

## **Distance Marketing of Consumer Financial Services Directive (DMD) guidance:**

In the response to the Consumer Credit White Paper consultation papers ( <http://www.dti.gov.uk/ccp/topics1/pdf1/creditconres.pdf> ) that we released on 9 June, we indicated that the DTI would implement the DMD requirements regarding pre contract information relating to regulated consumer credit agreements on 31 May 2005. This ties in with when the Consumer Credit (Disclosure of Information) Regulations 2004 introduce our pre contract information requirements for non-distance contracts.

We also explained that the DMD's 14 day cancellation rights for distance contracts would be introduced on 31 October 2004, just slightly later than the Directive's 9 October deadline.

It was originally proposed that the DTI would make a separate set of regulations implementing the Directive's requirements as these apply to regulated consumer credit agreements concluded at a distance. It became clear that this would substantively duplicate the regulations by Her Majesty's Treasury (HMT) implementing the DMD generally (save as implemented by Financial Services Authority rules). To avoid this, the Government decided to incorporate the relevant consumer credit provisions within the HMT Regulations. HMT have laid the resulting regulations (the Financial Services (Distance Marketing) Regulations 2004) and they appear on the HMT website at:

[http://www.hm-treasury.gov.uk/consultations\\_and\\_legislation/dmd/consult\\_dmd\\_index.cfm](http://www.hm-treasury.gov.uk/consultations_and_legislation/dmd/consult_dmd_index.cfm)

The regulations adopt a "copy out" approach. This means they largely copy out key text from the DMD rather than attempt a redraft that might give rise to a different interpretation.

We wish to draw your attention to the following key points:

You will note that the Financial Services (Distance Marketing) Regulations 2004 do not extend to covering sole traders, partnerships or unincorporated associations. This is because the Distance Marketing Directive was targeted at consumers based on the European Commission's definition. UK domestic legislation historically has a broader definition of consumer that includes the aforementioned businesses. In this case, the Government view was that there was no need to regulate further than the Directive required as there was no identified detriment requiring attention. Indeed, any business lobbying received was in support of "no such gold plating".

These Regulations will require pre contract information, as described in article 3 of the DMD, for all distance sale consumer credit contracts. For non-regulated consumer credit, this is introduced on 31 October 2004. The information can be incorporated into the credit agreement provided it is given to the consumer "in good time" before the contract is concluded. This complements the pre contract information requirements for non-distance regulated consumer credit agreements under the Consumer Credit (Disclosure of Information) Regulations 2004 (<http://www.dti.gov.uk/ccp/topics1/pdf1/creddis04.pdf>). Both distance and non-

distance pre contract information for regulated consumer credit agreements will be required from 31 May 2005 save as set out in the next paragraph.

The required pre contract information includes information as to the new cancellation rights mentioned below. That part of the pre contract information requirements, but only that, will apply in respect of regulated consumer credit contracts made on or after 31 October 2004. For full details on the cancellation related information that will need to be provided between 31 October 2004 and 31 May 2005 consult Regulation 29 and Schedule 1, paragraph 13, in particular.

The Regulations will provide that all credit agreements concluded at a distance with consumers within the meaning of the Directive will be subject to a cancellation period of 14 days from the date the contract was concluded. This will be required from 31 October 2004. There are a few exceptions; for example, loans secured by a legal mortgage on land. The rules concerning cancellation of credit agreements which are not distance contracts have not changed.

As noted above, there is a requirement that consumers are made aware that they have these new cancellation rights. If lenders have stocks of agreements used for distance contracts which give cancellation rights to distance contracts (even though there is currently no requirement to do so) but the cancellation period is under 14 days, then lenders should find that a sticker, insert or covering document would suffice for the purposes of indicating the new 14 day cancellation right. There should, therefore, be no need to destroy existing documentation in the period 31 Oct 2004 - 30 May 2005.

We will, in due course, issue further guidance on the provisions of the Regulations.

Consumer and Competition Policy Directorate  
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