COMPETITION COMMISSION

Explanatory note to accompany the Home Credit Market Investigation Order

Introduction

1. On 30 November 2006, the CC published its report on its investigation into the home credit market. The report set out a number of remedies to address the adverse effects on competition that it found. The CC has made an Order to give effect to these remedies. The remedies are designed to open up the market to greater competition, bringing lower prices and more choice to consumers. They include a requirement for home credit companies to share data on their existing customers' payment records to open up the market to greater competition from other lenders and make it easier for these customers to access other forms of credit. Another remedy requires lenders to publish information on the price of loans on a website, making it easer for customers to shop around and compare offers. Another changes the early settlement rebate so that customers who settle loans early receive a better deal.

2. The Order uses the language and concepts of the Consumer Credit Act 1974 (the 1974 Act) and regulations made under it. These are familiar to the home credit industry, its advisers, the Office of Fair Trading (OFT) and the courts.

3. In September 2010 the OFT advised the CC that it was appropriate to vary or revoke parts of the Order in light of the change of circumstances as a result of the coming into force of the Consumer Credit Directive (CCD)[1]. On 24 February 2011 the CC made an order[2] to vary this Order to incorporate amendments to reflect the implementation of the CCD. The amendments did not substantially alter the Order. This Explanatory Note was updated at the same time.

4. Amendments were made to the following articles:

   (a) Article 2(1): variation of definitions of '1974 Act' and 'the Advertisements Regulations';

   (b) Article 14(1): variation of definitions:

      (i) to add a definition of 'representative APR'; and,

      (ii) to vary the definition of 'rounded APR';

   (c) Article 14(2): variation of definition of 'APR';

   (d) Article 14(3): variation to reflect updated regulations;

   (e) Article 14(5): variations made to correct misspellings;

   (f) Article 17: variations made to the nature of the information required to be included in advertisements which are required by Article 16 to reflect the changes to the Consumer Credit (Advertisements) Regulations 2010 made as a consequence of the CCD; and,

   (g) Article 18: variations made to reflect the changes to the Consumer Credit (Advertisements) Regulations 2010 made as a consequence of the CCD;

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[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:133:0066:0092:EN:PDF
[2] Home Credit Market Investigation Order 2007 Variation Order 2011.

(h) Article 19: variation as a consequence of the variation to Article 17;

(i) Article 24: variation to reflect updated regulation;

(j) Article 25: variation to reflect updated regulation;

(k) Article 26: variations to reflect updated regulation;

(l) Article 27: variations to add 'representative APR' and delete 'typical APR';

(m) Article 29: variations to refer to 'representative APR' and to reflect updated regulations;

(n) Article 30: variations to reflect updated regulations and to delete a reference to the Consumer Credit Act 2006 coming fully into force as this Act is now fully in force; and,

(o) Article 31: deletion of a reference to the Consumer Credit Act 2006 coming fully into force as this Act is now fully in force.

2.*(p)* Schedule 1: variations to reflect the use of the term 'representative APR' in place of 'typical APR'.

Possible consequences of not complying with the Order

3.5. Section 167 of the Enterprise Act 2002 places a duty on any person to whom this Order applies to comply with it. Subject to the defences in the section, any person who suffers loss or damage due to a breach of this duty may bring an action.

4.6. Section 167 of the Enterprise Act 2002 provides that the OFT and the CC can seek to enforce this Order by civil proceedings for an injunction or for interdict in Scotland or for any other appropriate relief or remedy.

Review of this Order

5.7. The OFT has a general duty to monitor the operation of the Order under section 162 of the Act. This includes the duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances.

Status of this Explanatory Note

6.8. Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and the provisions of the Order, the Order shall prevail.

Structure of the Order

7.9. The Order is divided into six parts. Part 1 contains general provisions including definitions that are used throughout the Order. Where defined words are used in the Order, they appear in bold type. The Order relies on some definitions contained in the 1974 Act and they are identified in Part 1. These definitions are reproduced for convenience at Annex A to this note.

8.10. The following four Parts of the Order deal with the four remedies set out in the CC report:

(a) Part 2 requires home credit lenders to share customer repayment data with other potential lenders. This is to be achieved by the lenders having data sharing contracts with certain credit reference agencies (CRAs).

(b) Part 3 requires home credit lenders to publish, on a website set up for the purpose, information, notably price information, about the loans which they offer to customers.

(c) Part 4 requires home credit lenders, at most every three months, to provide an account statement, free of charge, when any of their borrowers asks for one.

(d) Part 5 adapts the already existing law regarding early settlement rebates. The new terms are tailored to the circumstances of home credit.

~~9.~~11. Part 6 of the Order deals with a range of further information requirements which home credit lenders have to act upon—in their advertisements, in the payment books given to their borrowers and in dealing with specific requests for information.

~~10.~~12. The rest of this explanatory note deals in detail with each of the articles in the draft Order.

PART 1 (GENERAL)

Article 1 (citation and commencement)

~~11.~~13. Article 1 has two functions. It gives the Order its name and it sets the date on which the Order comes into force as 4 October ie 21 days following the date of the Order itself.

Article 2 (general interpretation)

~~12.~~14. Article 2 identifies a number of definitions in the 1974 Act and applies them to this Order. It also contains other definition applicable throughout the Order.

Article 3 ('home credit loan agreement' and 'home credit voucher agreement')

~~13.~~15. Article 3 defines 'home credit loan agreement' (relating to a money loan and money repayments) and 'home credit voucher agreement' (relating to the provision of vouchers on credit which can be exchanged for goods or services).

