

**White Paper - "Fair, Clear and Competitive - The Consumer Credit Market in the 21st Century".**

Establishing a Transparent Market

Responses to a consultation on proposals for regulations  
on:

Early Settlement  
Consumer Credit Advertising  
Form and Content of Credit Agreements  
APRs on credit cards  
On-line Agreements  
Establishing a Transparent Market

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## ***Ministerial Foreword***

Britain has the largest and most competitive consumer credit market in Europe. The Consumer Credit White Paper, published in December 2003, set out a comprehensive programme of reform of existing UK consumer credit legislation aimed at building on this success and ensuring a credit market fit for the 21<sup>st</sup> Century. As a first step towards that reform, we published a consultation on detailed proposals for reforms of Early Settlement, Consumer Credit Advertising, the Form and Content of Credit Agreements, APRs on Credit Cards and On-line Agreements.

The White Paper was welcomed by consumer groups, industry and regulators, confirming the need for reform. We received 106 substantive responses to the consultation. I am extremely grateful to all those who responded for the enormous time and effort I know went into preparing their comments.

The responses were largely supportive of our policy approach, whilst making a number of helpful and important comments about the best way to achieve them. The responses will enable us to avoid unnecessary regulatory burdens on business without compromising our stated aim of greater transparency and increased protection for consumers, particularly the weakest and most vulnerable in society.

This document sets out some of the main points raised in the consultation process and our response to them. It also contains the regulations as placed before Parliament on 9 June 2004, including revised Regulatory Impact Assessments.

These Regulations are the first important step in the wider reform programme. They are all about increasing openness and improving transparency, making it easier for consumers to understand and compare credit products. They will empower consumers and borrowers to make informed choices, and responsible lending and borrowing decisions.

They also introduce long overdue reforms of the existing early settlement rules, providing a fairer deal for those consumers who decide to settle their loans early. And they address important and timely concerns raised by the Treasury Select Committee on advertising, APR calculations, pre-contact information and the form and content of credit agreements.

Credit has become an integral part of all our lives, enabling all of us to deal with unexpected emergencies and manage the many financial demands and risks of modern life. We must ensure that this continues, but also that those for whom credit can become unsustainable are offered adequate protections. I believe that these new regulations will ensure continued access to credit at competitive prices whilst increasing the protection available to consumers, particularly the most vulnerable.

***Gerry Sutcliffe MP***

Minister for Employment Relations, Competition and Consumers  
Department of Trade and Industry

## ***Executive Summary***

1. On 8 December 2003 the Department of Trade and Industry (DTI) published its Consumer Credit White Paper 'Fair, Clear and Competitive: The Consumer Credit Market in the 21<sup>st</sup> Century' and a consultation document 'Establishing a Transparent Market: A consultation on proposals for regulations on Early Settlement; Form and Content of Credit Agreements: APRs on Credit Cards; and On-line Agreements'.
2. The White Paper was warmly welcomed by consumer groups, industry and regulators who agreed with the Government that the Consumer Credit Act 1974 was in need of updating to ensure legislation which would foster a competitive consumer credit market while providing adequate protection for all consumers.
3. There was a shared understanding that the UK credit market has not only grown in size but also in complexity. The UK market provides a multitude of credit products to all groups of society, including to the most vulnerable. The White Paper put forward the case for action to establish a more transparent regime, create a fairer legislative framework and minimise over-indebtedness. It proposed updating the credit licensing rules, introducing a new unfairness test, developing an over-indebtedness strategy, tackling loan sharks and reforming the existing regulations on advertising; form and content of agreements; APR calculations for credit cards; and early settlement.
4. This is an ambitious programme for a major overhaul of consumer credit legislation, requiring both primary and secondary legislation with a need for cross government working and substantial input and co-operation from industry and consumer bodies alike.
5. The consultation was a first and necessary step to progress the work and to test our policy with practitioners and consumers.
6. We received 106 substantial responses which have been enormously helpful in firming up our proposals for secondary legislation and in ensuring that the new regulations we have placed before Parliament on 9 June will be effective. These regulatory reforms are the first step in implementing the changes which we are committed to take forward in the next few months.
7. This document sets out our detailed response to the comments received on our proposed regulations for advertising; form and content of agreements; APR calculations on credit cards; and early settlement. We also set out our response to comments received on the abolition of the existing financial limit in the Consumer Credit Act 1974.
8. Most comments received focused on the detail of the proposals and the implementation timetables rather than the substance of the policy. As a result we have made a number of technical adjustments and taken into consideration the need for greater flexibility in the timing of implementation while maintaining the overall policy stance as set out in the White Paper.

