

THE CONSUMER CREDIT (DISCLOSURE OF INFORMATION)
REGULATIONS 2004 (“the Information Regulations”)
THE CONSUMER CREDIT (AGREEMENTS) (AMENDMENT)
REGULATIONS 2004 (“the Agreements Regulations”)

GUIDANCE NOTES

The Information Regulations

Introduction

These Regulations are made by the Secretary of State under the powers conferred by section 55 of the Consumer Credit Act 1974.

Section 55 empowers the Secretary of State to make Regulations requiring specified information to be disclosed in the prescribed manner to the debtor or hirer before a regulated agreement is made. Under section 55(2) a regulated agreement is not properly executed unless any such Regulations were complied with before the making of the agreement.

The Regulations will come into force on 31st May 2005 in accordance with regulation 1(1). As these Regulations do not replace existing law, lenders and hirers may choose to give pre-contract information at any time prior to 31 May 2005. If a consumer returns a signed agreement on the old style form in the three month transitional period allowed for in Regulation 18 of the Consumer Credit (Agreements) (Amendment) Regulations 2004 they will need to be provided with pre contract information. However, provided the relevant terms have not changed, this would be the pre contract information created for the new style of Agreement that would by then be necessary.

Regulation 1(2) defines key terms used in the Regulations including “distance contract”. The definition makes it clear that a regulated agreement is a distance contract if it is made under an organised distance sales scheme under which the parties do not meet up to and including the time at which the agreement is made. See the reference to the Distance Marketing Directive below under *Distance Contracts*.

Regulation 2 of the Information Regulations provides that the Regulations apply to all regulated agreements under the Consumer Credit Act 1974 except-

i) Section 58 secured loans

The Information Regulations do not cover loans to which s.58 of the Consumer Credit Act applies as consumers will have a copy of the agreement for 7 days before receiving another copy for signature.

ii) Distance contracts

The Information Regulations do not cover pre contract information for distance contracts. These will be covered by Treasury regulations implementing Directive 2002/65/EC concerning the distance marketing of consumer financial services (“the Distance Marketing Directive”) although they will not extend to businesses such as sole traders, partnerships and unincorporated associations since the European Commission’s definition of consumer is more limited than the historical UK one. However, the information required under these regulations largely reflects that required under the Treasury’s save that some information, purely relevant to distance contracts, has been excluded.

Disclosure of information before a regulated agreement is made under the Consumer Credit Act 1974.

Regulation 3(1) of the Information Regulations requires specified information to be disclosed to the debtor or hirer before an agreement is made. This information will mimic that found at the start of the credit or hire agreement but the lender or owner may decide upon the order in which he displays the information.

This pre contract information will allow the consumer to have a summary of the key features that they can use to help them compare products and select the most appropriate. Any document must be separate from an agreement document although, for example, delivery in the same folder or pack would be acceptable if both were available.

Regulation 3(2) 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. An example might be where the interest rate is not known at the date of disclosure because the lender uses rate for risk pricing.

Regulation 4 sets out the manner in which the information must be disclosed. There are legibility and equal prominence requirements. All of the information and wording must be of equal prominence, with the exception of headings. The APR must not, therefore, be more prominent than any interest rate or other financial information. The information must be contained in a document which is of a nature which allows the debtor or hirer to remove it from the place at which it was disclosed to him.

Any document must be headed with the words “Pre-contract Information”. In addition, it must contain one of the headings prescribed by the Agreements Regulations, but with the words “Pre-contract Information” appearing first and more prominently.

As Regulation 3(2) requires information to be that which will be in the agreement, (save if not known), if the information becomes out of date, new pre contract information would be necessary. This negates the need for a “sell by” date to be inserted on pre contract information which, in any case, could breach Regulation 4(d)(iii). However, for limited time offerings, there is nothing to stop lenders flagging such detail in any promotional literature.

The Agreements Regulations

Introduction

These Regulations are made by the Secretary of State under the powers conferred by section 60, 61(1)(a), 105(9), 114(1), 182(2) and 189(1) of the Consumer Credit Act 1974.

Section 60 empowers the Secretary of State to make Regulations as to the form and content of documents embodying regulated agreements.

Section 61(1)(a) prescribes that a regulated agreement is not properly executed unless a document in the prescribed form containing all the prescribed terms is signed by the debtor and the creditor or hirer.

Section 105(9) provides that Regulations under 60(1) shall include provision that the agreements also embody any security in relation to the agreement.

Section 114(1) provides that at the time a person receives an article he has taken in pawn under a regulated agreement he shall receive a receipt in the prescribed form.

