an obligation to provide a copy of the executed agreement except where the creditor has already provided – before the agreement has been made – a copy of the agreement or a draft agreement to comply with a request made under Article 5.1(r). In that case, the creditor should be permitted to treat that copy (provided it remains unchanged from the executed agreement) as the copy of the executed agreement giving the borrower written notice that the agreement is made and the lender is treating the copy already supplied as the copy of the executed agreement. Additionally the provision should require the written notice to inform the borrower that during the cooling off period, the borrower has the right to be supplied on request and free of charge with a further copy of the executed agreement.

**Q21. Which approach do you think would work best? Can you suggest alternative approaches?**

**Q22. Should we retain the requirement to provide a copy of the agreement within seven days of the agreement being signed?**

#### *Cancellation notices*

7.35. Under current credit legislation, there is no absolute right to cancel credit agreements; therefore, the Agreements Regulations distinguish between cancellable and non-cancellable agreements. Under paragraph 23 of Schedule 1 of the Agreements Regulations, a statement is required as to whether the Agreement is cancellable, either under the CCA or the Timeshare Act 1992 or the DMR. For agreements that are cancellable, there are also forms of statement in respect of cancellation rights set out in Schedule 2 of the Agreements Regulations. However, these forms do not refer to the detail of the cancellation right as required by Article 10.2(p) The CCD appears to require further information (cancellation period, and conditions of exercise, obligation to repay capital drawn down and interest in accordance with article 14(3) (b) and amount of interest payable per day) to be provided in the actual agreement. The forms of statement are therefore an additional requirement and would no longer seem necessary.

7.36. Given the above, the requirements in section 64 regarding notice of cancellation rights appear to be superfluous, given that the consumer will automatically get this information (SECCI section 4 and Article 10.2(p)). On this basis, we propose to amend

the section 64 notice of cancellation rights and amend the CNC Regulations accordingly (although we need to leave these provisions in place to the extent that they are relevant to other categories of agreements such as hire agreements or other agreements not covered by the CCD's new regime).

**Q23. Do you agree with this approach?**

*Section 77/78 of the CCA*

7.37. The purpose of s77 & s78 is to enable consumers to request a copy of the current terms applicable to their agreement (i.e. reflecting any notices of variation issued since the account was opened). There is concern among some lenders that the current wording is open to misinterpretation and in some situations is being used as a means of **attempting to write-off of legitimate debts, even though that is not the intention of these provisions**. As this issue is not directly related to the implementation of the CCD, scope for potential amendments to these requirements are limited, even if any change is desirable.

**Q24. Do you agree that the section 77/78 provisions to request an additional copy of a credit agreement should be revised? If so, how?**

Issues related to Article 10.2

7.38. As referred to in paragraph 7.18, the information requirements in schedule 1 and 8 of the Agreements Regulations will need to be amended in line with the requirements set out in Article 10.2 for agreements within the scope of the CCD.

7.39. The simplest approach is to replace the list of information required by the Agreement Regulations with the information required under the CCD, hence our preferred policy option is to align the requirements of Article 10.2 with those of the Agreement Regulations where possible.

7.40. In relation to Article 10.2(d), there is an issue concerning how to express the amount of credit on offer regarding running-account agreements (see also the discussion in paragraphs 2.26-27 and 3.22 in respect of Articles 4 and 5). This situation is already envisaged in Paragraph 8 of Schedule 1 to the Agreement Regulations which anticipates that the amount of credit may not be known where the agreement is for running-account credit. In such cases, the credit limit should be expressed as a statement that the credit limit will be determined by the creditor from time to time and that notice of it will be given (Schedule 1 Paragraph 8 (b) or a statement indicating the manner in which the credit limit be determined or a statement indicating there is no credit limit (Schedule 1 paragraph 8(d)). It would appear appropriate to retain this approach for running account agreements in the implementing legislation on the basis that this is consistent with the requirements of Article 10.2(d).

**Q25. Under what circumstances would the provisions in Schedule 1 Paragraph 8 as described above be relevant and should they be retained?**

7.41. As to the approach (as per Schedule 1 of the Agreements Regulations) where there are two columns, one denoting the type of agreement, and the other the information required, this would probably fit with the approach taken in the CCD given the requirement in Article 10.2(a) to specify the type of credit.

### *Statutory Statements*

7.42. Under Regulation 2 of the Agreements Regulations, regulated agreements are required to contain statements of the protections and remedies available to consumers under the CCA. These particular statements are set out in Schedule 2 of the Agreements Regulations, and form part of the "key information" as detailed in paragraph (e) of Regulation 2. Although the prescription concerning the placement of the statements within an agreement cannot be retained, it may be that many of the specific statements can be retained and are either not inconsistent with the requirements of the CCD, or concern matters outside the scope of the CCD.

7.43. In particular, Article 10.2(m) already requires a warning concerning the consequences of missing payments. This seems to correspond with Form number 2 of Schedule 2. By way of amendment to the current warning, we propose to require lenders to make clear the risks to a debtor's property if a Charging Order is imposed by a court due to non-repayment of outstanding debt. This would require anyone selling an unsecured loan to ensure the borrower is aware in advertising and promotional material that failure to keep up with payments on an unsecured loan could lead to the forced sale of their assets.

7.44. We do not think that the Regulations can continue to require the statements contained on forms 14-16 in schedule 2, regarding the rights of the consumer under the CCA, or form 17 concerning theft, loss or misuse of a credit token, although the relevant information could constitute "other contractual terms and conditions" as must be provided under 10.2 (u).

#### **Q26. Do you agree with this approach, in particular the proposal to revise the missing payments warning?**

### *Modifying Agreements*

7.45. As discussed, in chapter 1, we do not intend to apply the light touch treatment to kinds of modifying agreements described at Article 2.6. This is because we believe it is sensible to continue the UK distinction between "agreements", on the one hand, and forbearance by lenders/court orders, on the other hand. Anything which would constitute an agreement in the UK should in our view continue to be caught by the full provisions of the CCA, whereas forbearance by lenders /court orders do, in line with current practice, not require the provision of further contractual information.

7.46. However, the issue of modifying agreements is still relevant to the implementation of Article 10 given that schedule 8 of the Agreements Regulations sets out specific information required in respect of a modified agreement, as defined in the Agreements Regulations. Our intention is that the CCD will not preclude such an approach of separating out the information required for modifying agreements as opposed to the other types of credit agreement covered in schedule 1 of the Agreements regulations. However, the information required under schedule 8 would need to be consistent with the information required under Article 10.2, and therefore the amendments made to the list of information in schedule 1 would need to be reflected by equivalent amendments to schedule 8.

#### **Q27. Do you agree with this approach?**

## **8. Article 11 – Information concerning the borrowing rate**

### Summary of this article

8.1. Article 11 of the CCD is concerned with the provision of information relating to changes to the borrowing rate:

- Where applicable, the consumer shall be informed of any change in the borrowing rate, on paper or another durable medium, before the change enters into force. The information shall state the amount of the payments to be made after the entry into force of the new borrowing rate and, if the number or frequency of the payments changes, particulars thereof.
- However, the parties may agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically in cases where the change in the borrowing rate is caused by a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is also kept available in the premises of the creditor.

8.2. The “borrowing rate” is defined in Article 3(k) as the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of the credit drawn down. “Durable medium” is defined in Article 3(m) as “any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored”.

### Existing UK Legal Requirements

8.3. Section 82 of the CCA deals with all variations to consumer credit agreements.

8.4. Where a change is made by the creditor under a power contained in the agreement Section 82(1) states that the variation will not take effect before notice of it is given to the debtor in the prescribed manner. Regulation 2 of the Consumer Credit (Notice of Variation of Agreements) Regulations 1977 (the Variation Regulations) requires, in general, such notice to be served on the debtor not less than 7 days before the variation takes effect. ‘Served’ includes post and electronic transmission of documents. Electronic transmission of documents is dealt with by Section 176A of the CCA and its provisions are very similar to the CCD’s definition of “durable medium”.

8.5. However, under Regulation 3 of the Variation Regulations, an alternative procedure is possible where the amount of payment of interest charged under the agreement is calculated by reference to the daily outstanding balance and the variation relates only to the rate of interest. Here, notice of the variation may be given by publication in three national daily newspapers and by displaying the notice at the creditor’s premises.

8.6. In addition to the notice requirements under the CCA, the Unfair Terms in Consumer Contracts Regulations 1999 (UTCC Regulations) also contain some relevant provisions. The underlying principle of these regulations is that a consumer is not bound by a standard term in a contract if that term is unfair. Schedule 2(1) contains an

indicative list of terms which may be regarded as unfair, and paragraph 1(j) of Schedule 2 states that a term will be indicatively unfair if it enables a seller or supplier to unilaterally alter the terms of the contract without a valid reason which is specified in the contract. However, the UTCC Regulations recognise that in certain circumstances a supplier can validly include a unilateral right to vary a contract.<sup>4</sup>

8.7. Certain credit agreements covered by the CCD will also fall within the scope of the Payment Services Directive<sup>5</sup> (PSD). Article 44 PSD deals with variations to contracts. Article 44(2) of the PSD allows certain changes in interest rates to be applied immediately and without notice if the contract contains such a right. This contrasts with Article 11 of the CCD, which requires changes in the borrowing rate to be notified to the consumer before the change enters into force, unless the agreement states that such information is to be given to the consumer periodically (which it can only do in relation to certain limited cases where the borrowing rate is linked to a reference rate). It is also different from the provisions on variation of agreements at section 82 of the CCA and in the Variation Regulations.

8.8. Article 44(1) of the PSD requires the payment service provider to propose, on paper or on another durable medium, any changes in the framework contract at least 2 months before those changes are to come into effect. The CCD does not contain an equivalent general provision regarding notification of any proposed changes to the agreement itself, only the specific provisions relating to the borrowing rate.

8.9. To the extent that Article 44 of the PSD differs from the CCD/domestic credit legislation, domestic legislation will prevail due to Regulation 34 (a) of the draft Payment Services Regulations 2009. This disapplies draft Regulation 42 (which implements Article 44 of the PSD) in respect of CCA regulated agreements

8.10. The Banking Code also contains some relevant provisions although these have non-statutory force. The following provisions are relevant:

- *We will keep you informed about changes in the interest rates on your accounts and we will tell you about the ways we do this.*
- This provision is expanded on in the guidance to subscribers. The requirement to “keep you informed of changes to the interest rates on your accounts” will be fulfilled by either:
  - *Telling customers personally within 30 days of the change; or*
  - *Within three working days of the change, put notices in our branches and in the newspapers we usually use. To help customers compare rates more easily, our newspaper notices will show clearly the old and new rates.*

## Policy proposals

---

<sup>4</sup> Paragraph (2) of Schedule 2 states that where a supplier of financial services reserves the right to alter the rate of interest payable by a consumer or due to the consumer, or the amount of other charges for financial services, without notice, where there is a valid reason, then provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately, the variation will not fall within paragraph 1(j) and so will not be presumed to be unfair.

<sup>5</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market.

## *Scope*

8.11. The circumstances where Article 11 would apply would seem to be broader than under the Variation Regulations in relation to variations to interest rate changes. Where an interest rate is linked to an external reference rate in a regulated agreement, unlike in Article 11, there is no requirement in the Variation Regulations to give individual notice to the borrower of any change to the reference rate. On the other hand, there are no provisions in the CCD dealing with variations to other terms. This leaves each Member State free to introduce provisions dealing with variations to terms other than the borrowing rate.

8.12. In terms of amendments to the Variation Regulations, our intention at this stage is that the legislation needed to conform to Article 11 should maintain the existing coverage of these Regulations so that it does not apply only to agreements within the scope of the CCD, or only to variations of interest rates.

8.13. As discussed above, the draft regulations implementing the PSD have disapplied the regulations implementing Article 44 (changes to a framework contract) insofar as they relate to regulated agreements under the CCA. We expect that this disapplication would not be valid for business loans that are not CCA regulated. The application of the amended Variation Regulations will therefore still apply to business lending up to £25,000, whereas the PSD will otherwise apply where appropriate. Although this would mean that lending to small businesses would fall within the scope of the CCA or the PSD depending on the nature and value of the agreement, we do not want to see any reduction of consumer protection currently enjoyed by small businesses as compared with individual consumers. An alternative approach is to amend the Variation Regulations in respect of business lending agreements to conform with the Payment Services Regulations 2009 (which will implement the PSD) in order to create a uniform regime in respect of variations to business lending agreements although this would seem to represent a reduction of consumer protection for small businesses as compared with individual consumers.

### **Q28. Do you agree with the proposals concerning the scope of the Variation Regulations?**

### **Q29. Should the Variations Regulations be amended in respect of business lending in order to conform more closely with the Payment Services Regulations?**

## *Timing of the notice*

8.14. The CCD requires that notice of a change in the borrowing rate must be given "on paper or another durable medium, before the change enters into force". There is no minimum specified period similar to that in Regulation 2 of the Variation Regulations, which specifies that at least 7 days' notice must be given.

8.15. Although the CCD does not specify a minimum period during which notice must be given, the existing 7-day rule seems to be in line with the purpose of this Article and would therefore ensure that notification is given before the change takes effect and that the consumer has time to act on this. On this basis we are considering retaining the 7-day rule for variations currently subject to Regulation 2.

8.16. There may however be situations when 7 days may not actually allow enough time for the consumer to act. It might therefore be better to transcribe this provision in terms of giving notice without delay/as soon as possible. Guidance could then elaborate on what this meant – for example, that there should be sufficient time to allow consumers to make alternative arrangements.

**Q30. Should we retain the existing rules regarding a 7 day notice period? If a time period is not specified should guidance be issued as to what would be considered good practice in terms of the length of the notice period?**

8.17. The requirement in the CCD to give notice before the change comes into force does not apply where the borrowing rate is linked to a reference rate and the credit agreement states that notice of changes are to be given periodically. In this instance the change to the reference rate must be made publicly available by appropriate means and must be kept available at the creditor's premises. Nevertheless, it requires that borrowers should be notified individually "periodically". This goes beyond the current position under the CCA where changes to interest rates would not require personal notice to be given and the CCA would need to be amended.

8.18. Regulation 3 of the Variation Regulations will also need to be restricted to cover only changes to a reference rate. Specific provisions dealing with the way in which notice must be given to consumers on an individual basis where the borrowing rate is linked to a reference rate will be required given the reference to "periodically" in paragraph 2. There is an issue as to the meaning of the term "periodically" but we believe this should be dealt with in guidance, although an alternative would be for the legislation to say something like "for example through regular statements provided to consumers as provided for in the agreement".