Article 4 ('home credit business' and 'home credit loan business')

~~14.~~16. Article 4 defines 'home credit business' and 'home credit loan business'. The definition of home credit business includes the making of home credit loan agreements and home credit voucher agreements whereas a home credit loan business relates just to home credit loan agreements.

Article 5 ('agent' and 'employed')

~~15.~~17. An agent is a person who is employed by a lender to collect repayments from the borrower at his home (whether or not he is employed by the lender to perform other functions such as completing loan transactions and seeking business). For the purposes of this article 'employed' means employed whether under a contract of service or a contract for services, or otherwise. Hence agents include self-employed agents and agents working voluntarily.

~~16.~~18. Some articles in the Order (for example, some articles relating to data sharing) only apply to lenders with over a certain number of agents or home credit turnover (see below). The applicable number of agents is determined from the average number employed by the lender on each of the quarter days in the previous year. In determining the number of agents employed, a creditor and its 'associates', as defined in the 1974 Act, are treated as a single organization. For example, the number of agents employed by Provident Financial plc would be the total number of agents of Provident Personal Credit Limited (PPC) and Greenwood Personal Credit Limited (GPC) plus the number of agents of any other home credit companies in the same group.

Article 6 ('home credit turnover')

~~17.~~19. Article 6 defines 'home credit turnover'. Home credit turnover is the turnover[3] associated with the lender's home credit loan business. If a lender has associates

[3]The definition of turnover is to some extent based on the Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003 (SI 2003/1370 as amended by 2004/3204); and also on section 262 of the Companies Act 1985.

(eg companies in the same group) carrying on a home credit loan business, the respective turnovers are added together.

Article 7 (suspension of provisions in the Order)

~~18.~~20. Article 7 enables the OFT to suspend any provision of the Order. It can make the suspension of general application by publishing a notice—or applicable to a single lender by giving that single lender notice in writing.

~~19.~~21. If a lender's contract with a credit reference agency was terminated, he might be able to make out a case to the OFT for suspending Part 2 in its application to him so that he could carry on making new home credit agreements while he negotiated another contract.

~~20.~~22. The OFT might think that it would be appropriate to suspend the whole of Part 3 generally if, for example, the website upon which lenders are required to publish details of their products was out of action.

Article 8 (delegated powers of direction)

~~21.~~23. Article 8 is made under section 87 of the Enterprise Act 2002 as applied by section 164(2) of that Act.

~~22.~~24. Article 8 gives the CC power to give directions to a person for the purpose of ensuring compliance with the Order. The directions can be addressed to an individual or a company or can be addressed to the holder for the time being of an office in a company, eg the secretary.

Article 9 (multiple agreements)

~~23.~~25. Article 9 deals with agreements that:

(a) in part fall within the definition of home credit loan agreement (or home credit voucher agreement) and in part fall within some other category of agreement; and

(b) fall within the definitions of both home credit loan agreement and home credit voucher agreement.

~~24.~~26. Broadly the article uses the same approach and wording as are used in section 18 of the 1974 Act (multiple agreements). We do not envisage agreements of this nature often arising in practice.

~~25.~~27. An example of (a) would be an agreement in two distinct parts, one part falling within the definition of a home credit loan agreement and the other part being a home credit voucher agreement. The two parts would be treated as separate agreements for the purposes of the Order.

~~26.~~28. An example of (b) would be an agreement that was not in distinct parts but fell within the definition of both home credit loan agreement and home credit voucher agreement. The agreement would be treated as a home credit loan agreement.

Article 10 (modifying agreements)

~~27.~~29. Article 10 makes provision for agreements that are modified by applying section 82(2) of the 1974 Act. So, if an agreement varies an earlier home credit loan agreement, the modifying agreement would be treated, for the purposes of the Order, as revoking the earlier agreement and containing provisions reproducing the combined effect of the two agreements. Furthermore, any outstanding obligations under the Order regarding the first agreement would be treated as outstanding under the second agreement.

PART 2 (DATA SHARING)

Outline

~~28.~~30. Part 2 requires home credit lenders meeting certain criteria (as explained in paragraph 26) to share customer repayment data with other potential lenders by supplying certain data to certain credit reference agencies. The credit reference agencies concerned are referred to as 'CRAs'. If these lenders do not have contracts requiring provision of data with at least two CRAs, they are debarred from entering into any new home credit loan agreements or home credit voucher agreements with customers.

Article 11 (interpretation)

~~29.~~31. Article 11 sets out definitions relevant only in Part 2. These are:

(a) The Principles: the Principles of Reciprocity governing data sharing within the financial services community and produced by the Standing Committee on Reciprocity (SCOR), a body comprising representatives of the financial services industry and CRAs. The Principles were last produced in June 2006.[4]

(b) CRAs: three CRAs are named in the Order (Callcredit, Equifax and Experian). They are named as CRAs in the current Principles and are represented on SCOR. The OFT is given discretion to nominate as further CRAs firms that satisfy it that they either meet the following requirements or are otherwise suitable to be so nominated:

(i) at least 50 subscribers to shared data;

(ii) at least 10 per cent of shared records;

(iii) have an independent audit of security;

(iv) are compliant with the Principles; and

(v) are compliant with the Data Protection Act 1998 and other relevant legislation.

However, a firm cannot be nominated unless it is either a licensed credit reference agency or is an EEA firm that can lawfully carry on a credit reference agency business without a licence.

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[1]As at the time of making this Order, the Principles and the Rules Managing SCOR could be found at http://www.experian.co.uk/corporate/compliance/datasharing/index.html.