9. As a result, the new regulations will ensure greater transparency for consumers in the way credit products are sold. They will require consumers to be provided with more consistent information, both pre-contractual and post contractual, so that they are empowered to make informed decisions about what is best for them. Furthermore, the reform of the early settlement rules will give consumers a better and fairer deal when settling loans early.
10. Together they will provide the first important steps to a fairer and more transparent consumer credit market and will enable consumers to have greater confidence when entering into credit agreements.

### ***Early Settlement***

11. The aim of the Regulations on early settlement of credit agreements is to: -

- provide for a fairer method of calculating the remaining amount owed by consumers who choose to settle loans early.
- provide for fairer periods of deferment than under the existing regime.
- Require consumers to be given a trio of early settlement examples in the agreements offered to the consumer for consideration so that they have a more realistic feel for the typical sums likely to be asked for on early settlement.

12. The main changes that we have made to the Regulations as a result of the consultation are the following:

- We have allowed the use of representative illustrations of the cost of early settlement rather than tailored ones as neither is likely to tie in exactly with real situations but both can be educational.
- We have exempted loans under a month's term from the need to provide three early settlement examples.
- We have allowed the use of the date of receipt of early settlement requests in calculations rather than the date of posting because the latter cannot always be verified.
- We have listened to concerns that lenders would not be able to make the necessary systems changes by October 2004 and so the new Regulations will not come into force until 31 May 2005. There will be a transitional period of two years before the Regulations apply to existing regulated loans of ten years or less and of five years for loans of more than ten years.

### ***Advertising***

13. The aim of the reform is to: -

- modernise and simplify the existing rules governing the advertising of consumer credit, which are technical, highly complex and difficult to enforce.
- increase transparency in the advertising of consumer credit and ensure greater consistency in enforcement.
- Enabling consumers to compare products more easily and make informed purchasing decisions with greater confidence.

14. The main changes that we have made to the Regulations as a result of the consultation are the following:

- The Regulations now permit both the range of credit on offer or details of any deposit required to be quoted without triggering the obligation to quote either the APR or any of the other key financial indicators in Schedule 2 to the Regulations.
- The APR will always have to be more prominent than other financial information in the advertisement; it will also have to appear in a font 1.5 times the size of the Schedule 2 indicators where they are included (as opposed to the original suggestion of twice the size).
- Full contact details of the advertiser will be required wherever the items in Schedule 2 are required.
- The Regulations retain the existing provisions that allow for split advertisements in catalogues – and apply these equally to advertisements in both catalogues and to marketing material on retail premises.
- Where “from” and “to” APRs are quoted, the Regulations now require the “to” APR to be the actual highest rate on offer.
- The Regulations now contain, at Schedule 1, a set of assumptions for calculating the APR in respect of running account credit. These will apply only to the APRs quoted in advertisements, and will allow consumers to use that figure as a reliable comparator of the costs of competing products. The assumptions have not changed from those set out on page 18 of the consultation document “Establishing a Transparent Market”.
- The new Consumer Credit Advertisements Regulation will come into force on 31 October 2004 as proposed in the consultation.

### ***Form and Content of Agreements***

15. The aim of the Regulations on pre-contract information and on form and content of credit agreements is to:-

- provide for the provision of pre contract information which will help consumers to benchmark products and select the most appropriate.
- require the provision of key financial, other financial and key information in credit agreements to help consumers to understand their contracts.
- require that consumers actively consent to buying products such as Payment Protection Insurance and Guaranteed Asset Protection insurance where these are financed through credit so that these are not subject to inertia selling.
- There are two sets of Regulations to implement these proposals - The Consumer Credit (Agreements) (Amendment) Regulations and the Consumer Credit (Disclosure of Information) Regulations.