*Content of the Notice*

8.19. Article 11.1 requires the borrower to inform the customer of:

- a. The change in the rate
- b. The amount of the payments to be made after the entry into force of the revised rate
- c. Where the number or frequency of the payments changes, particulars of the change
- d. The Variation Regulations require the creditor to set out the "particulars of the variation". The "particulars" of the variation are not defined but on an ordinary construction are likely to include any revised rate as well as the reason and basis for the variation. To comply with the CCD the regulations will have to specify the items explicitly referred to in Article 11.1

**Q31. Are there any particular issues raised by the need to give individual notice or by the content requirements?**

**Q32. Should the legislation seek to define the term "periodically" in Article 11.2, or is this best dealt with in guidance?**

### *Form of the Notice*

8.20. Under the terms of the CCD the notice must be on paper or in another durable medium. The Variation Regulations do not specify the form of the notice but through the definition of 'served' notice of variation which provides (except where notice is given through branch or newspaper advertisement) that notice must be given by post (that is on paper) or electronically in a durable medium.

8.21. As a result, no amendment to the current requirements relating to the form of notices of variation would appear necessary where notice is sent by post or electronically. However, the current provisions allowing notice to be given by newspaper advertisement and branch notice will need to be amended so that this applies only to changes to a reference rate where the creditor and the debtor have agreed that notice to changes to a reference rate can be given periodically. The CCD does not elaborate on what is meant by the term "appropriate means" (Article 11.2), although it does specify that the information concerning the new reference rate must be kept available on the premises of the creditor. On this basis it seems that the provisions at Regulation 3 paragraph 2 are not inconsistent with the CCD and can be retained

### **Q33. Do you agree with this approach?**

#### *Agreed Variations*

8.22. Although such circumstances are likely to be rare, the borrower and creditor may agree a variation to an interest rate. Under UK legislation, if such an agreement is reached this must be documented in a modifying agreement as set out in section 82 CCA. Article 11.1 appears to be aimed at variations made unilaterally by the creditor rather than agreed variations. This interpretation is substantiated by Recital 32 which makes reference to other national provisions allowing variation by the creditor for valid reasons. On this basis Article 11.1 would not seem to restrict the ability to impose requirements as to how agreed variations of interest rates must be documented and we therefore propose to retain the current provisions relating to modifying agreements.

### **Q34. Do you agree with this approach?**

#### Transitionals

8.23. Article 30 provides that the Article 11 provisions should be applied to open-end credit agreements existing on the date the implementing legislation enters into force.

8.24. There is a question as to whether the Regulation 3 procedure discussed in paragraph 8.18 can remain in place for open-end agreements made before the transposition date. Our view is that we cannot retain the "special variation" procedure in its current form in respect of agreements covered by the CCD.

### **Q35. What problems could arise if the Regulation 3 procedure cannot be retained in its current form for existing agreements, and should the above procedure remain in place for agreements not falling within the scope of the CCD?**

## **9. Article 13 – Open-end credit agreements**

### Summary of this article

9.1. Article 13.1 of the CCD sets out the consumer's right to terminate an open-end credit agreement. The consumer is entitled to terminate at any time unless the parties have agreed that a period of notice should be given. The lender cannot require more than one month's notice.

9.2. The second paragraph of Article 13.1 deals with the creditor's ability to effect standard termination of an open-end credit agreement. This paragraph provides that the creditor may effect standard termination provided this is allowed in the credit agreement, but that the creditor must give the consumer at least two months' notice drawn up on paper or another durable medium.

9.3. Article 13.2 provides that, if agreed in the credit agreement, the creditor may, for objectively justified reasons, terminate the consumer's right to draw down on an open-end credit agreement. If this happens, the creditor must inform the consumer of the termination and the reasons for it on paper or in another durable medium. Where possible, the consumer should be informed before the termination and at the latest immediately thereafter. There is an exception to this requirement, where the provision of such information is prohibited by other Community legislation, or where it would be contrary to public policy or public security objectives.

9.4. Recital 33 helps with the interpretation of Article 13. It gives examples of what is meant by "objectively justified reasons" including "suspicion of an unauthorised or fraudulent use of the credit or significantly increased risk of the consumer being unable to fulfil his obligation to repay the credit." Recital 33 also clarifies that the CCD does not affect domestic legislation in the area of contract law regulating the rights of the contracting parties to terminate on the basis of a breach of contract. Given the reference to standard termination we are of the view that Article 13.1 only applies in non default situations.

### Existing UK legal requirements

#### *Rights to terminate and notice requirements*

9.5. There is no specific rule in the CCA as to the consumer's right to terminate an agreement. Therefore the termination right and notice period would fall to the contract. Nor does the CCA deal with the creditor's rights in respect of termination under an open end credit agreement except in a default situation – section 87(1) (a).

9.6. The creditor can treat a consumer's right to draw down on any credit as restricted or deferred and take steps to enforce such a restriction or deferment without giving any prior notice to the consumer under section 87(2) of the CCA. The CCA does not require that the consumer be informed of such action. The contract itself, however, may require notice in this situation or notification after the event.

### Our policy proposals

9.7. Neither the CCD nor the CCA define an open-end credit agreement. However, we understand it to be a credit agreement with no fixed-term, the classic example of

this type of agreement being a credit card agreement. Other examples could be store cards and pay-day loans. A new definition in the CCA to cover the term “open-end credit agreement” will be required.

#### *Article 13.1*

9.8. There is no specific rule in the CCA as to the consumer’s right to terminate an agreement. Therefore, at present, the termination right and notice period would fall to the contract. To the extent that that open-end credit agreements are standard term contracts, then the Unfair Contract Terms Act 1977 may also apply. It would still seem necessary however for there to be a new, specific provision in UK law to give effect to the requirement in Article 13.1 that the consumer can terminate an open-end agreement at any time unless the parties have agreed on a period of notice. The provision will need to state that the maximum notice that can be agreed between the parties to be given by the consumer is one month.

9.9. The CCA does not deal with the creditor’s rights in respect of termination under an open end credit agreement except in a default situation – section 87(1) (a) – whereas Article 13 is about termination in a non-default situation. Therefore, we do not envisage any need to amend section 87 of the CCA, but we will need to include a new specific provision which states that where the parties agree in the credit agreement that the creditor can terminate he must nevertheless give the consumer two month’s notice. Further, that notice must to be given on paper or on another durable medium.

9.10. We intend to make provision requiring the creditor’s notice to include details of the outstanding balance. This might be along the lines of what is required under the Consumer Credit (Enforcement, Default and Termination Notices) Regulations (Notices Regulations) although these requirements would not work for credit card agreements. This is because whenever there is a non-breach termination of a credit facility credit card, issuers will be calling in the entire outstanding amount and it will not be possible to give an accurate balance owed figure for a date 2 months into the future. Therefore, it may be preferable to insert a new section dealing specifically with the new 2 month termination right where the information would relate only to the date the notice is prepared. On the other hand, it may be possible to amend section 98 so that it applied to standard termination of an open end agreement and at the same time amend the Notices regulations to adjust the requirements in the standard termination case.

#### *Article 13.2*

9.11. Under Article 13.2, where the consumer’s right to draw down on an open-end credit agreement is terminated, the consumer must be informed of the reasons on paper or on another durable medium, where possible before the termination and at the latest, immediately after the decision to withdraw this facility. This is presumably intended to deal with situations where the creditor wishes to prevent the consumer from drawing down further credit and incurring further debt and also to avoid having to wait for up to two months until the notice of termination has expired.

9.12. We have been considering whether the form of the notice in 13.2 (and in 13.1 paragraph 2) needs to be prescribed in the same kind of detail that is set out in the Notices Regulations. We do not believe that there is any need for further prescription

and that creditors should, therefore, be able to provide notification in a form that seems most suited to the circumstances. Therefore, the wording of the CCD in Article 13.1 (paragraph 2) and in Article 13.2 should be sufficient in respect of the form of notice to be given to the consumer, while guidance could set out some minimum requirements as to content of the notice. It should also be possible for a lender to incorporate the notice required under Article 13.2 into the same statutory notice required under Article 13.1, but there is no need for the legislation to specify this.

9.13 We need to consider whether to use exactly the same language in our implementing legislation in Article 13.2 in respect of the creditor's ability to "terminate" the consumer's right to draw down on an agreement. Although Article 13.2 uses the word "terminate", Recital 33 refers to the creditor having the right to "suspend" the consumer's right of draw down. It may be preferable to use the word "terminate" in the implementing provision. This approach has the advantage that it will be easier to cover in guidance the principle that the termination envisaged by 13.2 is not intended to capture temporary suspensions of a credit facility such as when the consumer has a transaction declined because they have inadvertently exceeded their credit limit. Alternatively the legislation could refer to "terminate or suspend". The legislation (or guidance) could make clear that declining a transaction because it would exceed the credit limit would not amount to "temporary suspension" as the consumer is still entitled to draw down on the facility (provided they keep within the agreed credit limit), and does not in any event have the right to draw down beyond that limit.

**Q36. Should the legislation refer to "terminate" or "terminate or suspend" in respect of the consumer's right to drawdown? What are the advantages/disadvantages of these alternatives?**

9.14 The next issue to consider is whether to expand on the term "objectively justified reasons" in Article 13.2. Here we propose to include a non-exhaustive list of such reasons, drawing on the factors set out in Recital 33, to include:

- suspicion of unauthorised or fraudulent use of the credit
- significantly increased risk of the consumer being unable to repay the credit
- the order of a competent public authority and
- suspicion of criminal conduct

**Q37. Do you agree with the approach in respect of defining "objectively justified reasons"? Are there other reasons that should be listed?**

9.15 The last sentence of Article 13.2 refers to the consumer being informed of the termination of his right to draw down before it takes place or "at the latest immediately thereafter". We do not believe that this needs to be clarified in implementing legislation although it could be dealt with in guidance.

**Q38. Do you agree with the approach in respect of informing the consumer of a termination in the right to drawdown on an agreement?**

*Transitionals*

9.16 Article 30 makes clear that the standard termination provisions apply to existing open end agreements. It would be sensible for the new statutory termination rules to

be read into existing contracts to avoid lenders having to vary the terms of the agreement.

## **10. Article 14 – Right of withdrawal**

### Summary of this article

10.1. Article 14.1 of the CCD gives consumers the right to withdraw from a credit agreement within 14 days from the conclusion of the agreement, or from when the consumer receives the terms and conditions if later, without giving any reason.

10.2. The right is to withdraw from the credit agreement. It is not a right to withdraw from an agreement for the provision of goods or services. Where a consumer withdraws from a credit agreement which has been used to finance the purchase of goods or services, he must therefore find another way to pay for the goods or services. The right to withdraw is intended to give consumers time to reconsider whether that credit agreement is the best one for them in their particular circumstances.

10.3. Article 14.3 requires the consumer to notify the creditor of his withdrawal and to repay the capital and accrued interest without undue delay and no later than 30 calendar days after giving notice.

10.4. Article 14.4 says that if an ancillary service relating to the credit agreement is provided on the basis of an agreement between the creditor and a third party, the consumer will no longer be bound by the ancillary service contract if he exercises his right of withdrawal.

10.5. Article 14.5 provides that where the consumer has a right of withdrawal under Article 14, the right of withdrawal in the Directives on Distance Marketing of Consumer Financial Services (2002/65/EC) and Contracts Negotiated Away From Business Premises (1985/577/EEC) does not apply.

10.6. Article 14.2, 14.6 and 14.7 (concerning respectively existing legislation that provides funds cannot be made available to the consumer before the expiry of a certain period, credit agreements conducted through a notary and national legislation establishing a period of time during which the performance of a contract may not begin) are not relevant to the UK and are therefore not discussed in this consultation document.

10.7. Article 10.2(p) says that the creditor must include in the terms and conditions information about that consumer's right of withdrawal and how this is to be exercised.

### Existing UK legal requirements

#### *CCA*

10.8. There is no across the board right to withdraw from a credit agreement under the CCA. Instead, there are a number of rights that apply to agreements in different circumstances.

10.9. The main right is provided in section 67 of the CCA which creates a category of cancellable agreements. Section 67 allows a debtor to cancel a regulated agreement where the antecedent negotiations included oral representations made by an individual acting as, or on behalf of the negotiator, in the presence of the debtor except where:

- the agreement is secured on land or relates to the purchase of land;
- the unexecuted agreement is signed by the debtor at premises at which the creditor/owner, any party to a linked transaction (other than the debtor/his relative) or the negotiator in any antecedent negotiations is carrying on any business;
- the agreement is excluded from Part V of the CCA (in which the cancellation provisions are contained) by section 74 of the CCA (as to which see below).

10.10. Antecedent negotiations are any negotiations with the debtor about a prospective credit agreement or about the supply of goods or any other transaction to be financed by the credit agreement.

10.11. Section 68 allows the debtor to serve notice of cancellation of a cancellable agreement for up to 5 days after the day on which he received a copy of the executed agreement or a notice indicating his right to cancel the agreement (or up to 14 days after the day on which the unexecuted agreement was signed by him in certain circumstances).

10.12. Except as otherwise provided by or under the CCA, an agreement cancelled under section 69(1) is treated as if it had never been entered into.

10.13. In the event that the debtor exercises his right of cancellation, section 70 sets out the circumstances in which any sum paid by him (or his relative) under or in contemplation of the credit agreement or a linked transaction should be reimbursed.

10.14. Section 71 covers repayment of credit in the event of cancellation. Provided that the debtor repays all or part of the credit within a month of serving notice of cancellation or, in the case of credit repayable by instalments, before the date on which the first instalment is due, he does not have to pay any interest on the amount he has repaid.

10.15. Section 72 concerns the duty of the debtor to retain possession of and take reasonable care of goods he has received. Section 73 concerns the treatment of goods taken in part-exchange.

10.16. As mentioned above, section 74 excludes from the application of the cancellation provisions:

- non-commercial agreements;
- debtor-creditor agreements enabling the debtor to overdraw on a current account (subject to determination by OFT);
- debtor-creditor agreements to finance the making of prescribed payments arising on or connected with the death of a person (subject to determination by OFT); and
- small debtor-creditor-supplier agreements for restricted-use credit (up to £50).