Article 12 (contracts with CRAs)

~~30.~~32. Article 12 applies to lenders who carry on a home credit loan business and employ at least 60 agents or who have an annual home credit turnover of at least £2 million. It compels them to have contracts, meeting specified requirements, with at least two CRAs. Article 12(1) states that if these home credit lenders do not have such contracts, they are debarred from entering into any new home credit loan agreements or home credit voucher agreements with customers. Other lenders can of course voluntarily enter into data-sharing contracts with CRAs.

~~31.~~33. Schedule 2 of the Order sets out the requirements which a required data-sharing contract must fulfil. The contract must, among other things, require the lender to supply full (positive and negative) data (covering both home credit loans and home credit vouchers) about each borrower's account on a regular (minimum monthly) basis.

~~32.~~34. Under Article 12(3)(b) the need to have contracts with CRAs will arise six months after the date of the Order. The general rule is that the provisions in the contracts with the CRAs requiring provision of data will need to be in force when the lender makes a home credit loan agreement or a voucher agreement. However, if those contracts give home credit lenders up to three months from the date of the contract before they start sharing data, the lender will be exempt from this rule during that period. This is to give the lenders time to ensure that their data is in the right format for sharing. This exception will apply only to the first two CRA contracts ever made by the lender (ignoring contracts terminated before commencement date).

Article 13 (requirement to obtain debtor's consent to sharing data)

~~33.~~35. Article 13 applies to home credit lenders who employ 60 agents or more or who have an annual turnover of at least £2 million. These lenders have to obtain, before setting up a home credit agreement or home credit voucher agreement, the debtor's consent to her or his data being shared. Only if this condition is satisfied can they can enter into such an agreement. This therefore prepares the way for the sharing of data.

~~34.~~36. Article 13 will come into force 21 days after the date of the Order.

PART 3 (WEBSITE)

Outline

~~35.~~37. Part 3 imposes a duty on home credit lenders to publish details of each of their available home credit loan products on a website run by an operator accredited by the CC. The duty begins six months (unless extended by the CC) after the CC has formally published notice of its accreditation, a notice of which will be published on the CC website. Lenders must refer to the website in their advertisements, payment books and other documents and this requirement is dealt with in Part 6.

~~36.~~38. The lender must inform the operator every 12 months whether the loans published are still available. It is envisaged that, if the lender fails to do so, the operator will remove details of the loans in question from the website. And if the loans in question are still available then the lender would be in breach of the Order.

~~37.~~39. Lenders do not have to publish details of any home credit loan product where they have sold fewer than 100 in the previous 12 months. They may, however, publish any such details if they want to.

~~38.~~40. The main costs for running the website are to be shared between the large lenders who employ at least 200 agents or who have an annual home credit turnover of at least £10 million. The cost will be shared on the basis of each firm's turnover in its previous business year and the cost per lender will be based on the ratio of his home credit turnover to the combined home credit turnover of all large lenders. This means that smaller home credit lenders place information on the website free of charge.

~~39.~~41. Certain other loan products may be advertised on the website. The lenders concerned will have to meet the marginal cost of publication.

~~40.~~42. The CC plans to invite tenders from website operators and will accredit the one whom it considers to be the most suitable. There will be no contract between the CC and the operator. However, the CC can, on advice from the OFT, remove the accreditation from an operator whose performance is unsatisfactory.

Article 14 (interpretation)

~~41.~~43. Article 14 sets out definitions relevant only in Part 3. These include the following:

(a) The accredited operator: the operator accredited by the CC to run the website.

(b) The authority: means the CC until the relevant date (six months after the CC has published notice that it has accredited a website operator unless extended) and the OFT thereafter.

(c) The relevant website: the website run by the accredited operator for the purposes of the Order.

~~*(d)* APR: the Annual Percentage Rate on the loan.~~

~~*(e)*~~*(d)* The total charge for credit (in this note referred to as the TCC).

~~*(f)*~~*(e)* Special credit agreements: loan agreements (other than home credit loan agreements) where the repayments are:

(i) to be made by instalments; and

(ii) expected to be made in cash (ie notes and/or coins).

~~(g)~~*(f)* Large lenders: lenders who employ 200 agents or more or who have an annual home credit turnover of at least £10 million.

~~(h)~~*(g)* A class of agreements: broadly, credit agreements with the same creditor, the same duration, the same frequency of repayments (eg weekly or monthly) and the same APR[5] form a class. There are two types of class: a class of home credit loan agreements and a class of special credit agreements. A class can be regarded as a loan 'product' offered by the lender though the word product is not used in the Order.

~~(i)~~*(h)* The name of the lender: the name on the standard licence for lenders who are covered by such a licence and the business name for other lenders.

Article 15 (accredited operator, relevant date and certain notices to be given by the CC in regarding timing)

~~42.~~44. Article 15 defines the relevant date by which lenders are obliged to publish price information on the website (six months after the CC has accredited a website operator unless extended). Article 15, in conjunction with article 27, also outlines the timetable for the setting up of the website and the notices that the CC will publish to indicate that certain points in the timetable have been reached. There is provision for the following notices to be published:

(a) First, the CC will publish a *formal* notice to say that it has accredited a website operator (article 15(3)).

(b) Second, the CC will publish a *formal* notice that will state that the accredited operator is ready to receive information for publication as well as the address of the website (article 15(5)).

(c) Thirdly, if the CC is of the view that the relevant date should be deferred, they will publish a *formal* notice giving the new date (article 15(2)).

(d) Fourthly the CC will publish a *formal* notice specifying 'the appointed day'. This is the date from which advertisements etc. have to refer to the relevant website in accordance with Part 6. The date has to be at least 21 days after the relevant date (article 27).