Section 182(2) prescribes for the Secretary of State to have certain powers in relation to the making of regulations under the Act i.e. to exclude certain classes of cases.

Section 189(1) is cited for the definitions of 'prescribed' and 'regulations'.

These regulations will cover all new agreements entered into on or after 31 May 2005 except for regulated agreements that have been given to the debtor for signature before the 31st May but which have not been made by that date provided that they become executed agreements not later than 3 months after the 31st May 2005. This allows agreements already sent out for signature before 31st May to be made after that date as long as they comply with the Agreements Regulations as they were before amendment by these Regulations. There would be nothing to stop lenders from sending out new style agreements before 31st May 2005 but these could not be made before that date.

We are currently looking into the issue of copies of documents to be given under the Act and the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983. We will issue further guidance in due course.

The order of information

Regulations 2(4), 3(4), 7(4) and 7(11) prescribe the order that the information, statements of protection and remedies, signature and other boxes must be in a regulated agreement. The Regulations prescribe the ordering of particular blocks of information, but not the order of each piece of information within the

block. For example lenders will have the discretion to decide upon the order to display the information required by regulation 2(4).

The requirement to show paragraph 14A of Schedule 1 under the heading “Key Financial Information” was a typographical error. It should only be shown under “Other Financial Information” where it was also, correctly, listed. The department will issue an amending Statutory Instrument in due course. There is a similar correction necessary for paragraph 13A with regard to modifying agreements.

Where precise details are unknown

Regulations 2(2) and 3(2) allow lenders to make use of estimated information where certain financial and related particulars cannot be exactly ascertained by the creditor. This is limited to paragraphs 9-11 of Schedule 1.

Certain items however, like the interest rate, should be known. For practical reasons, it might suit lenders to indicate an interest rate over the phone where this was not initially known, such as in a rate for risk credit card application. They might wish to record the consumer’s clear assent to protect themselves in any subsequent dispute.

Paragraphs 9 and 10 of Schedule 1 of the Regulations have been amended so that all agreements, will have to show a total charge for credit, the rate of interest and give a statement explaining how and when interest charges are calculated.

In the case of running account credit where the total charge for credit is not known it is to be calculated on the assumptions contained in paragraph 1, Schedule 7. Where a credit limit is not known the credit to be provided is to be taken as £1500 unless it is known a lower amount will be offered. It is to be assumed the credit will be repaid over a period of one year in 12 equal monthly instalments.

Legibility and prominence

In addition to the long established requirements for lettering to be easily legible and to be a colour easily distinguished from the background, regulation 6(2) includes a new requirement of equal prominence. This means that the terms and conditions will have to be the same size as other, more up front, information.

Headings, trade names and the names of the parties can be given more prominence (capitals, underlining, boldness, size etc).

Handwritten sections will be exempted from the equal prominence requirements because of practical realities.

New headings of agreements

Paragraph 1 of Schedules 1 and Part I of 8 provide for some new headings for agreements. These revised headings aim to make the nature of the agreement clearer to the consumer. Schedule 1, paragraph 1(2) is for cases such as a store card agreement, or other running-account credit, which would not constitute a 'credit card agreement'. If an agreement comprises elements of (a) to (d) of paragraph 1(1), but does not fall entirely within any one of them, then the heading in paragraph 1(2) should be used.

Term of the credit

Paragraph 8 of Schedule 1 and 7 of Part I of Schedule 8 now require that the duration of the agreement (e.g. weeks/months/years) or the minimum duration be given. Of course, this does not undermine a consumer's right to settle the loan early as will be explained under the new paragraph 24 of Schedule 1 and associated paragraphs.

Total charge for credit, rate of interest etc

Paragraphs 9 and 10 of Schedule 1 and 8 and 9 of Part 1 of Schedule 8 provide that the initial interest rate and any known future interest rates must be specified along with the periods for which they apply (e.g. loans with a low cost start rate/s). All rates, regardless of whether there is just one or more, will have to be in annualised form e.g. "This loan is at an equivalent rate of 8% p.a. for the first 6 months and an equivalent rate of 10% p.a. thereafter". Where a future rate is unknown, and cannot be exactly ascertained, Regulation 2(2) requires the inclusion of estimated information based on reasonable assumptions and a statement of the assumptions. This applies where it is known that the rate will or is likely to change at a particular time, but not where it is merely stated to be variable or linked to base rates.

Different elements of the credit may have different interest rates, in which case all such rates must be shown. They should be clearly distinguishable so that it is clear what each relates to.