*Financial Services (Distance Marketing) Regulations 2004 (SI 2004/2095)*

10.17. These Regulations implement Directive 2002/65/EC. They give consumers a period of 14 days from the day on which a contract is concluded at a distance (or from

the date on which the consumer receives the contractual terms and conditions) to cancel the agreement.

10.18. The right of cancellation does not apply to:

- credit secured by a mortgage;
- credit agreements automatically cancelled under the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334) as ancillary to another cancellable agreement;
- credit agreements cancelled under the Timeshare Act 1992;
- a restricted-use credit agreement (within the meaning of the CCA) to finance the purchase of land or an existing building, or an agreement for a bridging loan in connection with the purchase of land or an existing building.

*The Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008 (SI 2008/1816)*

10.19. These Regulations implement Directive 85/577/EEC. They replace the Consumer Protection (Cancellation of Contracts Concluded Away from Business Premises) Regulations 1987 (SI 1987/2117), although unlike those regulations they cover solicited as well as unsolicited visits. They give the consumer the right to cancel an agreement within 7 days of receiving notice from the supplier of his right to cancel.

10.20. The Regulations apply to contracts (including consumer credit agreements) between a consumer and a trader for the supply of goods or services made:

- during a visit by the trader to the consumer's home or place of work, or to the home of another individual;
- during an excursion organised by the trader away from his businesses premises; or
- after an offer made by the consumer during such a visit or excursion.

The intention when making the Regulations was that they would not cover consumer credit agreements to which the CCD would apply.

### Our policy proposals

#### *Scope*

10.21. The new right of withdrawal will replace the more limited right to cancel certain agreements in section 67 with a right to cancel all those agreements that are within the scope of the CCD. In addition, we are proposing to extend the right of withdrawal to the agreements listed below that are covered by the CCA but are outside the scope of the CCD. Sections 67 to 73 will remain for those agreements outside the scope of the CCD to which the right of withdrawal is not being extended.

#### Hire purchase and conditional sale agreements

10.22. There are strong consumer protection arguments for extending the right of withdrawal to these agreements. Hire purchase agreements are very similar to conditional sale agreements which do appear to fall within the scope of the CCD. Other types of credit agreements linked to the purchase of particular goods or services

also fall within the CCD. We believe that treating these agreements differently from other consumer credit products could lead to consumer detriment. It is much easier for consumers to understand their rights and to make informed choices if very similar types of agreements are treated in the same way.

10.23. It has been suggested that suppliers may be reluctant to release goods financed by these types of linked credit agreements before the end of the 14 day withdrawal period because of concerns about consumers not finding alternative finance and increases in fraud. While we understand this view, the concerns are not specific to these agreements. They would also apply to other agreements linked to the purchase of goods that are within the scope of the CCD. Nor are the concerns necessarily specific to the right of withdrawal. Some consumers will apply for credit fraudulently or default on their agreements now. The CCD does not give consumers the right to withdraw from the purchase of the goods, but the right to decide to finance that purchase in a different way.

#### Pawnbroking

10.24. It could be argued that a right of withdrawal is unnecessary for pawnbroking because a pawnbroking agreement can be terminated and the goods recovered at any time by repaying the agreed sum. Pawnbroking agreements are relatively short term, but are often repaid well before the term. A 14 day right of withdrawal could mean that some consumers who would have redeemed the pledge after 2 or 3 weeks and paid a month's interest will now give notice of withdrawal and repay the money after the same period of time but be liable to pay less interest. This will result in lost revenue for pawnbrokers, and potentially in increased interest rates for all pawnbroking customers.

10.25. It is however difficult to see why customers who use pawnbrokers should not have the same rights as those who take out other types of credit agreements. We are therefore inclined to extend the right of withdrawal to pawnbroking.

#### Credit agreements below €200 (£160)

10.26. The right of withdrawal will result in potential costs for creditors, and for smaller agreements the cost may be proportionately higher. However, credit agreements for small amounts are often taken out by the most vulnerable consumers. We therefore believe that there are strong consumer protection arguments for extending the right of withdrawal to agreements below £160.

#### Credit agreements above €75,000 (£60,260) for the purpose of debt consolidation

10.27. One might expect consumers taking out this size of loan to be financially aware and to have done their research to find the most appropriate agreement, particularly when the agreement is to purchase particular goods or services; they are also more likely to have taken financial advice. Also there is likely to be a greater cost to lenders (which they cannot recoup) in setting up higher value loans.

10.28. On the other hand, consumers taking out higher value loans for the purposes of consolidating existing debt may already be experiencing financial difficulties and therefore are more likely to behave impulsively and to be vulnerable to superficially attractive offers which may not be in their longer term interest. With increases in

indebtedness, the size of loans for debt consolidation are also increasing, and it is even more important that consumers have time and space to make sure that they understand the implications of the loan and that it is right for them.

10.29. Therefore we propose to extend the right of withdrawal to credit agreements above €75,000 (£60,260) where these are for the purpose of debt consolidation, but not to other loans in excess of this amount.

#### Small business lending

10.30. The CCA currently covers loans up to £25,000 to certain small businesses (partnerships of 2 or 3 persons not all of whom are bodies corporate and certain unincorporated entities), on the grounds that such business are more akin to consumers in the way they behave and in their financial needs. Many such small businesses are essentially run out of the home and the owner may not be financially sophisticated. The owner of such a small business may benefit from the option to reconsider the appropriateness of a credit agreement just as much as a consumer. There is therefore an argument for extending the right of withdrawal to small businesses loans up to £25,000.

10.31. On the other hand, there is not currently a right of withdrawal for small business lending so we would be creating a new right rather than extending or amending an existing one. It would mean some lenders who treat business lending as a single portfolio would have to differentiate between types of businesses for loans up to £25,000 which could increase their costs and may discourage some from offering smaller loans to these businesses. However, this will already be the case as many CCA requirements apply to certain small businesses. In addition, it is likely to be less of an issue for lenders who do not differentiate between consumer lending and micro business lending.

10.32. We would be interested in the views of stakeholders on whether the right of withdrawal should be extended to loans up to £25,000 to certain small businesses.

#### Implications of Article 14.5

10.33. Where there is a right of withdrawal from an agreement under Article 14, Article 14.5 provides that this right of withdrawal supersedes any right of withdrawal under Directives 1985/577 and 2002/65 (as implemented by SIs 2008/1816 and 2004/2095). However, for agreements outside the scope of the CCD, the right of withdrawal is not given by Article 14. Therefore it would appear that Article 14.5 does not apply and we can only extend the right of withdrawal to these agreements insofar as they do not have a different right of withdrawal under Directives 1985/577 and 2002/65.

**Q39. Do you have any comments on our proposals to extend the right of withdrawal in Article 14 to certain agreements outside the scope of the CCD? Please be specific about the type of agreement in your comments. In particular, do you think that the right of withdrawal should be extended to loans up to £25,000 to certain small businesses? Please explain why or why not.**

### *Exercising the right to withdraw*

10.34. Under Article 14, the consumer has an absolute right to withdraw from a credit agreement within 14 days of the conclusion of the agreement or when receiving the terms and conditions if later. It should be clear in the circumstances when the agreement was concluded (it may differ depending on the type of agreement) and when the terms and conditions were received later than this. We do not propose to define this further.

10.35. As indicated above, the right is to withdraw from a credit agreement, not an agreement for the purchase of goods or services. If the credit agreement has been used to purchase goods or services, the consumer must find another way of paying for the goods or services.

10.36. However, we are aware of concerns about what will happen to the goods if the consumer does not appreciate that the right is not to return the goods or if the consumer is simply unable to find alternative finance. Realistically, there may be situations where the consumer does want to return the goods and the supplier is willing to accept them. We do not want to inhibit this if it presents the best outcome for the parties involved.

#### **Q40. Would it be helpful if we provide that the relevant parts of sections 72 and 73 on the return of goods will apply where the consumer has exercised his right to withdraw and both the consumer and the supplier agree that the goods will be returned?**

10.37. The consumer will be able to give notice of withdrawal in writing, in another durable medium (as defined in Article 3(m) of the CCD) or orally. Article 14.3(a) says that the consumer is deemed to have met the deadline if the notice (if on paper or another durable medium) is despatched on or before the 14th day. We propose to provide that the notice should be deemed to be despatched on the day it is posted, faxed or emailed.

### *Repaying the money*

10.38. Under Article 14.3(b), the consumer must repay the capital and any interest accrued between drawing down and repaying the capital.

10.39. All necessary information about the consumer's right of withdrawal will be included in the terms and conditions, including the amount of interest payable per day (as required by Article 10.2(p)). This should mean that the consumer will be able to work out how much he must repay without reference to the lender. Where he does ask the lender for confirmation of the amount to be repaid, the lender can easily provide this from the terms and conditions. There is no advantage to the lender in refusing to provide the information; he risks the extra cost of engaging in correspondence if the consumer gets the amount wrong or complaints to the authorities of unfair treatment. We do not therefore propose to set out requirements as to how the consumer and creditor should interact to work out the details of repayment, or to impose any duty on the creditor to provide the consumer with information about the amount to be repaid in response to a notice of withdrawal.

10.40. The consumer must repay the capital and accrued interest without undue delay and no later than 30 calendar days after the despatch of the notice of withdrawal. It is understandable that lenders would prefer to use the date the money reaches them as the date for calculating the interest to be paid and the date by which it must be repaid. However, the CCD envisages that the consumer should be able to repay without further reference to the creditor (because of the information required under Article 10.2(p)). This would only be possible if the effective date of repayment is the date the consumer sends the money. This is also consistent with the policy proposal on despatch of notice – that it is deemed to have been sent when posted or emailed. Therefore, we propose that the date the money is deemed to have been repaid for the purposes of calculating the number of days interest owing should be: the day the payment is posted; the day the payment is delivered by hand; or the day in respect of which the consumer has arranged for an electronic payment to be made.

10.41. Article 14.3(b) says that the creditor is not entitled to claim any compensation from the consumer other than for non-returnable charges paid by the creditor to any public administrative body. We think this particular provision is unlikely to be relevant in the UK and do not propose to expand on or clarify it.

10.42. The CCD does not say what should happen if the consumer has given notice of withdrawal but does not repay the money. We propose to provide that although notice of withdrawal has been given, the agreement will continue in force so far as it relates to the repayment of the capital and interest. This would enable the creditor to pursue the consumer for the capital and any interest due in the same way that he would currently pursue a consumer who defaulted on a credit agreement.

10.43. We are not proposing to expand on Article 14.4 as part of the implementation. It should be clear in the circumstances whether something is “an ancillary service relating to the credit agreement”. One obvious example is payment protection insurance.

**Q41. Do you have any comments on our proposals on exercising the right of withdrawal and repaying the money?**

## ***11. Article 15 – Linked credit agreements***

### Summary of the article

11.1. Article 15 deals with two completely different aspects of linked credit agreements. “Linked credit agreement” is defined in Article 2(n) of the CCD.

11.2. Article 15.1 says that where the consumer has exercised a right of withdrawal based on Community law concerning a contract for the supply of goods or services, he shall no longer be bound by a linked credit agreement.

11.3. Article 15.2 provides protection for consumers where a transaction to purchase goods or services is financed by a linked credit agreement. If the supply agreement is not fulfilled, is fulfilled only in part or is not fulfilled as agreed, the consumer can pursue the creditor for a remedy if he has failed to obtain satisfaction from the supplier. Member States can determine to what extent and under what conditions those remedies can be exercised.

11.4. Article 15.3 says that the article is without prejudice to national rules making the creditor jointly and severally liable with the supplier in respect of any claim which the consumer may have against the supplier where the purchase of goods or services from the supplier has been financed by a credit agreement. This means that Member States do not have to implement the provisions in Article 15.2 into national law where they already have provisions dealing with joint and several liability for purchases funded by credit agreements.

11.5. We believe the intention is that national provisions can be retained where they offer equivalent or greater protection than Article 15.2, but if there is a gap the consumer should have a remedy against the creditor in accordance with Article 15.2.

### Existing UK legal requirements

#### *Article 15.1*

11.6. Consumers have a right of withdrawal from a supply agreement under the following pieces of UK legislation implementing European Directives:

- The Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334);
- The Cancellation of Contracts made in a Consumer’s Home or Place of Work etc Regulations 2008 (SI 2008/1816);
- The Financial Services (Distance Marketing) Regulations 2004 (SI 2004/2095); and
- The Timeshare Act 1992.

11.7. All these pieces of legislation provide that the consumer is no longer bound by a linked credit agreement where he withdraws from a supply contract so we consider that the requirements of Article 15.1 are met.

#### *Articles 15.2 and 15.3*

11.8. Section 75 of CCA covers joint and several liability in relation to debtor-creditor-supplier agreements under section 12(b) or (c) (which is further defined by

reference to section 11). In many respects section 75 offers greater consumer protection than Article 15.2, but in some respects it offers less.

11.9. Section 75 goes beyond Article 15.2 in a number of ways including the following:

- It applies to a wider range of credit agreements as it extends to unrestricted use credit agreements and some restricted use credit agreements which are unlikely to fall within the definition of linked credit agreement. The credit in question is unlikely to be “exclusively to finance an agreement for the supply of specific goods or the provision of specific services” or to fall within the scope of a “commercial unit”, as it will cover situations where the supplier has not been involved in the preparation of the credit agreement or the goods or services are not explicitly specified in the credit agreement. For example, section 75 protection extends to purchases made with credit cards whereas the protection in Article 15.2 does not.
- The definition of pre-existing arrangements in section 12 of the CCA covers both direct and indirect commercial arrangements and includes situations where the arrangements in place are between “associates” of the creditor and/or the supplier. For example, the protection will extend to situations where a creditor provides credit even where the main relationship is between an associated company and the supplier. Article 15.2 makes no reference to associates and so protection will only be given where the creditor has a direct relationship with the supplier.
- Section 75 protection extends to certain small businesses and unincorporated associations (provided the amount of credit does not exceed £25,000) who are outside of the scope of the CCD.
- The liability of the supplier and the debtor is “joint and several” and as a result there is no obligation on the debtor to pursue the supplier before action can be taken against the creditor.
- Section 75(2) includes a statutory indemnity in the event that the creditor suffers loss under section 75(1), providing protection for business.
- Section 75 relates to the cash price of the purchase; the amount of the credit agreement is not taken into account. Consumers receive protection for the whole amount of the purchase, regardless of whether the purchase was financed wholly or partly through a credit agreement. Article 15.2 however relates to the amount of the credit agreement and only provides protection for that part of the purchase financed by a credit agreement.