~~43.~~45. Article 15(4) stipulates that the OFT has to recommend withdrawal of accreditation before the CC can do this. In this event, the CC shall publish a *formal* notice indicating that it has withdrawn its approval (article 15(3)).

Article 16 (duty to publish)

~~44.~~46. Article 16 applies to all home credit lenders. Article 16 requires lenders, within 28 days of their offering any home credit product for sale, to publish, and continue to publish, an advertisement for that product on the relevant website; containing the

[5]For the purposes of defining a class of loans, the Order treats APRs as being the same, if they are the same when rounded up to the nearest whole number. So, for example, loans with APRs of 300.1% and 300.3% would have the same APR for the purposes of defining a class of product. This is to avoid obliging or allowing lenders to publish multiple advertisements in relation to extremely similar loan products. In publishing the APRs on the website, lenders will need to specify the APR within the tolerances permitted in the Advertisements Regulations, ie 1.0 above and 0.1 below the APR calculated in accordance with Consumer Credit (Total Charge for Credit) Regulations 1980.

information set out in article 17 (if a home credit loan were withdrawn, then put back on the market, the lender would need to publish again). Article 16 refers to lenders 'causing' an advertisement to be published. In practical terms, once the website is up and running, it is envisaged that lenders will meet this obligation by providing the website operator with the necessary information in a timely and accurate fashion.

~~45.~~47. Article 16(3) exempts lenders from compulsory publication of any home credit loan product where they have sold fewer than 100 in the previous 12 months (but the Order leaves them free to publish voluntarily).

~~46.~~48. Article 16(3) also exempts lenders from compulsory publication of information before the relevant date.

Article 17 (information to be published)

~~47.~~49. Article 17 details the precise content of the advertisement which has to be displayed on the website in relation to a home credit product in addition to that required since implementation of the CCD:

(a) duration;

(b) TCC expressed as amounts per £100 lent;

(c) details of borrower repayments, expressed as amounts per £100 lent;

~~*(d)* APR;~~

~~*(e)*~~*(d)* late payment charges;

~~*(f)*~~*(e)* separate home collection charges;

~~*(g)*~~*(f)* details of any limitations on the offer (eg confinement to existing borrowers) other than the borrowers' ability to repay, where the borrower lives, or the maximum or minimum amount that can be advanced; and

~~*(h)*~~*(g)* differences within a class. This caters for the—probably unusual—case where a home credit loan product with the same APR, frequency of repayments and duration differ in other ways. In any such cases, the differences have to be displayed on the website. For example, a product might be confined to existing borrowers if the amount to be advanced is up to £1,000 and only available for higher amounts as a renewal. Both limitations would have to be shown.

~~48. Article 17(3) stipulates that the entries on the website relating to each home credit loan product must also contain:~~

~~*(a)* the name of the lender, a postal address where the lender can be contacted and a telephone number; and~~

~~*(b)* any further information that needs to be included to ensure that the entries relating to the loan comply with the Advertisements Regulations. This will include the typical APR.~~[6]

~~[6]The Consumer Credit (Advertisements) Regulations 2004 (SI 2004/1484) defines typical APR (so far as relevant) as 'an APR at or below which an advertiser reasonably expects, at the date on which an advertisement is published, that credit would be provided under at least 66% of the agreements he will enter into as a result of the advertisement'.~~

Article 18 (further provisions concerning the manner of publication)

~~49.~~50. Article 18 sets out the detailed characteristics of the website which home credit lenders have to secure through their arrangements with the accredited operator. The requirements listed there are intended to ensure that the website is quick and easy to use; and that potential users can readily compare the various loan products available. In practical terms, it is envisaged that these characteristics of the website will form part of the contract to be agreed between large home credit lenders and the accredited operator.

~~50.~~51. Article 18 states what can and what cannot be published on the website. Subject to the restrictions specified in article 18, when displaying information about their home credit loan products, lenders are not restricted to the information that has to be displayed under article 17. For example, lenders are not required to display limitations on availability based on the borrower's ability to pay or the areas in which they operate, but the Order will not prevent them displaying such information if they wish.

~~51.~~52. Article 18 also amplifies the requirements that:

(a) the website will be limited to home credit loan agreements and special credit agreements;

(b) advertisements displayed voluntarily will have to contain all the information that has to be contained in an advertisement displayed compulsorily (with one exception if a customer specifies an actual amount to be borrowed when making a search. In this case the advertisement displayed as a result will be able to show the actual amounts of the TCC and instalments instead of the amounts per £100 advanced);

(c) when a search is made, the resulting page will not be permitted to display more that one advertisement per product;

(d) no advertisement displayed on the website will be permitted to contain information about more than one product; and

(e) an advertisement will not be able to contain any information about the advertiser other than the terms on which he is willing to enter into the agreements, his names, his addresses, his telephone numbers and other information required by law.

~~52.~~53. It may be possible for an advertisement for a product to vary in some respects according to the search criteria applied. For example, different contact addresses or telephone numbers could be shown in response to searches against particular postcode districts.

~~53.~~54. There are provisions concerning advertisements that contain links to other pages on the website or drop-down boxes. Broadly, the linked material is treated as part of the advertisement for the purposes of this Order. Thus the requirement for specified information about a product to be published in an advertisement could be met by placing some of the information in the advertisement itself and a more detailed set of product information on a linked page or drop-down box. This principle will, however, be of limited application because the advertisements will have to comply with the

Advertisements Regulations.[7] Linked material will not be able to contain any information that would not be permitted in the advertisement itself, eg information about another product.

~~54.~~55. Articles 18(l), 18(m), 18(n) and 18(o) specify other information that needs to be provided on the website, including guidance on consumer rights and an explanation of how to interpret the information contained on the website.