16. The main changes that we have made to the Regulations as a result of the consultation are the following:

- We have reduced the pre-contract information requirements for non-distance transactions by removing information only relevant to distance transactions.
- We will not now require a separate signature for each additional product linked to a consumer credit agreement so that now two signatures will be the maximum required on any agreement.
- We have limited the circumstances in which warnings need to be given.
- We have dropped certain requirements like the "Your Responsibilities" section which attracted little support.
- We have listened to concerns that lenders would not be able to make the necessary changes to documents by October 2004 and so the new Regulations will not now come into force until 31 May 2005 .
- We have allowed a three months transition period during which agreements in the current form which were issued before 31 May 2005 can still be processed.

### ***Distance Marketing of Financial Services Directive***

- We will implement the majority of DMD requirements relating to Consumer Credit Agreements on 31 May 2005. However, we will implement cancellation rights under the DMD by 31 October 2004.
- We will write to stakeholders shortly with draft regulations and intend to publish these regulations by early July.

## **Online Agreements**

- The Regulations will allow lenders and consumers to undertake on-line transactions
- The consultation responses confirmed the policy and no further substantive changes were requested
- We intend to place new enabling regulations before Parliament in September, with a view to their coming into force on 31 October 2004.

## **Financial Limits**

17. We propose to bring forward legislation, when Parliamentary time permits, to abolish the existing £25,000 limit in the Consumer Credit Act. The limit does not reflect the way that the consumer credit market is developing – in particular increases in second-charge mortgages and secured debt consolidation.

18. We will retain the £25,000 limit for business lending, but restrict the definition of business lending covered by the Act to credit agreements made with sole traders, unincorporated bodies and partnerships of three or fewer.

19. We will remove the provisions in section 127 of the Consumer Credit Act that state that certain errors of format or process in a consumer credit agreement make that agreement totally unenforceable. We will give the courts full discretion to rule on the enforceability of agreements in such circumstances.

20. As a result of comments received, we propose the following additional provisions:

We will allow "high net worth" borrowers, who may feel that it is in their interests to forgo their Consumer Credit Act protections, to do so by way of a process of self-certification.

The business lending test will be framed in such a way that borrowing -wholly or predominantly- for business purposes above £25,000 will not be governed by the terms of the Consumer Credit Act.

The classification of an advance as business lending will principally be evidenced by self-certification on the part of the borrower.

We will make clear that buy-to-let transactions are to be regarded as a form of business lending – only buy-to-let transactions for less than £25,000 will be capable of being regulated under the Consumer Credit Act.

## ***Consumer Credit Bill - Licensing and Unfairness Test***

21. In the White Paper, the Government set out proposals to amend the 1974 Consumer Credit Act, by reforming the licensing system and improving consumer redress by making it easier to challenge unfair credit transactions and by establishing an alternative dispute resolution (ADR) mechanism. These reforms had been developed following two years of extensive consultation, and while the White Paper did not seek comments on specific points (other than in relation to the ADR proposals), the measures received support from a wide range of respondents to the White Paper consultation.
22. These comments, together with feedback from discussions with stakeholders and the results of additional research, confirmed that the Government's proposals for legislative reform were focusing on major areas of concern, and work is now well underway to produce draft legislation which will be introduced when Parliamentary time is available. The Government will share draft clauses with stakeholders if at all possible before the Bill is introduced, and will continue the dialogue which has been vital to ensure our proposals are fair, workable, and best meet the needs of diverse stakeholders. The Government plans to publish its response to the ADR consultation together with research on the impact of interest rate ceilings in other countries during the summer. Draft OFT guidance which will accompany the legislation will also be shared with stakeholders at an early opportunity.

## ***Overindebtedness***

23. The Government set out its approach to tackling over-indebtedness in chapter five of the White Paper. The chapter reviewed the current situation, discussing extent, causes and costs of over-indebtedness and identifying the Government's strategic priorities. The Government's twin aims are to: minimise the number of consumers who become over-indebted; and to improve the support and processes for those who have fallen into debt. Policy proposals covered financial literacy, debt advice, sources of affordable credit, irresponsible and illegal money lending, enforcement processes and administration of entitlements. The Ministerial, Advisory and Official Working Groups announced in the White Paper have now been formed.
24. While the White Paper did not seek comments on the strategy on over-indebtedness, the need for a holistic approach to addressing over-indebtedness was strongly supported and widely recognised. The introduction of a strategy for tackling over-indebtedness and the focus on vulnerable consumers was generally welcomed. A summary of the comments received has been shared with the Advisory and Officials Working Groups and they are being taken into consideration in the development of the Government's strategy on over-indebtedness which we aim to publish in the summer.