It must be stated whether rates are variable or fixed.

It must be explained how interest charges are calculated and applied to the credit e.g. for credit card accounts there are complex ways of applying the specific interest rate. We would expect something like "There is an interest free period of up to 59 days comprising 28 days payment period on the statement and up to 31 days between the purchase and the statement being issued". Any example should be also address related detail such as when interest starts and stops being applied, whether it may be charged in respect of credit partially repaid during the previous period, and whether interest is compounded.

The total charge for credit with a list of constituent parts must now be given for all types of agreement.

Payment allocation

Paragraph 14A of Schedule 1 and 13A of Part 1 of Schedule 8 provide that lenders must include a statement of the order or proportions in which any amount paid by the debtor which is not sufficient to discharge the total debt will be applied for different purposes and under different parts of the agreement. We would expect something like “Any payments are allocated first to pay off arrears (if any); then costs, expenses and charges due (if any) and finally to reduce the amount you owe” or “Any payments are allocated first towards interest and other charges and fees and then to Balance Transfers; Purchases and Cash Advances in that order”. Alternatively, the lender could state that payments will always be allocated so as to reduce the highest charged debt first, if that is the case.

Charges

Paragraph 22 of Schedule 1 and Part I of Schedule 8 provides that all default charges must be listed. There must also be a statement indicating any term of the agreement (in the Terms and Conditions) that provides for any other charges other than either a default charge or a charge included in the total charge for credit.

We would expect that exact charges would be listed or, where not known precisely, a description of how the amount would be calculated at any time it became payable.

Cancellation rights

Paragraph 23 of Schedule 1, 11 of Schedule 3, 22 of Part 1 of Schedule 8 and 11 of Part II provide that where there are no cancellation rights this must be stated. Many consumers labour under the misunderstanding that all contracts can be cancelled. The obligation to include the “Your right to cancel” statutory wording remains for cancellable agreements.

The tailored or representative trio of early settlement examples

Three examples need to be given for fixed sum credit (of more than one month) of what an early settlement figure would look like at various stages during the term of the agreement. All such agreements are covered regardless of how they calculate early settlement figures including hire purchase and conditional sale agreements. This will help educate consumers as to the type of large amounts that can still be outstanding on loans several years down the line. Due to their lack of awareness of this, consumers are often shocked by what they see as high early settlement quotes and this creates animosity that we hope to avoid.

We have specified that the stages for the early settlement quotes are to be a $\frac{1}{4}$, a $\frac{1}{2}$ and $\frac{3}{4}$ s. The stages should be in terms of time (so 1, 2 and 3 years

for a 4 year loan) but we allow for movement to the nearest repayment date that falls thereafter for ease of calculation.

We have not prescribed tailored examples because of the high cost of producing these in certain situations. These could include doorstep loan sales where representatives have no IT links with headquarters and the size of loans can vary greatly. However, lenders can provide tailored examples if they choose.

Alternatively, representative examples can be provided. These would say what amount was payable for each £100 or £1000 borrowed (choosing the more apt) at the $\frac{1}{4}$, $\frac{1}{2}$ and $\frac{3}{4}$ time periods. The consumer could calculate the precise sum owing by suitable multiplication but even without this, s/he will get a feel that sizeable amounts can be required at these points. This helps with our objective of better transparency contributing to educating consumers.

Lenders are required to state that the amounts are only illustrative as they do not take account of any variation which might occur under the agreement. They may wish to state any assumptions underpinning the examples such as payment schedules being met; variable interest rates remaining the same etc. They may wish to add that the early settlement date in the future would be likely to be different from the examples and so the figure would probably vary in reality.

MISSING PAYMENTS and YOUR HOME MAY BE REPOSSESSED warnings

Paragraphs 2 and 4 of Schedule 2 and 2 and 3 of Schedule 5 provide for 2 new warnings. The "Your Home may be Repossessed" warning need only go on agreements secured on land, however, the "Missing Payments" warning should go on all agreements as it is relevant to all.

Signatures for the Purchase of Additional Contracts of Insurance

Where, at the time of entering an agreement the debtor is also purchasing an optional contract of insurance, which will be financed by credit advanced under the main agreement or under a subsidiary credit agreement, a separate consent indicator in the Form in Part III of Schedule 5 must be included. The debtor will have to indicate the extra products they wish to purchase by ticking the names of the relevant products. This would mean that lenders could not pre populate the box/es with a tick. Cross references to the terms relating to the credit for the additional insurance products being purchased will also need to be given.

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