~~55.~~56. Articles 18(p), 18(q) and 18(r) specify the information that needs to be retained by the website operator and the information which should be available to the OFT. We do not anticipate all of this information being displayed on the website.

Article 19 (requirements referred to in article 18*(e)*)

~~56.~~57. Article 19 prevents an advertisement being displayed on the website unless the lender has provided the website operator in writing with all the information that has to be included in the advertisement and some information which is additional to the information that has to be included. The additional information includes the postcode districts (the first part of the postcode as defined in article 19(4) and (5)) where they will collect repayments and the number of their credit licence (if applicable). This information enables borrowers and potential borrowers to search the website by reference to areas and aims to prevent illegal money lenders from using the website. The requirement to provide this information 'in writing' is intended to prevent this information from being provided orally (eg over the telephone) but to allow information to be provided electronically (eg by email).[8]

~~57.~~58. Article 19 also prevents an advertisement remaining on the website unless the lender confirms to the website operator every 12 months that the loan product is still available; and if available, whether the published information and the previously provided postcode districts are or are not still correct. This provision aims to prevent outdated information remaining on the website indefinitely.

Article 20 (further provisions concerning large lenders and special loan agreements)

~~58.~~59. Article 20 outlines the arrangements between the website operator and lenders concerning the operator's costs and the costs of placing an advertisement on the website. Article 20(1) requires the cost of operating the website to be borne by the large lenders in proportion to their relative shares of home credit turnover; and those advertising special credit agreements to pay for each advertisement at marginal cost.

~~59.~~60. Article 20(2) stipulates the proportion of the cost to be borne by each of the large lenders.

~~60.~~61. Under article 20(3) and (4), large lenders have to inform the OFT of their home credit turnover within 14 days of the relevant date (as defined in article 15) and then annually. Article 20(5) allows the OFT to share this information with the accredited operator so the accredited operator can levy the appropriate level of charges.

~~61.~~62. Article 20(6) stipulates that the large lenders must ensure that smaller home credit lenders are allowed to place information about their home credit loan products on the website free of charge.

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[7] Thus most of the information will be required by regulation 4 to be 'given equal prominence' and 'shown together as whole'.
[8] See 'Electronic commerce: Formal requirements in commercial transactions—Advice from the Law Commission' published by the Law Commission (http://www.lawcom.gov.uk).

Article 21 (extent of obligations under this part)

~~62.~~63. Article 21 states that lenders are required only to take all reasonable steps to comply with the duty to publish. This recognizes that many lenders will have little control over how the operator runs the website. So lenders are to be judged not solely by the final result appearing on the website but rather by the steps they took to provide the right information at the right time and the action they took to ensure that the website met the requirements.

PART 4 (STATEMENTS)

Outline

~~63.~~64. Part 4 requires all home credit lenders, to provide a free account statement when any of their borrowers asks for one. However, the lender does not have to comply with a request if he has complied with a previous request from the same borrower less than three months before the request was received.

Article 22 (duty to give information to debtor)

~~64.~~65. Article 22 applies to all home credit lenders.

~~65.~~66. Article 22(1) and (2) require home credit lenders to provide an account statement within seven days of a borrower asking for one (whether in writing or orally). The statement has to comply with specified provisions of the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 ('the 2007 Regulations') as modified by the article in respect of each loan made to the borrower by the lender and his associates.

~~66.~~67. The provisions of the 2007 Regulations that are applied are those that set out the form and content of the statements that will have to be supplied annually to debtors when section 6 of CCA 2006 comes fully into force. Article 22(3) sets out the modifications. It modifies regulation 11, which specifies the period to which an annual statement has to relate. As a result of the modification, the statements under the Order will have to relate, not to the period specified in regulation 11, but to a period beginning with the making of the agreement or 12 months before the request is received (whichever is the later) and ending not more than 14 days before the statement is given. Article 22(3) also excludes the application of regulations 45 to 48, which contain transitional provisions.

~~67.~~68. The 2007 Regulations as applied by the article will require the statement to show, for each agreement, the total of the balance due at the end of the period to which the statement relates. The article in addition requires the statement to give the sum of these totals.

~~68.~~69. Article 22(4) and (5) describe the circumstances under which a home credit lender is dispensed from the obligation to meet the borrower's request for a free statement under the Order. These arise in each of the following circumstances:

(a) the lender (or his associate) has already within the previous three months met an earlier request from the borrower;

(b) the borrower has made the request before section 6 of the Consumer Credit Act 2006 comes fully into force; and

(c) the borrower had paid back all outstanding loans to the lender 12 weeks or more before the lender received the request.

~~69.~~70. Article 22(6) to (9) explain some of the terminology used in Article 22. Article 22(6) makes explicit that a home credit loan agreement ends once the borrower has discharged his obligations under the agreement. Article 22(7) states that 'give' means the same as in the Consumer Credit Act 1974 (see Annex). Article 22(8) and (9) ensure that a request for information can be made to an agent (as defined in the Order).

~~70.~~71. Article 23 prohibits a home credit lender from entering into any home credit agreement that conflicts with the borrower's rights, as set out above.

PART 5 (EARLY SETTLEMENT REBATES)

Outline

~~71.~~72. Part 5 increases the amount of early settlement rebate which a borrower is entitled to when he/she settles an outstanding home credit loan two weeks or more before its term. This increased rebate will be required in relation to agreements made more than three months after the Order is made. Part 5 also stipulates the content of statements a borrower settling early is entitled to receive.