11.10. Article 15.2 goes beyond section 75 in the following ways:

- The protection provided by Article 15.2 applies to all linked credit agreements of more than €200 (£160) and not more than €75,000 (£60,260). Section 75 protection applies where the cash price of the item purchased with the credit is not less than £100 and not more than £30,000. Therefore certain transactions currently excluded from the scope of section 75 - where the linked credit

agreement is in respect of a purchase in excess of £30,000 - will fall within the scope of Article 15.2.

- Article 15.2 protection would also extend to certain credit agreements exempt under the CCA 1974 – principally agreements falling within the high net worth exemption in Section 16A of the CCA where the amount of the credit agreement does not exceed €75,000 (£60,260).

### Our policy proposals

#### *Articles 15.2 and 15.3*

11.11. Article 15.3 means that we can maintain our existing regime in section 75 of the CCA. Section 75 goes beyond Article 15.2 in many respects and is a significant element of the UK consumer protection regime. Article 15.2 offers lesser protection in many ways. We therefore propose to retain section 75.

11.12. Where section 75 falls short of Article 15.2, we consider we need to cover any gap and make provision for the protection offered by Article 15.2. Section 75 falls short of Article 15.2 where the cash price of an item is more than £30,000 and the amount of the credit agreement is not more than €75,000 (£60,260). The high net worth exemption is no longer relevant as far as section 75 goes because it must be restricted to agreements over €75,000 (£60,260) to comply with the CCD.

11.13. We could raise the ceiling in section 75 of the CCA. However, the ceiling relates to the cash price of the item whereas Article 15.2 relates to the amount of the credit agreement. We do not believe that raising the ceiling alone would guarantee coverage of credit agreements up to €75,000 (£60,260).

11.14. We could keep section 75 unchanged and apply the protections in Article 15.2 to the shortfall: purchases where the cash price of the item is not less than £30,000 and the amount of the credit agreement is not more than €75,000 (£60,260). This would ensure that we extend our current level of consumer protection in line with Article 15.2 while minimising the costs. While a dual regime is not ideal, we believe this is the best way forward in the circumstances.

11.15. The new regime would be in two separate and distinct parts. One part would be section 75 as it is now, with the provisions unchanged and applying to those agreements to which it now applies.

11.16. The other part would provide that (as in Article 15.2): where goods or service are covered by a linked credit agreement, consumers can pursue remedies against the creditor if they have tried and failed to obtain satisfaction from the supplier, in the event that the goods or services are not supplied or are supplied only in part or are not in conformity with the contract. It is open to us to determine to what extent and under what conditions this right can be exercised (for example, we could be specific about how far the consumer has to pursue the supplier before approaching the creditor), or to frame the provision in a very general way. This provision would apply to agreements currently not covered by section 75 but within the scope of the CCD – linked credit agreements where the cash price of the item is more than £30,000 and the amount of the credit agreement is not more than €75,000 (£60,260).

11.17. In terms of how consumers would take advantage of the new regime, they would look first to section 75 to see if those protections applied to the agreement in question. If the agreement in question was not covered by section 75, they would then look at the new provision based on Article 15.2 to see if the agreement was covered by that. It is expected that the majority of agreements would continue to fall within section 75 and most consumers would therefore see no change.

**Q42. Do you have any comments on our proposal to implement Article 15.2? In particular, do you think the split between the two parts of the new regime will be clear? Can you think of any situations where it won't be clear whether an agreement is covered or by which part? Do you think the legislation should be specific about what extent and under what conditions the new Article 15.2 right can be exercised? If so, please explain in what way it should be specific.**

## **12. Article 16 – Early repayment**

### Summary of the article

12.1. Article 16 gives the consumer the right to discharge his obligations under a credit agreement fully or partially at any time and the right to a reduction in the total cost of credit corresponding to the interest and costs applicable to the remaining duration of the contract.

12.2. It also gives the lender the right to compensation for costs directly linked to early repayment provided that the early repayment falls within a period for which the borrowing rate is fixed. Such compensation may not exceed 1% of the amount repaid early if the outstanding period of the loan is more than a year, or 0.5% if it is less than a year. This compensation cannot be claimed in certain specified circumstances and it cannot exceed the amount of interest the consumer would have paid in the period between the early repayment and the termination date of the agreement.

12.3. Member States can restrict this compensation so that it can be claimed only where the amount of the early repayment exceeds €10,000, or a lower sum if they choose. They also have the option to permit the creditor to claim higher compensation in exceptional circumstances.

### Existing UK legal requirements

12.4. In the UK, consumers already have the right to repay a credit agreement early. However, the right is only to repay in full; there is no right to make partial early repayments. There is no provision for creditors to claim compensation for costs directly linked to early repayment where the early repayment falls within a period for which the borrowing rate is fixed.

### *CCA*

12.5. Section 94 of the CCA gives consumers under regulated credit agreements the right to settle early in full at any time. The consumer must give the creditor notice of his intentions. The consumer repays the full cost of the loan less a rebate, to reflect the saving in the cost of the credit for the remaining period of the loan.

12.6. Under section 96, where a credit agreement is repaid, the consumer is also discharged from liability under a linked transaction. Linked transactions for this purpose are defined in the Consumer Credit (Linked Transactions) (Exemptions) Regulations 1983 (SI 1983/1560) as amended by SI 2001/3649. They are not linked transactions in the broad sense of, for example, contracts for goods or services to which the credit agreement is ancillary, but more narrowly contracts which are ancillary to the credit agreement.

12.7. Section 97 requires lenders to provide information to consumers on outstanding amounts owed and how these have been calculated. The Consumer Credit (Settlement Information) Regulations 1983 (SI 1983/1564) made under section 97 set out the content of this settlement statement. The statement must be provided within 7 working days and the settlement date should be no more than 28 days after the creditor has received a written request from the consumer. The lender does not have to provide a settlement statement if he has provided one within the past month.

12.8. The Early Settlement Regulations set out the circumstances in which a consumer is entitled to a rebate on early settlement, to reflect the saving in the total cost of the credit. They also set out the items to be included in the calculation of the rebate and the formula to be used to do the calculation. The formula is a standardised way of calculating how much of the outstanding capital and charges have already been paid at the point of early settlement and how much remains to be paid so that the consumer repays the capital in full but pays less in total than he would have done had he not repaid the loan early. The rebate calculated using the formula is the minimum rebate the consumer must receive in the case of early settlement; a creditor may use a different method of calculation as long as this provides a rebate that is as least as generous.

12.9. The Early Settlement Regulations go wider than early settlement requested by the consumer and also cover other situations in which agreements are terminated early, for example in cases of default.

12.10. Where a consumer gives notice of early repayment, the settlement date for calculation of the rebate is normally 28 days after notice of early repayment is received by the creditor unless the consumer specifies a later date. The lender may defer the settlement date by 30 days/one month where the credit is to be repaid over a period of more than a year from the date of the agreement.

12.11. The Early Settlement Regulations replace the Consumer Credit (Rebate on Early Settlement) Regulations 1983 (SI 1983/1562), although the 1983 Regulations continue in force for agreements entered into before 31 May 2005 until 31 May 2010 if the agreement is for more than 10 years.

#### Our policy proposals

12.12. Our approach to implementing Article 16 is governed by three overarching policy objectives:

- The generality of consumers should not have to subsidise those who repay early. This was one of the policy objectives when the previous regime was reviewed and the Early Settlement Regulations put in place and it is still valid. The outcomes of our early settlement regime should not be that consumers who repay early gain a disproportionate advantage over other consumers or that early repayment imposes such a cost on business that they increase charges to the generality of consumers to make up for the cost of those who repay early. But nor should consumers who can repay early be penalised or discouraged from doing so. The ability to repay early encourages switching and therefore promotes competition.
- We want to minimise disruption and confusion for business and consumers by keeping as much of the existing framework as possible. Our early settlement regime was reviewed in 2001 and a new one put in place in 2004. It would not be helpful to users to change a relatively new regime if what we have in place now meets our EU obligations.
- There should be a single framework covering both full and partial early repayment rather than different frameworks for each.

### *Article 16.1*

12.13. This gives consumers the right at any time to discharge fully or partially their obligations under a credit agreement. In such cases, they are entitled to a reduction in the interest and the costs for the remaining duration of the contract. The CCD does not deal with the details of how this right should be exercised.

12.14. We believe our current regime (insofar as it relates to full early repayment) provides a helpful framework which makes the right to repay early workable in practice. It also provides an appropriate and fair balance between the interests of consumers and creditors which we wish to maintain. We consider that it is consistent with the requirement in Article 16.1 in that it does indeed result in a reduction in interest and costs for the remaining duration of the contract, albeit in a standardised form. Therefore, we propose to retain our current framework for full early repayment as outlined above (subject to two changes) and apply this to partial early repayment. This new framework is outlined below.

### *Consumer's reduction/rebate*

12.15. Article 16.1 entitles the consumer to a reduction in the total cost of the credit (for full and partial repayment) while our current regime entitles the consumer to a rebate of the total charge for credit (for full repayment). The terminology is different, but the principle is the same: the consumer should pay less if he repays early than he would if he repaid at the end of the term.

12.16. Under Article 16.1, the consumer's reduction should consist of the interest he would have paid had the agreement run to term for the full amount and the costs for the remaining duration of the contract.

12.17. We consider that the costs for the remaining duration of the contract do not include costs that would fall due during the outstanding period but are not attributable to that period – e.g. an arrangement fee that is being paid off over the life of the agreement. Therefore, the lender could recoup such a fee even if it had been spread over the life of the contract rather than loaded up front. The lender could also recoup the cost of calculating the early repayment, as this would not be a cost for the remaining duration of the contract.

12.18. Costs for the remaining duration of the contract would therefore be the cost of collecting and processing repayments and any other ongoing charge (other than interest) applicable to the remaining part of the loan. The cost of collecting and processing payments would be a normal cost of business, recouped largely through the interest rate. The consumer would therefore get a reduction in this cost as part of the reduction in the amount of interest he would have repaid.

12.19. Under the current UK early repayment framework, the consumer's rebate or reduction is worked out using an actuarial formula devised by the Government Actuary's Department (set out in the Early Settlement Regulations). This formula works out how much of the agreement remains to be paid at the settlement date and this sum is subtracted from the total amount of the repayments that would have fallen due after the settlement date if early repayment had not taken place, giving the consumer's rebate. We are proposing to keep this formula for full early repayment.

12.20. The consumer is also entitled to a reduction for partial early repayment. In addition, the amount that remains to be paid off after the partial early repayment and a new repayment schedule will need to be calculated. The Government Actuary's Department has devised a formula to be used for working out these two figures.

12.21. As now, the formulae will provide a minimum rebate. The lender will still be able to use a different method of calculation as long as it gives the same or a more generous rebate than that calculated using the formula.

12.22. The rebate formulae are discussed in more detail immediately after the next section.

#### *Settlement date/30 day deferral*

12.23. Currently, the consumer's rebate and the amount of credit to be repaid are normally calculated at a date 28 days after the creditor has received notice of the consumer's intention to repay early. The 28 day settlement date provides a set time from which to make calculations and allows the lender time to calculate the amount of the rebate and inform the consumer and the consumer to send in the money. The concept of a settlement date helps to make early repayment work in practice and specifying one prevents abuse. We therefore propose to retain the 28 day settlement date for full early repayment.

12.24. We also propose to apply it for partial early repayment. A settlement date is less necessary for partial early repayment because the agreement will continue and there is less need for correspondence between the consumer and the creditor to sort out the details. However, we believe that it is useful to have a set date from which to make calculations that is clear to both parties involved. It allows time for administrative procedures to be completed (for example, if the consumer needed to amend his direct debit for the instalment payments).

12.25. Currently, the creditor may (but does not have to) defer the settlement date by 30 days/one month where the credit is to be repaid over more than a year. The Early Settlement Regulations give the creditor the option of one month or 30 days where a month is longer or shorter than 30 days. When the Regulations were made, it was considered that this flexibility would reduce costs for business.

12.26. Although it is expressed as 30 days/one month's deferral, in practice it means that the consumer pays a month's interest on the amount repaid early; he does not have to wait an extra month to send in his money. It is intended to allow the lender to recoup fixed costs already incurred that would normally be recouped over the full term of the loan and the administrative costs of processing the early repayment. Rather than require lenders to make complex calculations to work out how much they can recoup in each case, this works as a rough and ready proxy. In some cases, the lender will lose out by this, and in other cases the consumer will lose out, but overall it is considered fair to lenders and consumers as a whole. This ability to recoup costs in the event of early repayment is important in ensuring that the generality of consumers do not have to subsidise those who repay early. We do not therefore wish to change the outcome.

12.27. However, the requirements could be made more transparent. The 30 day/one month deferral equates to one month's interest on the amount repaid early. It could be expressed as an option to charge 30 days/one month's interest on the amount repaid early where the credit is to be repaid over more than a year. The Government Actuary's Department advises that this approach should give broadly the same outcome as the current approach.

12.28. We also propose to permit the 30 days/one month's interest in the case of partial early repayment where the agreement provides for the credit to be repaid over more than a year. The result will be proportionate to the amount of the repayment.

12.29. It is important that there is a level playing field for partial and full early repayment, both for consumers and creditors. The effect of a single full early repayment should be the same as the effect of a series of partial early repayments, so that we do not tilt the market in favour of one or the other. This is a strong argument for applying the 28 day settlement period and the 30 days/one months interest to partial early repayment. If we reduced or did away with either for partial early repayment, the consumer who made a series of partial early repayments would be better off than the consumer who made a single full repayment, and the creditor would be worse off if a number of partial early repayments were made rather than a single early repayment.