## **Analysis of Responses**

25. The consultation document 'Establishing a Transparent Market: A consultation on proposals for regulations on Early Settlement; Form and Content of Credit Agreements: APRs on Credit Cards; and On-line Agreements' paper was published in December 2003 and was sent to a wide range of lenders, trade associations, consumer bodies, regulatory and Government bodies plus other interested parties. We summarise the main points made to us below. All those replies that were not marked "Confidential" are available for individual analysis in the DTI Library at 1 Victoria Street, London, SW1H 0ET (call the Open Government Unit on 020 7215 6618).

## **Rebate on Early Settlement Regulations**

### **Breakdown of Responses**

26. In total 65 responses commented on the questions about early settlement, the breakdown of which was:

Retailers – 5  
Trade Association/bodies – 14  
Lenders – 22  
Regulatory/Supervisory bodies inc. Trading Standards – 7  
Consumer Organisations – 8  
Legal/academic – 4  
Others – 5 (companies and individuals)

### **Questions 1 - 9**

**Question 1:** *We would value views on any potential problems in applying the new formula to early settlement calculation.*

27. Consultees did not raise any substantial problems with regard to the Government Actuary's Department's devised formula. Many of the business sector consultees did, however, raise difficulties on the timetable for implementation (see Q4).

**Question 2:** *What problems, if any, do you see in requiring quotations to be provided within 7 working days?*

28. A few business consultees (three) said that SMEs might have problems with providing quotes within 7 days, however most were content, provided that the clock started ticking from the date of receipt of the request. The consultation had suggested the date of mailing would be the start point but lenders were strongly

of the view that this was not always possible to verify for example due to postal delays which could make the target unachievable.

29. DTI listened to these problems and have amended the legislation to say that the 7 days would start from the date of receipt of the request.

**Question 3:           What problems, if any, do you see in providing examples of early settlement costs? Please identify any costs involved.**

30. Consumer consultees generally (eight) welcomed the provision of early settlement examples to both help with consumer education and to avoid later arguments caused by consumers being unfamiliar with the likely size of their early settlement quote.

**31.**       Both consumer and business consultees stressed that consumers should be warned that the quotes were only based on certain assumptions and would only stand if these were met e.g. if interest rates stayed the same; if all payments were made to schedule and if the eventual early settlement date was precisely one of the three quoted in the examples.

32. Many business consultees (twenty eight) stressed that the cost of providing tailored examples would be very high and not worthwhile since it would be very unlikely that a consumer would select one of the exact three days - out of the hundreds or thousands available – on which to settle. It was also the case that many consumers would not have run their accounts exactly to contract (they may have missed a payment date by a few days) and so the three quotes would never be realised in such cases.

33. DTI listened to these problems and have amended the legislation to allow for the provision of three representative examples on the grounds that these will be as educative and as (un)likely to tie in with the eventual early settlement date as tailored ones. We have also exempted loans below one month because their quotes would be for the full amount owed (because of the 28 day deferment) in almost every single case.

**Question 4:           Do you see any difficulty in meeting this timetable? If so, please say what problems you see and set out any costs involved.**

34. Consumer consultees did not flag problems in meeting the 31 October 2004 timetable although some (seven) did want to see existing loans covered by the new Regulations earlier than proposed.

35. There was strong concern from business (thirty two) about the proposed timetable for implementation of the Regulations. Many stated that they would need 12-24 months to implement the systems changes necessary. One leading trade association even called for 4 years for certain loans. It was noted that SMEs in particular could find it impossible to get the IT resources they would need to implement systems changes as the few UK experts were snapped up by the front

runners. Scarcity would also drive up the cost of bought in expertise. There could also be pressure on the availability of expert legal advice.

36. DTI noted these grave concerns and that FSA and OIC (Office of the Information Commissioner) had been rather more generous in their timetabling for comparable changes. We have, therefore, decided to bring the Regulations into force on 31 May 2005, approximately 12 months after the regulations were laid.
37. The need for a transition period - to allow for old documentation in consumers' hands to still be valid – was stressed by some (three).