~~72.~~73. Existing regulations under the 1974 Act provide the background on rebates. These require all lenders to give a minimum rebate on early settlement. This is calculated according to an actuarially-based formula which supposes that settlement takes place not on the actual settlement date but rather (if later) 28 days after the borrower gives notice of his/her wish to pay off the loan (unless the actual settlement date or the early settlement date stated in the notice is later). And in certain cases, a further deferment of another month can be made. The lender can elect whether to make the calculation on the basis of the debtor's actual repayments or on the basis of the contractual repayment schedule. This Order effectively reduces this period of 28 days to 13 days for home credit and removes any right to further deferment and requires the calculation to be made on the basis of the contractual repayment schedule.

Article 24 (interpretation of Part 5)

~~73.~~74. Article 24 sets out two definitions ('early settlement' and 'rebate') relevant only in Part 5.

Article 25 (amount of rebate)

~~74.~~75. Article 25(1) requires home credit loan agreements to contain a provision giving the borrower a right to a minimum level of rebate in the event of early settlement. Article 25(2) sets out the borrower's minimum rebate rights that have to be available under the agreement. The calculation of the minimum is based on settlement taking place 13 days (instead of 28 days) after the borrower has given notice (unless the actual settlement date or the early settlement date stated in the notice is later); without any further deferment and on the basis of the contractual rather than the actual payment schedule.

~~75.~~76. Article 25(3) brings out for clarity that a provision giving the borrower his right to a minimum level of rebate is valid whether it is contained in the home credit loan agreement itself or in some other document referred to in that agreement.

~~76.~~77. Under Article 25(4) the changes effected by Article 25 apply to agreements made more than three months after the Order is made.

Article 26 (early settlement statements)

~~77.~~78. Section 97 of the 1974 Act already requires any credit lender to provide an early settlement statement in a form prescribed by regulations if so requested by a borrower. The statement has to quote (among other things) the rebate and total amount the borrower would have to pay to discharge his debt on the assumption that actual settlement takes place 28 days after the request is received (unless the borrower requests a later date). This ties in with the provision that the settlement date

for the purpose of calculating the rebate is normally 28 days after the borrower gives notice that he/she wishes to settle early.

~~78.~~79. As explained above, the Order reduces this rebate calculation period from 28 to 13 days for home credit. Hence Article 26 requires a home credit settlement statement given under the Regulations under the 1974 Act to quote the rebate and amount required to discharge the loan on the assumption that actual settlement takes place 13 days after the request is received (unless the borrower requests a later date). This further information is additional to, and does not replace, the information required by the Regulations. This is because the Order can add to, but cannot subtract from, the requirements already set out in regulations made under the 1974 Act.

~~79.~~80. Where a rebate would be payable, the statement would normally not only have to give the amount of the rebate and amount to discharge the debt, calculated on the assumption that actual settlement takes place 28 days after the request, but also those amounts calculated on the assumption that actual settlement takes place 13 days after the request. If no rebate is payable, the statement would simply have to comply with the Regulations. The same applies if the borrower requests a statement for a settlement date that is at least 28 days after the request is received.

~~80.~~81. Under Article 26(1)*(b)* the changes effected by article 26 apply to agreements made more than three months after the Order is made.

PART 6 (FURTHER INFORMATION)

Outline

~~81.~~82. Part 6 of the Order deals with a range of further information requirements which all home credit lenders have to observe—in their advertisements, in the payment books given to their borrowers and in dealing with borrowers' specific requests for information.

Article 27 (interpretation)

~~82.~~83. Article 27 sets out definitions relevant to Part 6 (though these are taken either from other legislation or from an earlier part of the Order). The article also defines 'the appointed day' which is the date from which advertisements etc. have to refer to the relevant website (see paragraph 38*(d)* above).

Article 28 (supply of information to the OFT)

~~83.~~84. Article 28 applies Schedule 3 of the Order. Schedule 3 relates to the OFT's role in monitoring or reviewing the operation of the Order. It gives the OFT power for this purpose to:

(a) require a person who carries on a home credit loan business to supply, and if necessary provide in person, relevant information; and

(b) publish relevant information received.

Articles 29 (duty to refer to the relevant website in advertisements)

~~84.~~85. Article 29 deals with references to the website in lenders' advertisements.

~~85.~~86. The advertisements to which the article applies are set out in article 29(1)*(a)* and *(b)*. The advertisements to which the article applies are ones which are published for the purpose of the lenders' home credit business and must display, by virtue of the Advertisements Regulations, a ~~typical~~ representative APR. Examples of advertisements that need to display the representative~~typical~~ APR are advertisements which: specify any other rate of charge; include a statement indicating the description and amount of any other payments and charges which may be payable under the transaction advertised; indicate credit is available to persons who might otherwise consider their access to credit restricted; or indicate that any of the terms on which credit is available is more favourable than corresponding terms applied in any other case or by other creditors. The article does not apply to advertisements on the website and any home credit loan advertisements provided to an individual and all material in payment books are also excluded from the application of article 29 because these are covered by articles 30 and 31.

~~86.~~87. The advertisements have to contain the wording set out in Part 1 of Schedule 4. This is a statement drawing attention to the relevant website. Article 29(~~4~~2) stipulates the size of the characters and the prominence of the wording of the advertisement.

~~87.~~88. The statement in Part 1 of Schedule 4 will be needed in advertisements on or after the appointed day.

Article 30 (duty to provide information in documents delivered to an individual)

~~88.~~89. Article 30 relates to direct mail and flyers, ie to every home credit advertisement delivered or sent to individuals (with the extended meaning given in the 1974 Act) or left at the address of individuals. All these advertisements have to contain the wording set out in Parts 1 and 2 of Schedule 4. As noted above, Part 1 wording is a statement drawing attention to the relevant website. Part 2 wording consists of a statement about the right of the customer to get free statements of account. Article 30(2)*(b)* stipulates the size of characters.