**Q43. Do you agree with our proposal to replace the 30 days/one month deferral with 30 days/one month's interest on the amount repaid early in the early repayment calculation (where the credit is to be repaid over more than a year)? If not, please explain why. Should this now be standardised at one month or 30 days? Do you agree with the proposal to apply this and the 28 day settlement date to partial early repayment? If not, please explain why.**

*Rebate formulae*

12.30. For full early repayment, we propose to retain the current position that the consumer's rebate is the difference between the total amount of repayments of credit that would be due for payment after the settlement date if early repayment did not take place and the figure given by the following formula (this is the current formula, which we propose to retain):

$$\sum_{i=1}^m A_i(1+r)^{a_i} - \sum_{j=1}^n B_j(1+r)^{b_j}$$

where:

$A_i$  = the amount of  $i$ th advance of credit

$B_j$  = the amount of the  $j$ th repayment of credit

$r$  = the annual rate equivalent of the APR/100 (ie if rate of interest is 12%,  $r = 0.12$ )

$m$  = the number of advances of credit made before the settlement date

$n$  = the number of repayments of credit made before the settlement date

$a_i$  = the time between the  $i$ th advance of credit and the settlement date expressed in years and days, or whole weeks or months, as appropriate, and

$b_j$  = the time between the  $j$ th repayment of credit and the settlement date expressed in years and days, or whole weeks or months, as appropriate

Settlement date = up to 28 days from date of notification of early repayment.

12.31. As now, this formula will provide a minimum rebate. The lender will still be able to use a different method of calculation as long as it gives the same or a more generous rebate than that calculated using the formula.

12.32. Where the term of the loan is more than a year, the lender may (but does not have to) add 30 days/one month interest on the amount repaid early, reducing the rebate by this amount (instead of calculating the rebate with the settlement date deferred by 30 days/one month as he may do now).

12.33. For partial early repayment, the consumer's rebate will be determined by taking the amount of the repayments of credit that would fall due for payment after the settlement date if early settlement did not take place and subtracting the total of the repayments that remain to be made after the partial early repayment and the amount of the partial early repayment. Expressed as a formula, this would be:

$$\text{Rebate} = F - \sum_{x=1}^q E_x - P_T$$

where:

$F$  = the total of the repayments of credit that would fall due for payment after the settlement date if early settlement did not take place

$\sum_{x=1}^q E_x$  = total of repayments that remain to be made after partial repayment

$E_x$  = the amount of  $x$ th repayment of credit after time T

$q$  = the number of loan instalment repayments to be made after the settlement date T

$P_T$  = amount of the early partial repayment to be made at time T, net of any additional 30 day/one month interest payment.

12.34. Again, where the term of the loan is more than a year, the lender may (but does not have to) add 30 days/one month interest on the amount repaid early, reducing the rebate by this amount.

12.35. The Government Actuary's Department has produced a formula to calculate the rescheduled payments after partial early repayment, which works both if the term is being amended and the regular instalment payments are remaining the same and/or if the regular instalment payments are being amended. We do not intend to deal with the question of how the partial early repayment is used as part of the CCD implementation. The formula is:

$$S - P_T = \sum_{x=1}^q E_x (1+r)^{e_x}$$

where:

$S$  = amount that remains to be paid calculated at the settlement date (the figure given by the formula at paragraph 12.30)

$P_T$  = amount of the early partial repayment to be made at time T, net of any additional 30 day/one month interest charge  
 $q$  = the number of loan instalment repayments to be made after the settlement date T  
 $E_x$  = the amount of  $x$ th repayment of credit after time T  
 $r$  = the annual rate equivalent of the APR/100 (ie if rate of interest is 12%,  $r = 0.12$ )  
 $e_x$  = the time from time T to payment of the  $x$ th repayment, expressed in years and days, or whole weeks or months, as appropriate.

12.36. The amounts  $E_x$  need not be equal, nor need the intervals at which they are advanced,  $e_x$ , be equal. Here,  $E_x$ ,  $q$ ,  $e_x$  and  $P_T$  are all factors which could be varied as the borrower or lender wishes. However, only one can be an unknown in order to do the calculation. These can also be varied to give the answer to queries such as 'What partial repayment must I make in order to shorten the term by  $x$  repayments or to reduce the repayments by a given percentage or amount?'

12.37. Requiring lenders to use this formula to work out the rescheduled payments after partial early repayment would ensure that all consumers are treated equally. It could also reduce costs for some lenders by providing a standard method of calculation. However, it may increase costs unnecessarily for other lenders who already have a method of working out rescheduled payments.

12.38. Worked examples using the formulae are available from the Consultations section of the BERR website at [www.berr.gov.uk](http://www.berr.gov.uk).

**Q44. Do you have any comments on the proposed formula for partial early repayment? Do you think it would be helpful for consumers and lenders if we specify a method of calculating the rescheduled payments following partial early repayment? Please explain why or why not. Do you agree that this formula for calculating rescheduled payments works? If not, please explain why.**

*Notice*

12.39. Currently, consumers have to give notice of their intention to repay early. This requirement will be retained and extended to partial early repayment. We do not believe that the requirement to give notice inhibits the consumer's right to repay early. It allows him to signal clearly his intentions to the creditor. In the case of full early repayment, notice can act as a trigger for the creditor to provide information on how much the consumer will have to repay. In the case of partial early repayment, it will be particularly important to make the consumer's intentions clear to the lender. It would be burdensome on lenders to have to treat a small "rounding up" of the instalment payments (say from £9.50 to £10.00) as a partial early repayment. And it could disadvantage consumers if a payment they made early, for example because they were going on holiday was treated as a partial early repayment rather than the next month's payment, meaning they were in default the next month.

12.40. Currently notice of early repayment must be given in writing. We propose to make it easier for consumers to repay early by allowing notice to be given in writing, in another durable medium (as defined in Article 3(m) of the CCD) or orally. This change reflects what we understand happens now; although the current requirement is for written notice, oral notice is often given and accepted.

**Q45. Do you agree with the proposal to allow notice of early repayment to be given in another durable medium or orally as well as in writing? If not, please explain why.**

*Settlement statement*

12.41. We propose to retain the option for consumers to request a settlement statement for full early repayment, and the limit to one statement a month. The statement is valid for a month so there does not seem to be any need for the consumer to get statements more frequently, and in any case the provision of a statement is not a prerequisite to repaying early.

12.42. As with the notice of early repayment, the request for a settlement statement will no longer have to be in writing. It can be in writing, in another durable medium or oral.

12.43. We considered whether consumers should have the right to request a settlement statement showing the impact of a partial early repayment before making one. It was not clear how much benefit this would provide to consumers. If a consumer is making a partial early repayment, it is likely he will have a specific sum that he wants to repay. He will not need a settlement statement to decide whether or not to repay that sum. However, he will need something similar after he has made the partial early repayment, so he is clear what the impact has been on his loan. We are not therefore proposing to give consumers the same right to request information in advance of making a partial early repayment that they have for full early repayment. However, we do propose to require lenders to provide similar information to that currently required under the Consumer Credit (Settlement Information) Regulations for full early repayment to explain the effect of the partial early repayment on the loan. This could be provided in response to a notice of partial early repayment or after the partial early repayment has taken place. We do not propose to specify a particular format for the information.

**Q46. Do you agree with our proposal to require lenders to provide consumers with information on the effect of a partial early repayment notified or made? If not, please explain why.**

*Article 16.2*

12.44. Article 16.2 says that the creditor is entitled to compensation for any costs directly linked to early repayment provided that the early repayment falls within a period for which the borrowing rate is fixed.

12.45. In our view, this compensation is for costs incurred as a result of changes in interest rates where the borrowing rate in the credit agreement is fixed. Where money lent out at a fixed interest rate is repaid and interest rates are now lower than the fixed rate, the creditor will have to lend out the repaid money at a lower interest rate, thereby losing money (incurring a cost); he is entitled to compensation for this. If the loan was at a variable rate (so the repaid money can be lent out at the same rate) or if the rate was fixed but interest rates have risen (so the repaid money can be lent out at a higher rate), the lender is not entitled to compensation.

12.46. To implement Article 16.2, we will permit creditors to claim compensation for early repayment where it is made during a period for which the borrowing rate is fixed and where they have incurred a cost as a result of this.

12.47. This compensation should be fair and objectively justified and may not exceed 1% of the amount repaid if there is more than a year remaining of the agreement or 0.5% if there is less than a year remaining. Recital 39 states that the calculation method of the compensation should be clear to consumers at the pre-contractual stage and later, the method should be easy for creditors to apply and supervisory control of the compensation should be facilitated. We do not propose to prescribe any method for calculating the compensation. We consider that it would be difficult to do this in the abstract, without knowing the circumstances at the time. It will be left to creditors to calculate the compensation as appropriate in the circumstances and explain (and justify if challenged) their method of calculation. Creditors must include information on the calculation of this compensation in the SECCI and the credit agreement (this is required by Articles 5 and 10 of the CCD).

12.48. This compensation will be a completely separate item to anything contained in the consumer's reduction/rebate. It will not be included as an item in the rebate formula. We propose to require creditors to include any figure claimed for this compensation in the settlement statement for full early repayment or equivalent information for partial early repayment, as a separate item, so the consumer has the full picture.

**Q47. Can you suggest any other costs that would be directly linked to early repayment but would only be incurred where the early repayment falls within a period for which the borrowing rate is fixed? Do you agree with our proposal to leave it to creditors to decide how to calculate compensation for changes in interest rates in the event of early repayment, where this is being claimed? If not, please explain why.**

*Articles 16.3 and 16.4*

12.49. Article 16.3 says that this compensation may not be claimed if repayment has been made under an insurance contract intended to provide a repayment guarantee, for an overdraft or if the repayment falls within a period for which the borrowing rate is not fixed.

12.50. Article 16.4 allows Member States to provide that compensation may be claimed by the creditor only on condition that the amount of the early repayment exceeds €10,000 or such lower threshold as may be set by Member States. It also allows Member States to permit creditors exceptionally to claim higher compensation if they can prove that the loss suffered exceeds the amount determined under Article 16.2.

12.51. Such compensation is not currently a feature of the UK early settlement regime. The current UK regime was introduced in 2004/5 and was considered to provide an appropriate and fair balance between consumers and creditors. We have no reason to change that view and therefore wish to maintain the balance of the system as far as possible. We are retaining our current early repayment regime. We have to allow some compensation under Article 16.2, but we do not consider that there is a good argument for disturbing the balance by allowing more than the

minimum. In addition, it is probably the case that interest rate costs are more relevant to larger loans. Therefore, we propose to exercise the Member State option in Article 16.4(a) and provide that compensation for changes in interest rates can only be claimed where the total amount of one or more early repayments exceeds £8,000 (the figure given using the exchange rate specified by the CCD is £8034). We do not propose to exercise the Member State option in Article 16.4(b) to allow extra compensation in certain circumstances.

**Q48. Do you have any comments on our proposals regarding the Member State options in Article 16.4?**

*Early repayment other than at the instigation of the debtor*

12.52. The current early repayment framework provides a right for the debtor to discharge his indebtedness under the agreement by notice. It also allows for early repayment other than at the instigation of the debtor. We propose to retain that provision for full and partial early repayment. However, a right to a rebate only arises where the debtor's indebtedness is discharged in full (for whatever reason). It does not arise where indebtedness is discharged in part. There does not seem to be any logical reason why the debtor should not be entitled to a rebate where the creditor has initiated partial early repayment. We therefore propose to extend entitlement to a rebate to partial early repayment other than at the instigation of the debtor.

12.53. We do not propose to allow the creditor to claim the Article 16.2 compensation in this situation, where the early repayment is at his instigation and therefore the timing is in his control.

*Effect on linked transactions*

12.54. Section 96 provides that repayment of the main agreement will discharge liability under a linked transaction. In this context, a linked transaction is one that is ancillary to the credit agreement. Article 16 does not make any reference to what happens to linked transactions in the event of early repayment (in contrast, Article 14 does deal with the effect of withdrawal on ancillary services), so we are free to cover this as we see fit. We consider that section 96 would facilitate early repayment and is in line with the intention of Article 16. Therefore, we propose to retain the provision in section 96 with regard to full early repayment (whether at the instigation of the debtor or otherwise).

12.55. We believe that this provision may also be relevant for partial early repayment in certain circumstances. We would therefore propose to extend section 96 to partial early repayment on the basis that liability under a linked transaction will be reduced proportionately where the cost of providing the linked service or the liability of the linked service is reduced as a result of the partial early repayment.

**Q49. Do you agree that section 96 should cover partial early repayment on the basis we have proposed? Can you see any problems with this? If so, please give details.**

## *Scope*

12.56. The right to partial early repayment will apply in respect of all types of credit agreements to which the CCA currently applies, with the exception of second charge mortgages. As the right to full early repayment already applies to all CCA agreements, it makes sense to extend the right to partial early repayment to them.

### Pawnbroking

12.57. The current early repayment regime applies to pawnbroking. Given that we are maintaining our existing regime for full early repayment, there does not seem to be any reason to change that position. If consumers have a right to repay early in full, it seems reasonable that they should also have a right to repay early in part. It also seems reasonable that consumers using pawnbrokers should have the same rights as consumers taking out other types of credit agreement. In any case, the retention of the existing provisions on the settlement date would probably mean that any early repayment in the case of pawnbroking could continue to be made by means of redeeming a pledge early and, where appropriate, borrowing a smaller amount (provided that the interest rate did not in the meantime increase). However, we appreciate that pawnbroking is different from other credit agreements in several respects and it may be that partial early repayment is less relevant or more difficult to apply in practice than for other types of credit agreements. It would be particularly helpful to have comments on applying the right to partial early repayment to pawnbroking.

### Hire purchase and conditional sale

12.58. Hire purchase and conditional sale agreements are covered by the current CCA early repayment regime, although they are excluded from the entitlement to a rebate where they are terminated under section 99 (regulation 2(3) of the Early Settlement Regulations). This is because section 99 is not about early repayment; it provides a right to return goods and in our view is therefore outside the scope of the CCD. A consumer who terminates an agreement under section 99 is not repaying early and is not therefore entitled to a reduction in the total cost of the credit.

**Q50. Do you agree with our proposal to extend the scope of the agreements to which the right of early repayment will apply? If you do not agree, please be specific about the type of agreement that should not be covered and why. Are there any particular difficulties with extending the right to partial early repayment to pawnbroking? If so, please explain why.**

### **13. Article 17 – Assignment of rights**

#### Summary of this article

13.1. Article 17.1 says that if a creditor's rights under a credit agreement or the agreement itself are assigned to a third party, the consumer can plead against the assignee any defence which was available to him against the original creditor, including set-off where permitted in the Member State.

13.2. Article 17.2 says that the consumer must be informed of the assignment except where the original creditor has agreed with the assignee to continue to deal with the consumer.

13.3. The aim of Article 17 is to ensure that the consumer is not placed in a less favourable position following an assignment (see Recital 41).