**Question 5: Overall, we welcome notification of any problems that you foresee with our proposals.**

38. One consumer consultee feared that the deferment and month's interest did not always relate to lenders' costs and so could be a penalty; three feared that short term loans might dry up as lenders moved to 13 month products (to allow them to charge an extra month's interest) and six felt that 28 days deferment was disproportionately long for weekly payment loans.
39. DTI has decided that the costs of running a system that tailored charges to exact costs would be disproportionately expensive to the resulting benefits. We are not persuaded that a great number of short term loan products would be withdrawn. In the case of weekly payment (e.g. doorstep loans), there is currently an ability to defer the settlement date for up to two months. We are cutting this to 28 days. There is also now an ability to respond to a quote request by deferring for four weeks and then moving to the next payment date. This will no longer be possible. We think we have been fair to the consumer in cutting back the possible current periods of deferment but we feel that lenders should retain some method of retrieving the costs of early settlement and so we will maintain our 28 day proposal. It is noted that three business consultees considered that they should be allowed an extra month's interest for loans under one year.
40. Many business consultees (twelve) were opposed to capturing existing loans with the new regime. Some (four) feared their securitisation ratings would suffer. One said that the market would skew to running account products and loans of 13 plus months. Some (five) suggested either a longer lead in time for existing loans or exempting certain types (those with fixed rate loan hedged fund breakage costs). Four voiced support for allowing breakage costs to be passed on with hedged loans. Some (three) feared that if/when the financial limit was raised the new early settlement regime would make fixed rate high value loans uneconomic, where they were hedged and high breakage costs might arise on early settlement. One business consultee felt that running two systems for existing and new loans would prove burdensome (they could, of course, voluntarily shift existing loans onto the new system).

41. DTI continues to believe it is right to bring existing regulated loans within the new provisions after a suitable period of time. The existing provisions are unfair to consumers. However, we recognise that lenders have, entirely legitimately, made commercial decisions on the basis of the current provisions and that applying the new rules to existing loans will impose costs on lenders. We, therefore, need to ensure that the transition period strikes a balance between the interests of consumers and of lenders. The new regulations will apply to loans of under ten years from 31 May 2007. This is two years after they come into force for new loans and almost five years after we first consulted formally on proposed changes in August 2002. In that time, a great majority of loans will have been settled or run to term. However, we recognise that there are particular costs and risks associated with longer term loans. The regulations will not, therefore, apply to loans of ten years or more until 31 May 2010. There will not, however, be any provision for lenders to recover hedged fund breakage costs. Lenders are, in any event, likely to gain from early settlement of such loans as long as interest rates are rising. The Regulations will not apply to existing loans which are currently unregulated.

**Question 6: What additional costs will lenders incur as a result of implementing these changes to the rules on early settlement of loans? Please quantify any costs and state which are one-off costs and which are continuing costs.**

42. Business consultees (thirteen) advanced various figures for the impact of the proposed changes. They ranged from one of costs off £285,000-660,000 to annual costs of £250,000-37,000,000. Others (seven) said that costs would be significant but gave no figures. However, four business consultees suggested that the cost of our proposed changes would be minimal.

43. DTI has taken these figures into account in the revised Regulatory Impact Assessment.

**Question 7: Will costs be different for different types of businesses?**

44. Few consultees responded to this question but those that did made the point that SMEs would have higher proportionate costs than larger firms.

45. DTI note that their revised timetable should help SMEs on the cost front.

**Question 8: Have you any comments on the draft regulations?**

46. Several business consultees provided useful technical advice on the wording of the new regulations which we have taken into account in finalising them.