~~89.~~90. Article 30 is to take effect when the statements in Schedule 4 become relevant. Hence the statement referring to the website will be needed if the advertisement is delivered on or after the appointed day~~ and the statement referring to the customer's right to a free statement will be needed once section 6 of the CCA 2006 comes fully into force~~.

Article 31 (duty to provide information in payment books etc.)

~~90.~~91. Article 31 relates to all payment books and similar documents of record given to the customer. All these documents have to contain the statements set out in Schedule 4, Parts 1 and 2. The text of the statements must be in font 11 pt Arial or larger.

~~91.~~92. Article 31 is to take effect when the statements in Schedule 4 become relevant. Hence the statement referring to the website will be needed if the document is delivered on or after the appointed day~~ and the statement referring to the customer's right to a free statement will be needed once section 6 of the CCA 2006 comes fully into force~~.

~~92.~~93. Article 31 will apply to payment books that are returned to the creditor (eg for bringing up to date) before the appointed day and then redelivered to the debtor on or after that day. It will also apply to books that are printed before the appointed day but issued after that day. This should not be unduly onerous as the requirements of the article could be met by the use of suitable stickers.

Article 32 (duty to provide product information on request)

~~93.~~94. Article 32 takes effect from when the Order comes into force (ie 21 days following the date of the Order) and applies to all home credit lenders. Article 32(1) and (2) require home credit lenders to supply particular information to any enquirer asking (in writing or orally, including orally to an agent) about their home credit loan products. This information comprises the duration of the loans, the TCC/£100 and the details of borrower repayments (Article 17(2)*(a)*, *(b)* and *(c)*).

~~94.~~95. Article 32(3) brings out that if an enquirer specifically asks for less information, the home credit lender need only supply that which has been asked for. For example, if the enquirer is only interested in one product then the lender would only have to provide information about that product.

~~95.~~96. If the request is made orally, whether to a lender or its agent, and the person making the request has not asked for the information in writing, the home credit lender has a choice between supplying the information orally within 24 hours or in writing within seven days. In all other cases the information must be supplied in writing within seven days (Article 32(4) and (5)). For the avoidance of doubt, Article 32(6) makes clear that nothing in article 32 impinges on the current ban on direct canvassing of cash loans (section 49 of the 1974 Act). In addition, article 32(6) ensures that a

request for information can be made to an agent (as defined in the Order) as well as directly to the lenders.

CC
13 September 2007

Terms used in the Order and given the same meaning as in the Consumer Credit Act 1974

TERMS DEFINED OTHER THAN IN SECTION 189(1) (GENERAL INTERPRETATION)

'Regulated agreement'

8 Consumer credit agreements

(1) A *personal* [consumer] credit agreement is an agreement between an individual ('the debtor') and any other person ('the creditor') by which the creditor provides the debtor with credit of any amount.

(2) *A consumer credit agreement is a personal credit agreement by which the creditor provides the debtor with credit not exceeding* [*£25,000*]*.*

(3) A consumer credit agreement is a **regulated agreement** within the meaning of this Act if it is not an agreement (an 'exempt agreement') specified in or under section 16, [16A or 16B].

NOTES

Sub-s (1): word 'personal' in italics repealed and subsequent word in square brackets substituted by the Consumer Credit Act 2006, s 2(1)(a).

Sub-s (2) is repealed by the Consumer Credit Act 2006, s 2(1)(b).

'Credit'

9 Meaning of credit

(1) In this Act '**credit**' includes a cash loan, and any other form of financial accommodation.

(2) Where credit is provided otherwise than in sterling, it shall be treated for the purposes of this Act as provided in sterling of an equivalent amount.

(3) Without prejudice to the generality of subsection (1), the person by whom goods are bailed or (in Scotland) hired to an individual under a hire-purchase agreement shall be taken to provide him with fixed-sum credit to finance the transaction of an amount equal to the total price of the goods less the aggregate of the deposit (if any) and the total charge for credit.

(4) For the purposes of this Act, an item entering into the total charge for credit shall not be treated as credit even though time is allowed for its payment.

NOTES

'Section 189(1) provides:

> 'cash' includes money in any form'

‘Debtor-creditor agreement’

13 Debtor-creditor agreements

A **debtor-creditor agreement** is a regulated consumer credit agreement being—

(a) a restricted-use credit agreement which falls within section 11(1)(b) but is not made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier, or

(b) a restricted-use credit agreement which falls within section 11(1)(c), or

(c) an unrestricted-use credit agreement which is not made by the creditor under pre-existing arrangements between himself and a person (the ‘supplier’) other than the debtor in the knowledge that the credit is to be used to finance a transaction between the debtor and the supplier.

NOTES

Section 11 provides:

> **11 Restricted-use credit and unrestricted-use credit**
>
> (1) A **restricted-use credit agreement** is a regulated consumer credit agreement—
>
> *(a)* to finance a transaction between the debtor and the creditor, whether forming part of that agreement or not, or
>
> *(b)* to finance a transaction between the debtor and a person (the ‘supplier’) other than the creditor, or
>
> *(c)* to refinance any existing indebtedness of the debtor’s, whether to the creditor or another person,
>
> and ‘restricted-use credit’ shall be construed accordingly.
>
> (2) An **unrestricted-use credit agreement** is a regulated consumer credit agreement not falling within subsection (1), and ‘unrestricted-use credit’ shall be construed accordingly.
>
> (3) An agreement does not fall within subsection (1) if the credit is in fact provided in such a way as to leave the debtor free to use it as he chooses, even though certain uses would contravene that or any other agreement.
>
> (4) An agreement may fall within subsection (1)*(b)* although the identity of the supplier is unknown at the time the agreement is made.