#### Existing UK legal requirements

13.4. Section 189 of the CCA provides definitions of debtor and creditor which clearly recognise the transfer of rights and duties being passed by assignment or under operation of law:

- "creditor" means the person providing credit under a consumer credit agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and in relation to a prospective consumer credit agreement, includes the prospective creditor;
- "debtor" means the individual receiving credit under a consumer credit agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and in relation to a prospective consumer credit agreement includes the prospective debtor.

13.5. Under the Law of Property Act 1925 (section 136), an assignment of a thing in action is a legal assignment if it satisfies the conditions in the section, namely the assignment is absolute and not by way of a charge, is in writing and written notice of the assignment is given to the debtor. However, an assignment which does not satisfy these requirements e.g. no notice has been given to the debtor may nevertheless be valid as an equitable assignment (although clearly where servicing has been transferred, it is likely to be in the assignee's interest for notice to be given, if only to ensure that payments are no longer to be made to the assignor).

13.6. The question of set-off is raised in the CCD which makes reference to consumers having the same defence rights against the assignee as the original creditor, including set off. In the UK, in principle where the right of the assignor is subject to a set-off on the part of the debtor, the debtor may avail himself of this right against the assignee, provided the right has accrued before notice of assignment: but this right of set-off may be ruled out by express or implied terms of the contract. In our view, the CCD does not affect the position in the UK regarding set-off and we do not propose introducing any changes in this respect.

## Our policy proposals

13.7. We believe that the requirement that the consumer's rights should be maintained after an assignment does not differ from current UK general law principles. Through a combination of section 136 of the Law of Property Act 1925 and the existing definitions of debtor and creditor within section 189 of the CCA, the requirements of Article 17.1 are satisfied. We do not therefore propose to make any additions to UK law to implement Article 17.1. Similarly we do not believe there is any intention or need for UK law on set-off to be altered so again we do not propose to make any changes to cover the reference to set off.

13.8. The requirement to inform the consumer of the assignment is not fully reflected in UK law, as there is no requirement to inform the consumer in the case of equitable assignments. We therefore propose to introduce a new requirement to implement Article 17.2 to the effect that, in the case of an equitable assignment, where servicing of the debt is transferred to another party by the assignor, the consumer must be notified of this fact.

13.9. The CCD does not make clear whether the duty to communicate lies with the assignee, the assignor or both. Current UK law on assignment similarly does not stipulate which party should provide advice of assignment. Where the communication only comes from the assignee, this may be inadequate from the consumer perspective as clearly the relationship to that point has been with the assignor.

### **Q51. Do you have any concerns regarding which party provides notice of assignment and whether this requires clarification in legislation?**

13.10. In addition, we believe that it is necessary to clarify the meaning of "servicing the credit". We understand there may be situations where the original creditor has subcontracted servicing to a third party and, following assignment of the debt, the same third party (subcontractor) will continue to service the debt. In these situations, but only relative to equitable assignments, it should not be necessary for communication of the assignment to be made to the consumer. However, where the assignment is a legal assignment, regardless of whether servicing remains with the same 3rd party, it is (and will) still be necessary for notice of the assignment to be given in writing.

13.11. We therefore propose to provide that the consumer shall be informed of the assignment of a consumer's rights under a credit agreement except where the assignment is an equitable assignment and payments and account maintenance continue to be handled by the same party, whether this be the initial creditor (assignor) or a third party to whom such responsibility has been delegated by the initial creditor.

### **Q52. Do you agree that no changes to UK law are required to implement Article 17.1? If not, please explain why and give an indication of the changes that you think are needed.**

## **14 Article 19 – Calculation of the APR**

### Summary of the article

14.1 Article 19 and Annex I of the CCD set out the requirements on how the Annual Percentage Rate of Charge (APR) must be calculated, including the assumptions to be used when the terms of the agreement have not been finalised.

14.2 The APR is defined (in Article 3(ii)) as:

14.3 The total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable including the costs referred to in Article 19.2.

14.4 For the purpose of calculating the APR, Article 19 states that the total cost of the credit to the consumer must be determined, exclusive of any non compliance charges payable by the consumer and any charges he is obliged to pay whether the transaction is effected in cash or on credit (other than the purchase price itself). The costs of maintaining an account recording both payment transactions and drawdowns, the costs of using a means of payment for both payment transactions and drawdowns, and other costs relating to payment transactions must be included in the total cost of credit to the consumer unless the opening of the account is optional and the costs of the account have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.

14.5 The calculation of the APR must be based on the assumption that the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement.

14.6 Where the credit agreement allows variations in the borrowing rate and, where applicable, charges which form part of the APR, but these cannot be quantified at the time of calculation, the APR must be calculated on the assumption that the initial borrowing rate and other charges will remain fixed for the entire period of the credit agreement.

14.7 Where necessary, the additional assumptions set out in Annex I may be used to calculate the APR. If these assumptions do not enable the calculation of the APR “in a uniform manner” or “are not adapted any more to the commercial situation at the market” (Article 19.5), the Commission may develop additional assumptions or amend the existing assumptions.

### Existing UK legal requirements

14.8 Section 20 of the CCA gives the Secretary of State power to make regulations concerning the total cost of credit to the consumer. The Consumer Credit (Total Charge for Credit) Regulations 1980 (SI 1980/51) specify what items are to be treated as part of the total charge for credit, how the amount of these items is to be calculated and the method for calculating the rate of the total charge for credit. These requirements were subsequently refined by the Consumer Credit (Agreements) Regulations 1983 (SI 1983/1553), the Consumer Credit (Total Charge for Credit,

Agreements and Advertisements) (Amendment) Regulations 1999 (SI 1999/3177) and Consumer Credit (Advertisements) Regulations 2004 (SI 2004/1484).

### Our policy proposals

14.9 The CCD has adopted much of the UK approach to determining the total charge for credit, but it has presented it in a higher-level and simplified manner and we will have to change the current UK regime to comply with Article 19.

#### *The formula*

14.10 Annex 1 of the CCD sets out the formula to be used by creditors in calculating the total charge for credit. This will have to replace the current UK formula – itself taken from the 1987 Directive. However the mathematical effect of the new formula is identical to the effect of the present UK formula. It has simply been updated in line with accounting best practice.

14.11 In terms of time intervals in APR calculation, the CCD indicates this can be expressed in years or fractions of a year (a year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months). While a year is stated as having 365 days or 366 days for leap years, when considering equal months, it notes that an equal month is presumed to have 30.41666 days regardless of leap years.

#### *The assumptions*

14.12 Many of the assumptions set out in the CCD are broadly similar to the ones used in the UK. However, they are less sophisticated and do not deal with as wide a range of situations.

14.13 Discussion with stakeholders suggests that the higher level assumptions do not create material gaps and would not result in differing interpretation by lenders in their APR calculation. A number of clarifications are proposed and these are discussed in subsequent paragraphs.

### **Q53. Do you agree that there are no gaps in the assumptions set out in Article 19 and Annex I and/or do you think that in any given situation there could be significant variation in the answer produced by the APR calculation given the higher level assumptions of the CCD?**

14.14 Annex I Part II (b) deals with the interest rate and charges to be assumed in calculating the APR in situations where the credit agreement provides different ways of drawdown with different rates or charges being applicable. It states that the rates and charges to be used will be the highest rates and charges as appropriate to the “most common drawdown mechanism” for the type of credit agreement. This particular aspect of the assumptions gives creditors responsibility for identifying the appropriate mechanism to be used which contrasts with our current approach in the UK where the drawdown method is prescribed in the regulations listed above as “the rate of interest and charges payable in relation to the whole of the credit for the purchase of goods, services, land or other things”. This will require lenders to look at the typical transactional pattern of individual products. We propose that this should be based on volume of activity rather than value but limited to the population of existing active accounts.

14.15 Although the assumptions do not make a distinction between running account credit and other forms of credit, nevertheless this distinction can be inferred. Annex I Part II (d) refers to agreements where there is no fixed timetable for repayment, while Annex I Part II (e) refers to agreements where there is a fixed timetable for repayment. In respect of credit card accounts where minimum payment rates are quoted we take the view that, as there is no fixed end date for such accounts and one cannot be inferred because borrowers are not limited to paying the minimum amount, there is therefore no fixed timetable. We propose to clarify this so that the assumption at Annex I Part II (d) must generally be applied in respect of running account credit (including credit cards), while the one at Annex I Part II (e) is relevant to fixed-term agreements.

14.16 Where there is no fixed timetable (for running account credit), Annex 1 Part II (d) suggests that the "credit" will be assumed to be provided for a period of one year and the "credit" will be repaid in 12 equal instalments and at monthly intervals. The use of the term "credit" creates a lack of clarity as to what assumption should be made concerning repayment of charges including interest. "Credit" is not defined in the CCD. The "total amount of credit" is defined as "the ceiling or the total sums made available under a credit agreement". This definition, along with other usage of "credit" in the CCD, suggests that "credit" here means only the sums advanced, not deferment of related costs and charges. However, the notion of amount repayable is introduced in Article 3(h) where "total amount payable by the consumer" is defined as "the sum of the total amount of the credit and the total cost of the credit to the consumer".

14.17 The Consumer Credit (Agreements) Regulations 1983 and the Consumer Credit (Advertisements) Regulations 2004 also refer to "credit" being repaid in 12 equal instalments. OFT Guidance 746 [Consumer Credit (Advertisements) Regulations FAQs, issued September 2005] states that "repayments of 'credit' for these purposes should be taken to include any interest or other charges applicable to the 12 month period in question."

Accordingly, in the absence of any contrary evidence, we propose to implement this assumption as requiring that credit will include any interest and other relevant charges.

**Q54. Do you agree with our proposed positions on the APR assumptions (b), (d) and (e) in Annex I? If not, please explain why.**

14.18 Annex I Part II (g) provides that if the credit limit or amount of credit has not yet been agreed, the limit is assumed to be €1500. Article 19.5 says that "...where necessary the additional assumptions set out in Annex 1 may be used...". The way in which the amount of credit or the credit limit is to be shown is dealt with in Chapters 2, 3 and 7 on Advertising, Pre-contractual Information and Contractual Information.

*Tolerances*

14.19 The current UK regulations permit tolerances in APR calculations. A percentage rate which exceeds the APR by not more than 1 or falls short of the APR by not more than 0.1 will be acceptable. The CCD however does not refer to such tolerances.

**Q55. Does the removal of the existing UK APR tolerances raise any issues?**

*Definition of total cost of credit*

14.20 The CCD defines the total cost of credit (in Article 3(g)) as meaning all the costs which the consumer has to pay in connection with the credit agreement. In the current UK regulations the total cost of credit also includes charges "...payable under the transaction by or on behalf of the debtor or a relative of his whether to the creditor or any other person...". We propose to maintain the UK approach.

Scope

14.21 We propose that the APR requirements in Article 19 and Annex 1 of the CCD should be applied to all credit agreements regulated by the CCA and for which APRs are currently required, with the exception of 2nd charge secured credit products.

14.22 We believe this approach will benefit both consumers and lenders. For consumers, there will be greater comparability of APRs. For lenders, there will be consistent APR requirements across the range of credit products.

**Q56. Do you agree with our proposal to extend the scope of Article 19 to all CCA-regulated credit agreements with the property related exceptions noted above? If not, please explain why, with reference to different types of credit agreements outside scope.**

**15. Article 20 – Regulation of creditors**

15.1 Article 20 requires Member States to ensure that creditors are supervised by a body or authority independent from financial institutions, or regulated.

15.2 The UK already has a long standing (and recently bolstered) framework for the licensing and supervision of those offering consumer credit, by the Office of Fair Trading. We do not need to change our framework in order to implement this Article.

## **16. Article 21 – Credit intermediaries**

### Summary of this article

16.1 Article 21 of the CCD imposes three requirements on credit intermediaries:

- they must disclose in advertising and other documentation intended for consumers the extent of their powers, and in particular whether they work exclusively with one or more creditors or as an independent;
- any fee charged to the consumer by the credit intermediary for his services must be agreed with the consumer and disclosed on paper or a durable medium before the conclusion of the credit agreement;
- they must communicate to the creditor the fee (if any) payable by the consumer to the intermediary, to use in calculating the APR.

16.2 Credit intermediary is defined in Article 3(f) of the CCD.

### Existing UK legal requirements

16.3 The term credit intermediary is not used in the CCA, but there is a similar term credit brokerage defined in sections 145 and 146. The difference between the two terms is discussed below at paragraphs 16.9 to 16.16.

16.4 There are currently no requirements in the CCA regarding the disclosure by credit brokers of ties with creditors. However, the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) could potentially have an equivalent effect. Failure to make clear ties to lenders may constitute an unfair (misleading) commercial practice. There are similar disclosure requirements on mortgage brokers in the Financial Services Authority handbook on mortgages and home finance. Also, OFT's Guidelines on Non-status Lending (which other lenders are encouraged to follow) state that brokers should disclose their status with regard to the borrower and lender and the extent of the service offered to the borrower. Advertisements should indicate if a broker is tied to a particular lender. Anecdotal evidence suggests that these things may also be disclosed in other sectors of the market on a voluntary basis as best practice.

16.5 There are no explicit requirements in the CCA for a credit broker to disclose any fee payable by the consumer for the broker's services and agree it on paper or a durable medium. However, there are other relevant requirements which mean that in practice brokerage fees are included in the APR and may well be disclosed and agreed with the consumer. The Consumer Credit (Total Charge for Credit) Regulations 1980 (SI 1980/51) provide that any brokerage fee should be included in the total charge for credit. Brokers are caught by the Consumer Credit (Advertisements) Regulations 2004 (2004/1484) which means that they must include the APR (where triggered) in any advertisements they place. Again, the requirement is covered for mortgage brokers in the Financial Services Authority handbook and in OFT's non-status lending guidelines (the broker should disclose at the outset any brokerage fee or commission payable by the borrower or lender).

16.6 There is no explicit requirement for the broker to inform the lender of any brokerage fee paid by the consumer. However, if the lender (rather than the broker) is

working out the total charge for credit, he would need to know any brokerage fee (given that brokerage fees must be shown in the total charge for credit).

16.7 Therefore, to a certain extent, the actions required by Article 21 already happen in at least some sectors of the UK consumer credit market, through a mixture of best practice and existing regulations that have a similar effect. However, the picture is not consistent and none of the provisions are currently explicit requirements in UK law. Explicit requirements must be introduced to ensure the CCD is implemented fully.