Section 187 provides:

> **187 Arrangements between creditor and supplier**
>
> (1) A consumer credit agreement shall be treated as entered into under pre-existing arrangements between a creditor and a supplier if it is entered into in accordance with, or in furtherance of, arrangements previously made between persons mentioned in subsection (4)*(a)*, *(b)* or *(c)*.

(2) A consumer credit agreement shall be treated as entered into in contemplation of future arrangements between a creditor and a supplier if it is entered into in the expectation that arrangements will subsequently be made between persons mentioned in subsection (4)*(a)*, *(b)* or *(c)* for the supply of cash, goods and services (or any of them) to be financed by the consumer credit agreement.

(3) Arrangements shall be disregarded for the purposes of subsection (1) or (2) if—

(a) they are arrangements for the making, in specified circumstances, of payments to the supplier by the creditor, and

(b) the creditor holds himself out as willing to make, in such circumstances, payments of the kind to suppliers generally.

[(3A) Arrangements shall also be disregarded for the purposes of subsections (1) and (2) if they are arrangements for the electronic transfer of funds from a current account at a bank within the meaning of the Bankers' Books Evidence Act 1879.]

(4) The persons referred to in subsections (1) and (2) are—

(a) the creditor and the supplier;

(b) one of them and an associate of the other's; and

(c) an associate of one and an associate of the other's.

(5) Where the creditor is an associate of the supplier's, the consumer credit agreement shall be treated, unless the contrary is proved, as entered into under pre-existing arrangements between the creditor and the supplier.

'Credit reference agency'

145 Types of ancillary credit business

……..

(8) A **credit reference agency** is a person carrying on a business comprising the furnishing of persons with information relevant to the financial standing of individuals, being information collected by the agency for that purpose.

'Associate'

184 Associates

[(1) A person is an associate of an individual if that person is—

(a) the individual's husband or wife or civil partner,

(b) a relative of—

(i) the individual, or

(ii) the individual's husband or wife or civil partner, or

(c) the husband or wife or civil partner of a relative of—

(i) the individual, or

(ii) the individual;s husband or wife or civil partner.]

(2) A person is an associate of any person with whom he is in partnership, and of the husband or wife [or civil partner] or a relative of any individual with whom he is in partnership.

(3) A body corporate is an associate of another body corporate—

(a) if the same person is a controller of both, or a person is a controller of one and persons who are his associates, or he and persons who are his associates, are the controllers of the other; or

(b) if a group of two or more persons is a controller of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

(4) A body corporate is an associate of another person if that person is a controller of it or if that person and persons who are his associates together are controllers of it.

(5) In this section 'relative' means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, ... references to a husband or wife include a former husband or wife and a reputed husband [or wife, and references to a civil partner include a former civil partner] [and a reputed civil partner]; and for the purposes of this subsection a relationship shall be established as if any illegitimate child, step-child or adopted child of a person [were the legitimate child of the relationship in question].

NOTES

Section 189 provides:

'controller', in relation to a body corporate, means a person—

(a) in accordance with whose directions or instructions the directors of the body corporate or of another body corporate which is its controller (or any of them) are accustomed to act, or

(b) who, either alone or with any associate or associates, is entitled to exercise or control the exercise of, one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller.

TERMS DEFINED IN SECTION 189(1)

Section 189(1) provides:

'**advertisement**' includes every form of advertising, whether in a publication, by television or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and references to the **publishing of advertisements** shall be construed accordingly;

…

‘**advertiser**’ in relation to an advertisement means any person indicated by the advertisement as willing to enter into transactions to which the advertisement relates;

…

‘**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;

…

‘**give**’ means, deliver or send [by an appropriate method] to;

[‘**appropriate method**’ means—

(a) post, or

(b) transmission in the form of an electronic communication in accordance with section 176A(1);]

[176A Electronic transmission of documents

(1) A document is transmitted in accordance with this subsection if—

(a) the person to whom it is transmitted agrees that it may be delivered to him by being transmitted to a particular electronic address in a particular electronic form,

(b) it is transmitted to that address in that form, and

(c) the form in which the document is transmitted is such that any information in the document which is addressed to the person to whom the document is transmitted is capable of being stored for future reference for an appropriate period in a way which allows the information to be reproduced without change.

(2) A document transmitted in accordance with subsection (1) shall, unless the contrary is proved, be treated for the purposes of this Act, except section 69, as having been delivered on the working day immediately following the day on which it is transmitted.

(3) In this section, ‘electronic address’ includes any number or address used for the purposes of receiving electronic communications.]

…

‘**individual**’ includes—

(a) a partnership consisting of two or three persons not all of whom are bodies corporate; and

(b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership;

…

'**licence**' means a licence under Part III (including that Part as applied to ancillary credit businesses by section 147);

OFT' means the Office of Fair Trading;

…

'**licensed'**, in relation to any act, means authorised by a licence to do the act or cause or permit another person to do it;

…

'**representation**' includes any condition or warranty, and any other statement or undertaking, whether oral or in writing;

…

NOTES

Definition 'appropriate method' inserted by SI 2004/3236, art 2(1), (8).

The definition of 'individual' is substituted by the Consumer Credit Act 2006, s1.

In definition 'licence' words from '(including that Part' to the end repealed by the Consumer Credit Act 2006, s70, Sch 4.