#### Our policy proposals

16.8 The requirements in Article 21 are straightforward and there is little flexibility around how we implement this Article. Any flexibility lies in interpretation of terms. Our proposals for implementation are set out below.

#### *Definition of "credit intermediary" – Which businesses are caught?*

16.9 The term "credit intermediary" is defined in Article 3(f) of the CCD. Recital 16 gives guidance on how the term should be construed. In particular, it makes it clear that co-branding and affinity partners are not caught by the definition. Therefore, a charity that lends its name to a credit card, for example, would not fall within the definition of credit intermediary.

16.10 The CCA does not use the term credit intermediary. The closest parallel is credit brokerage, which is defined in sections 145 and 146 of the CCA. The main points of difference between the two terms are:

- credit brokerage does not require a fee to be paid, whereas a credit intermediary must charge a fee;
- credit brokerage involves "the effecting of introductions" whereas the definition of credit intermediary refers to "presents or offers credit agreements" (the two phrases would not necessarily cover the same actions, although it may be a matter of interpretation how different the actions really are);
- the reference in the definition of credit intermediary to "assists consumers by undertaking preparatory work" could catch advisors and form fillers (who charge a fee) but such activities alone are unlikely to be caught by the definition of credit brokerage;
- a credit intermediary could enter into credit agreements with debtors as an agent of the creditor without necessarily effecting any introduction between the parties (if someone else has done that), whereas effecting introductions is a key part of the definition of credit brokerage;
- credit brokerage covers business to business transactions (for lending up to £25,000) as well as business to consumer transactions (it is irrelevant for the purposes of the definition whether the individuals who are introduced want the credit for business or non-business purposes);

- credit brokerage applies to the introduction of individuals to creditors who are carrying on certain credit business which falls within the exemptions of the CCD; and
- credit brokerage applies not only to the introduction of persons desiring to obtain credit to persons supplying credit but also to the introduction of persons desiring to obtain goods on hire to persons carrying on a hire business.

16.11 The two definitions will cover the same businesses to a certain extent but it is unlikely that all credit brokers would also be credit intermediaries or vice versa.

16.12 here are several options for how we could deal with the difference in defined terms in implementing Article 21:

- replace the CCA definition of credit brokerage with the CCD term credit intermediary;
- extend the CCA definition of credit brokerage so that it covers all activities falling within the CCD definition of credit intermediary and apply the term to the new requirements on credit intermediaries;
- retain the CCA term credit brokerage unchanged and apply the term credit intermediary specifically to the new provisions based on Article 21

16.13 The option of replacing our existing definition of credit brokerage with the CCD definition of credit intermediary is not attractive as credit brokerage is used in several contexts in the CCA and has an entrenched meaning. To remove it would be difficult, could impact on non-CCD areas and could have unintended and undesirable consequences.

16.14 The option of extending the CCA definition of credit brokerage and applying to it the new requirements on credit intermediaries would create a homogeneous group to which the same requirements applied; this has advantages for consumers, business and regulators. However, it would mean that any intermediaries that are not currently credit brokers would fall within that definition and therefore be caught by all the requirements currently attached to credit brokers (including licensing by OFT). It would also mean some businesses that would not fall within the CCD definition of credit intermediary may be caught by the Article 21 requirements. We would need to be clear on the impact of this, both in terms of the number of businesses affected and the impact on individual businesses.

16.15 The option of retaining credit brokerage as it is currently used and introducing the term of credit intermediary specifically for the Article 21 requirements would not disrupt current requirements and would not introduce additional burdens on business. A drawback of this approach is that some businesses may fall within only one definition but offer very similar services to those covered by the other definition. The differing requirements could cause confusion and difficulty for consumers, regulators and business itself.

16.16 On balance, we are inclined to think that extending the CCA definition of credit brokerage so that it covers activities that fall within the definition of credit intermediary would be preferable, provided this does not result in an excessive impact on business

(either in terms of the number of businesses affected or the impact on individual businesses). We need to be clearer on the impact of this and would be grateful for comments from consultees.

**Q57. Do you think businesses in this sector would fall within both the definition of credit intermediary and credit brokerage? If not, how many businesses would fall within the definition of credit intermediary but not credit brokerage? What kind of services are these businesses currently offering? What would be the impact on individual businesses of being brought within an extended definition of credit brokerage?**

*Requirement to disclose extent of powers*

16.17 There will be a new requirement that credit intermediaries must disclose in advertising and other documentation intended for consumers the extent of their powers, and in particular whether they work exclusively with one or more creditors or as an independent. Unlike the other two requirements, this will not be dependent on the consumer paying a fee to the credit intermediary for his services. It will apply whether the intermediary charges the consumer a fee or takes commission from creditors.

16.18 There is a clear requirement that the intermediary must say whether he is independent. If he is not independent, he should list the creditors to whom he is tied. We are considering whether it would be helpful to define the term “independent” so it will be clear to business and consumers exactly what is meant. One possibility might be to define this in terms of whether or not the intermediary is employed or uniquely remunerated by a particular creditor or group of creditors and is prevented by his relationship with that creditor or group of creditors from offering the products of other creditors on competitive terms.

**Q58. Do you think it would be helpful if we defined the term “independent” in legislation or would an explanation of the term be better left to guidance? Do you have any comments on a possible definition? Do you think there is a better way to ensure that the requirement is applied consistently than to define the term?**

16.19 Article 21(a) implies that the intermediary should also disclose something other than whether he is independent. One possibility is that “the extent of his powers” could mean whether the intermediary is authorised to offer loans on behalf of a creditor or can only forward the customer’s application to the creditor (we understand this is an issue in some other Member States). It could also mean the products the intermediary offers (a wide range or only certain types). In the latter case, we do not think it would be particularly helpful for consumers to be faced with a long list of credit products offered; a brief summary should be sufficient.

16.20 The disclosure might look like this:

“ABC Credit Intermediaries Ltd is independent and offers a wide range of credit products from a number of different creditors” or  
“ABC Credit Intermediaries Ltd is authorised to offer loans to purchase vehicles exclusively on behalf of X Credit & Loans Ltd”.

16.21 We would not envisage elaborating in our implementing legislation on the meaning of the extent of the intermediary's powers or the manner in which the intermediary might indicate this or his independence. We consider that it is best left to guidance.

16.22 The disclosure should be made on documentation intended specifically for consumers, rather than any documentation that might be seen by consumers. Examples are pre-contractual and contractual information, any standard adequate explanations pro forma and promotional material. We do not propose to take a prescriptive approach and define "documentation" by reference to types of documents. It should be read as what is appropriate in the circumstances.

*Requirement to disclose fee*

16.23 There will be a new requirement that any fee charged to the consumer by the credit intermediary for his services must be agreed with the consumer and disclosed on paper or a durable medium before the conclusion of the credit agreement.

16.24 This will only apply where the intermediary charges the consumer a fee for a service provided by the intermediary to the consumer. It will not apply where the intermediary earns commission from the lender on the products he sells to the consumer or where he collects a fee from the consumer on behalf of a third party, for example a lender's fee.

16.25 The fee must be agreed before the conclusion of the credit agreement. The requirement to show the APR in pre-contractual information would seem to suggest that the fee would be disclosed at that stage, although not necessarily agreed. It is implicit in the requirement that the paper or other durable medium must show that both parties have agreed the fee (e.g. by signatures). We do not propose to be more explicit about exactly when the disclosure is made or how the fee is agreed.

16.26 The definition of "durable medium" in Article 3(m) of the CCD will be used.

*Requirement to communicate fee*

16.27 There will be a new requirement that the credit intermediary must communicate to the creditor the fee payable by the consumer to the intermediary (if any), to use in calculating the APR.

16.28 This will only apply where the intermediary charges the consumer a fee for service provided by the intermediary to the consumer. It will not apply where the intermediary earns commission from the lender on the products he sells to the consumer or where he collects a fee from the consumer on behalf of a third party, for example a lender's fee.

16.29 We interpret "for the purpose of calculation of the APR" as qualifying the requirement to communicate the fee. Therefore, it will only apply where the creditor calculates the APR and needs to know the fee to include it in the calculation. If the intermediary rather than the creditor calculates the APR, the communication will not need to be made. Where the fee does need to be calculated, we do not propose to

specify how and when this should be done; the parties would be free to arrange this between themselves.

**Q59. Do you have any comments on our proposals for implementing the requirements in Article 21? If you do not agree with our proposals, please explain why and where possible suggest an alternative proposal.**

*Scope*

16.30 The requirements on credit intermediaries will apply in respect of all types of credit agreements to which the CCA currently applies, with the exception of second charge mortgages. We believe that it would be more helpful and less burdensome for consumers and credit intermediaries if the same disclosure requirements applied to all types of credit agreements that might be handled by credit intermediaries. The incremental cost of applying the requirements to these additional types of agreements should be minimal.

**Q60. Do you have any comments on our proposals regarding the scope of Article 21? If you do not agree with our proposals, please explain why.**

## **17. Overdrafts and overrunning**

**The provisions on overdrafts are set out at various points in the CCD, but for simplicity we are dealing with them together in this chapter.**

### Authorised overdrafts

17.1 The CCD contains specific provisions in relation to various types of overdraft agreement. (Overdraft is defined as an explicit credit agreement whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account (Article 3 (d)).

17.2 Overdrafts repayable within one month are exempt from the CCD's requirements with the exception of the requirement imposed by Article 6 (5) – that the consumer is made aware of the duration of the agreement. Otherwise, the CCD's requirements do not apply to this form of overdraft.

17.3 The CCD permits a lighter regulatory touch for overdrafts where the credit has to be repaid on demand or within 3 months (Article 2.3) as compared with other credit agreements falling within the scope of the CCD. Article 2.3 details the specific provisions that will apply to such overdrafts- these are Articles 1 to 3, Article 4(1), 4(2)(a) to (c) and 4(4), Articles 6 to 9, Article 10(1), 10(4) and 10(5), Articles 12, 15, 17 and finally Articles 19 to 32. In particular, three of these Articles include provisions which are specific to this type of agreement. These cover pre-contractual information (Article 6), contractual information (Article 10.5) and post-contractual Information (Article 12).

### Unauthorised overdrafts

17.4 Article 18 of the CCD refers to overrunning current accounts - meaning a tacitly accepted overdraft whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account or the agreed overdraft facility (Article 3 (e)).

17.5 Under Article 18, where at the time of opening a current account, there is the possibility of overrunning being allowed, the CCD requires that the consumer be advised of the borrowing rate, charges and conditions under which the borrowing rate or charges may change.

17.6 In the event of a significant overrunning exceeding a period of one month, the creditor shall inform the consumer without delay, on paper or on another durable medium,

- of the overrunning;
- of the amount involved;
- of the borrowing rate;
- of any penalties, charges or interest on arrears applicable

## Existing UK legal requirements for authorised overdrafts

17.7 A determination of the OFT of 21 December 1989 covers debtor-creditor agreements enabling the debtor to overdraw on a current account under which the creditor is a “bank”.<sup>6</sup>

17.8 This Determination is made under section 74 (1) of the CCA, and exempts overdrafts from Part V (Entry into agreements) provided they meet the conditions of the determination, including that the creditor has notified the OFT of its general intention to enter such agreements. To the extent that they exist, Overdrafts not within the determination are subject to normal CCA rules.

17.9 The Determination is mainly concerned with information requirements. It does not exempt overdrafts from other aspects of the CCA. For example, the Advertisements Regulations refer to running account credit which would include overdrafts.

17.10 Under the determination, the following information must be provided at the time or before the agreement is concluded

- Credit limit (if any)
- Annual rate of interest
- Charges applicable from time agreement is concluded and the conditions under which these can be amended
- Procedure for terminating the agreement

17.11 The information may be provided orally, but must be confirmed in writing.

17.12 With regard to post-contractual information, the CCA requires reporting of running account arrears and specifies default disclosure/treatment - in the context of overdrafts, this will only become an issue when repayment is demanded by the creditor. Section 78(4) of the CCA indicates statements will be required – either monthly (if there is a demand for payment) or six-monthly (if there is a debit or credit balance) or annually. In addition, the consumer can request a statement at any time together with a copy agreement – section 78(1).

17.13 In terms of interest rate information, a section 78(4) statement needs to show (where interest has been applied) either the rate of interest, or a statement that the rate will be provided on request (together with an explanation of the manner in which interest has been calculated), or sufficient information to enable the consumer to check the calculation of the interest applied.

### *The Banking Code*

17.14 There are also various provisions in the Banking Code which are relevant to overdrafts - (see [http://www.bankingcode.org.uk/pdfdocs/PERSONAL\\_CODE\\_2008.PDF](http://www.bankingcode.org.uk/pdfdocs/PERSONAL_CODE_2008.PDF)).

---

<sup>6</sup> As defined in the Bankers Books Evidence Act 1879 (in practice, this covers “deposit-takers” under FSMA and EEA firms which operate under passport rights).

17.15 Paragraph 5 indicates that information on charges will be provided (including availability on the internet) when customer arrangements are concluded via the Internet and that any increase in rates or charges will be notified at least 30 days in advance of taking effect.

17.16 Paragraph 6 requires that relevant terms and conditions for all products will be provided when a product is accepted for the first time and customers will be told about changes. If the change is adverse, at least 30 days notice will be given to each customer impacted on an individual basis. For all other changes, advice will be given within 30 days.

17.17 Paragraph 9 requires that statements of account will be provided regularly (monthly/3 monthly/annually) and where a card is available to make withdrawals, statements will be provided at least every 3 months when card withdrawal activity has occurred.

#### Existing UK legal requirements for unauthorised overdrafts

17.18 The OFT Determination provides that where the debtor overdraws his current account with the tacit agreement of the creditor and remains overdrawn for more than 3 months, the creditor must inform the debtor not later than 7 days after the end of the 3 month period, in writing, of the annual rate of interest and any other applicable charges.

#### Our policy proposals

##### *Authorised overdrafts*

##### *General*

17.19 The CCD does not require significant change to the existing regulation of overdraft agreements given the light touch regime applied by the CCD is close to existing UK requirements. In terms of definition of an overdraft, however, it will be necessary to be clear in UK legislation that the light touch requirements regarding provision of information on overdraft agreements apply only to those overdrafts which are payable either on demand or within 3 months of issue. Overdrafts which are not repayable on demand or within 3 months will be subject to the full requirements of the CCD. We understand that in practice this will make little difference in the UK as all overdrafts are repayable on demand.

17.20 We do not propose to exempt overdrafts repayable within one month from the requirements of the CCD altogether as permitted within the CCD and they would therefore be treated in the same way as overdrafts repayable on demand or within 3 months.

17.21 The terminology used for overdrafts in the CCD is different from that used in UK provisions, but we do not think this requires any change. In the CCD the term "overdraft" is defined as an explicit agreement whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account and is used where the overdraft is approved or authorised. In the UK we express this as "debtor-creditor agreements enabling the debtor to overdraw on a current account, under which the creditor is a bank" (OFT Determination, 21 December 1989 paragraph

1). The CCD uses the term “overrunning” signifying unauthorised or unapproved overdrafts. In the UK, again in the OFT Determination (paragraph 2 (c)), this is expressed as “where a debtor overdraws his current account with the tacit agreement of the creditor”. We propose to continue to use the UK descriptions which differ from the CCD as making specific reference to the creditor being a “bank” as we believe these for all practical purposes are the same as “overdraft” and “overrunning” in the CCD. This would result in the CCD’s light touch legislative regime not being available for non bank overdrafts however in the UK we believe lenders which are not licensed as banks are unable to offer overdrafts.

**Q61. Do you agree with our intention to restrict the CCD light touch regime available for Overdrafts to those overdrafts provided by banks only, which are repayable on demand or within 3 months?**

*Advertising (Article 4)*

17.22 Only paragraphs 4.1, 4.2 (a) to (c) and 4.4 of Article 4 apply to authorised overdrafts. The only specific issue from an overdrafts perspective is the option not to show the APR (A4.2 (c)). In line with current practice, we intend to make use of this derogation.

**Q62. Do you agree with our proposal not to require APRs to be shown in Advertisements relating to Overdrafts and if not, why not?**

*Pre-contractual information (Article 6)*

17.23 The key question is whether or not it is acceptable for overdrafts to remain excluded from Part V of the CCA with the OFT then having the power to determine what aspects of Part V should apply to overdrafts. We believe this exclusion will have to be replaced by specific provisions on overdrafts in line with Article 6 of the CCD, but the practical effect of this should be negligible given that Article 6 sets out very similar requirements to the current UK regime.

17.24 We intend to exercise the option available in Article 6.2 NOT to require creditors to show APRs in Pre Contractual Information on the grounds of cost, practicality, usefulness and also because it could be misleading from the consumer’s perspective. Further we do not intend to require creditors to use the SECCI (as set out in Annex III), although they will be free to use it if they wish.

17.25 When transposing Article 6.4, we will make clear that only the information requirements of this paragraph (description of the main characteristics of the financial service etc) have to be provided at the point when a consumer requests an overdraft be made available with immediate effect. In effect, our view is that Article 6.4 would be relevant in all cases relating to an overdraft request except for current account opening and where the consumer specifically indicates that the overdraft is only needed from some date in the future. Article 6.7 nevertheless requires the provision of the rest of the Article 6.1 information immediately after the conclusion of the agreement.

17.26 In summary, where an overdraft facility is provided as part of opening a current account (or in any circumstances in which the borrower specifically says that he will

only require an overdraft facility from some point in the future), the following information must be provided on paper or on another durable medium:

- the type of credit
- the identity and geographical address of the creditor as well as, if applicable, the identity and geographical address of the credit intermediary involved
- the total amount of credit
- the duration of the credit agreement
- the borrowing rate; the conditions governing the application of that rate, any index or reference rate applicable to the initial borrowing rate, the charges applicable from the time the credit agreement is concluded, and where applicable, the conditions under which those charges may be changed
- the conditions and procedure for terminating the credit agreement
- where applicable, an indication that the consumer may be requested to repay the amount of credit in full at any time
- the interest rate applicable in the case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable for default
- the consumer's right to be informed immediately and free of charge, of the result of a database consultation carried out for the purposes of assessing his creditworthiness
- the charges applicable from the time the agreement is concluded and, if applicable, the conditions under which those charges may be changed
- if applicable, the period of time during which the creditor is bound by the pre-contractual information

17.27 Where, on the other hand, a borrower who already has a current account requests an overdraft for immediate availability or where the overdraft is arranged over the phone, the information which must be provided immediately (but not necessarily in writing) is as follows:

- the total amount of credit
- the borrowing rate; the conditions governing the application of that rate, any index or reference rate applicable to the initial borrowing rate, the charges applicable from the time the credit agreement is concluded, and where applicable, the conditions under which those charges may be changed
- where applicable, an indication that the consumer may be requested to repay the amount of credit in full at any time

17.28 Additionally, this information must be complemented by provision of contractual information required by Article 10 (see following paragraph 17.31); this must occur immediately afterwards and be supplied on paper or on another durable medium.

17.29 In the case of agreements concluded at the consumer's request using a means of distance communication (other than telephone) where it is not possible to supply the information set out in 16.26 in advance of concluding the agreement, the information shown at 16.28 above must be provided immediately after agreement conclusion (pursuant to Article 10) – on paper or another durable medium.

17.30 Article 6.6 introduces a new requirement – the need to provide a draft copy of an overdraft agreement on request. This mirrors the requirement for other credit products in Article 5 and will need to be reflected in the implementing legislation.

**Q63. Do you have any comment to make on our various proposals relating to transposition of the CCD's requirements on the provision of pre-contractual information?**

*Contractual information*

17.31 As discussed above, the existing legislation relating to the determination will need to be amended or replaced with additional requirements set out in the CCD. These additional items are: type of credit, identity and geographical address of creditor (and intermediary, if applicable), duration of agreement, an indication that the consumer may be requested to repay in full at any time (where repayable on demand), drawdown conditions for the credit, total cost of the credit. We believe that much of this information is already provided by lenders despite this not being a CCA requirement and that any change in practice should therefore be minor.

17.32 Article 10.5 sets out the relevant information requirements:

- the type of credit
- the identity and geographical addresses of the contracting parties as well as, if applicable, the identity and geographical address of the credit intermediary involved
- the duration of the credit agreement
- the total amount of the credit and the conditions governing the drawdown
- the borrowing rate, the conditions governing the application of the borrowing rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedure for changing the borrowing rate and, if different borrowing rates apply in different circumstances, the abovementioned information in respect of all the applicable rates
- the total cost of the credit to the consumer, calculated at the time the credit agreement is concluded
- an indication that the consumer may be requested to repay the amount of credit in full on demand at any time
- information concerning the charges applicable from the time such agreements are concluded and, if applicable, the conditions under which those charges may be changed

(It should be noted that the list in Article 10.5 includes a further item at paragraph (h) – the need to disclose conditions governing the exercise of the right of withdrawal from the credit agreement; however this is a mistake in the text of the Consumer Credit Directive as Article 2.3 does not apply Article 14 covering Right of Withdrawal).

17.33 It is our intention not to require an APR to be shown for overdrafts. However as indicated above, the total cost of the credit to the consumer will require to be shown (see Article 10.5(f)). Guidance may be needed to achieve a consistent approach to how cost of credit is calculated given the uncertain nature of overdraft drawdown.

**Q64. Do you foresee any difficulties stemming from these changes?**

*Post-contractual information (Article 12)*

17.34 These provisions are similar to those contained in section 78 of the CCA which require reporting of running account arrears and specify default disclosure/treatment – in the context of overdrafts, this will only become an issue when repayment is demanded by the creditor.

17.35 CCA section 78(4) indicates statements will be required – either monthly (if there is a demand for payment) or six-monthly (if there is a debit or credit balance) or annually. In addition, the consumer can request a statement at any time together with a copy agreement – section 78(1). The timings in the UK Regulations for Running Account statements are driven by demand for payment which clearly is not necessarily applicable to overdrafts; thus under existing UK legislation monthly statements are only required when there is a demand for payment. Article 12 does require the precise period to which the statement relates to be disclosed. However, it is doubtful if this would ever be unclear from present practice. Similarly, minimum amount to be paid must be shown if applicable though clearly this is not likely with the existing UK overdraft structure.

17.36 Given the cost implications of requiring statements to be produced monthly, we think it would be appropriate to retain the language of the CCD in that the consumer should be “kept regularly informed” in respect of the requirements set out in Article 12.1. The detail of what must appear on the statement can be linked with the Section 78 requirements subject to the additional requirement that the applied borrowing rate must be shown within statements. (On the latter point, the schedule to the Consumer Credit (Running Account Credit Information) Regulations 1983 in paragraph 6 provides 3 presentational options in respect of statements showing that interest has been applied to an account during the period of the statement. However, only sub-paragraph (b) – rate of interest used to calculate the interest appears to be consistent with the requirements of Article 12.1 (f)).

**Q65. With regard to frequency of statements, do you agree with the proposal that such statements should be supplied on a “regular” basis?**

*Unauthorised Overdrafts*

17.37 The Article 18 requirements are likely to require some change to existing rules.

17.38 Firstly, for current accounts where overruns may be tolerated, the current account agreement will need to include borrowing rates, information on conditions governing when this rate will be imposed, any index or reference rates applicable to the initial rate and any charges and the conditions governing changes in such charges. This information must be provided on a regular basis and we propose that this should be annually.

17.39 Article 18 also introduces a new requirement to inform the customer he has significantly overrun. The customer must be informed “without delay” when “significant overrunning” has exceeded one month – this appears to contrast with the OFT determination requiring the customer to be informed of any level of overrunning after 3 months. Therefore, we propose that the initial reporting requirement should be triggered after the first month with quarterly reporting thereafter. Further, in respect of the trigger for providing the information detailed in Article 18.2 (i.e. significant overrunning exceeding one month), we propose overrunning in excess of £100 rather than using the term “significant”.

It will also need to be made clear that the statement relates to a tacitly agreed overdraft or "overrunning".

**Q66. Do you agree with the proposal as to when the consumer should be informed of a significant overrunning; and – Do you agree with the proposal that the statements required under Article 18.1 should be supplied on an annual basis?**

## **18. Implementing measures**

18.1 Chapter VII of the CCD covers a number of issues including enforcement, penalties and transposition.

### *Article 22 – Harmonisation and imperative nature of this Directive*

18.2 This article requires Member States to harmonise national provisions with those of the CCD, and to ensure that consumers may not waive the rights conferred upon them by it.

18.3 BERR is satisfied that the provisions for contracting out bans set out in this article are covered in section 173 of the CCA.

### *Article 23 – Penalties*

18.4 Member States are required to lay down rules on the penalties applicable to infringements of the national provisions which transpose the CCD and to take all measures necessary to ensure they are implemented. Member States have discretion as to what penalties to apply but they must be effective, proportionate and dissuasive.

18.5 We are not planning to change the existing regime, which means that existing penalties will be maintained where existing provisions are modified. Where new provisions are introduced it is our intention that any penalties would be consistent with existing penalties for similar offences.

### *Article 24 – Out-of-court dispute resolution*

18.6 Article 24 requires Member States to have in place adequate and effective alternative dispute resolution procedures to settle credit agreement disputes, and allows for using existing bodies where they meet this requirement and where they are appropriate.

18.7 The article also requires Member States to encourage these bodies to cooperate across borders to resolve credit agreement disputes.

18.8 BERR is satisfied that the current framework for out-of-court disputes provided by the CCA as amended by the Consumer Credit Act 2006, and the Financial Services and Markets Act 2000 sufficiently covers the requirements as laid out by the CCD.

18.9 This means that the Financial Ombudsman Service will continue as the independent body for complaints and for alternative dispute resolutions, and that this service will also take care of cross-border dispute resolutions.

### *Article 25 – Committee procedure*

18.10 This article refers to arrangements within the Commission under the comitology procedure for considering issues relating to the CCD and does not require transposition.

*Article 26 – Information to be supplied to the Commission*

18.11 This article requires each Member State to notify the Commission where the Member State exercises regulatory choices in the CCD, and to take appropriate measures to diffuse that information amongst creditors and consumers in that State. This provision will not require transposition.

*Article 27 – Transposition*

18.12 This article specifies the date by which the CCD must be transposed. Following a corrigendum published by the Commission, the CCD must be applied in each Member State from 11 June 2010. There may be advantage in allowing lenders to start adapting their procedures earlier by introducing some of the Directive's provisions before this date (but not making them mandatory until June 2010).

**Q67. Do you think there are provisions in the Directive with which lenders should be able to comply before June 2010. If so, which provisions?**

*Article 28 – Conversion of amounts expressed in euros to national currency*

18.13 This article sets out the requirements for how to convert any amounts given in euros in the CCD into the appropriate national currency. The conversion rate is the rate applying on the date of adoption of the CCD, which was 23 April 2008: on that date the exchange rate was €1=£0.80345.

## **19**    ***Transitional and final provisions***

19.1 Chapter VIII of the CCD provides for the repeal of the existing Directive on the entry into force of the new Directive, and provides that the new Directive will not apply to credit agreements existing on the date the CCD is to be implemented in the Member States, except in the case of open-ended credit agreements existing on that date, where certain provisions of the CCD will apply.

20. ***Impact Assessment***

20.1 A draft Impact Assessment on the implementation of the CCD can be found at <http://www.berr.gov.uk/whatwedo/consumers/consumer-finance/ec-directives/page29927.html>

20.2 This looks at the possible costs and benefits of the CCD as a whole. However, it also looks in more detail at the possible costs and benefits of the way the UK implements the CCD, in particular where we have options on how to implement.

20.3 We have identified and estimated possible costs and benefits as far as possible. However, we need information from those who will be directly affected by the CCD to make a more robust assessment. This is particularly important where we have options; we need evidence on the costs and benefits in order to make an informed assessment of the merits of the options.

20.4 We would be grateful if you would review the Impact Assessment in conjunction with the relevant issues raised for each article and let us have your comments, and where possible estimates, on the possible costs and benefits.

**Q68. Do you agree with the assumptions, figures and impact assessments made in the Impact Assessment at Annex B? This is based on initial consideration of the key issues for the UK of the original CCD draft. Do you have any comments on the costs and benefits of the options for implementation discussed in the Impact Assessment and in the consultation document? Please provide as much supporting evidence as possible.**

## **ANNEX A**

### **The Consultation Code of Practice Criteria**

1. **When to consult** – the formal consultation should take place when there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible.
3. **Clarity of scope and impact** – consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – consultation exercises should be designed to be accessible to, and clearly targeted at, those people it is intended to reach.
5. **The burden of consultation** – keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.