## **Consumer Credit Advertising Regulations**

### **Breakdown of Responses**

47. In total 71 responses were received to this aspect of the consultation document, the breakdown of which was:

- Industry 48
- Consumer Organisations 8
- Regulatory Bodies 8
- Lawyers 3
- Individuals 4

### **Questions 9 - 23**

**Question 9: *Are these the right circumstances in which to require the inclusion of the APR? Are there any other situations when the APR should be required?***

48. A substantial majority of industry respondents who responded to this question either agreed with the proposals on when to show the APR or agreed in principle with the policy. However, some thought that the APR should not be required where an advertisement merely refers to a range of credit on offer. Some industry respondents expressed concern that equally prominent APRs in multiple product advertisements could be confusing; others sought guidance on what would constitute an APR-triggering subjective claim about the nature of the product.
49. All of the consumer organisations and individuals who responded to this question either agreed with the detailed proposals or agreed in principle with the policy.
50. All of the regulatory bodies and lawyers who responded to this question either agreed with the detailed proposals or agreed in principle with the policy. Specific comments suggested removing the APR requirement where only an indication or range of the credit available is quoted.
51. In the light of the comments received, we have amended the Regulations to permit advertisers to display a range of credit on offer or details of any deposit required without triggering a requirement to show the APR (see also comments in response to Question 12 below about the status of the amount of credit and the deposit as Key Financial Indicators in credit advertisements). Guidance will be issued alongside the new Regulations on the circumstances in which a subjective claim about the competitiveness of a product will trigger the APR.

**Question 10: Do you agree that if advertisements are aimed (explicitly or implicitly) at customers who might otherwise consider their access to credit restricted, such advertisements should always state the APR?**

52. A significant majority of the industry respondents who responded to this question either agreed with the requirement to show the APR in such circumstances or agreed in principle with the policy. However, a significant minority of those responding sought re-assurances about how these limited-access groups would be defined. A number of respondents suggested that the proposals would elevate the importance of the APR in markets where other cost factors were more important to borrowers, and might consequently have a disproportionate impact in low-income markets.
53. With one exception, all of the consumer organisations and individuals who responded to this question either agreed with the detailed proposals or agreed in principle with the policy. There was, however, concern about definitions.
54. While all of the regulatory bodies and lawyers who responded to this question either agreed with the detailed proposals or agreed in principle with the policy, questions were again raised about how the target groups would be defined.
55. Guidance will therefore be issued alongside the new Regulations to clarify exactly what will trigger the requirement to show the APR.

**Question 11: Do you agree with the requirement that if any one of the designated key indicators is displayed then all must be shown with equal prominence? Do you agree that the APR must be shown with double the prominence?**

56. With one exception, all of the industry respondents who responded to this question either agreed with the proposals on the display of key financial indicators and the APR or agreed in principle with the policy. There were, however, specific concerns from a significant number of respondents on three issues. Firstly, that requiring the APR to be shown double the size of other financial information went too far, and was in any case inconsistent with the FSA's position as set out in the MCOB. Secondly, that there was a danger that requiring too much information would breed confusion and stifle innovation. Thirdly, that the impact of the proposals on broadcast – and in particular radio – advertisements had not been fully considered.
57. All of the consumer organisations and individuals who responded to this question either agreed with the detailed proposals or agreed in principle with the policy.
58. All of the regulatory bodies and lawyers who responded to this question either agreed with the detailed proposals or agreed in principle with the policy. Specific comments queried how prominence would be defined; and again raised the question of how the new rules could be applied to radio advertising.

59. As a result of the comments received, we have amended the Regulations to require the APR to be shown only one and a half times the size of and more prominent than the other key financial indicators. We have also included specific exemptions from the prominence provisions for advertisements that are not in a text format.

**Question 12: Do you agree with the key indicators that have been proposed? If not, what would you add/remove?**

60. There were almost as many suggestions for changes to the list of key financial indicators as there were responses to this question. We believe that many of the proposals to augment the list are either adequately addressed elsewhere in the Regulations or are covered by the over-arching obligation for all advertisements to be honest and truthful. As a general rule, we believe that matters relating to the detail of the product on offer – for example details of holiday periods – are more appropriately disclosed in pre-contractual information and in agreements themselves. Our separate proposals on the form and content of credit agreements therefore address these types of issues.

61. Responses from all stakeholder groups have prompted us to make the following changes to the Regulations. Firstly, advertisers will be able to quote the range of credit available details of any deposit or advance payment required, or the cash price without triggering the other key financial indicators – or the requirement to show the APR; although these elements will still themselves be required in circumstances where the key financial indicators are triggered. Secondly, we will require an advertisement to include the full contact details of the advertiser every time that the key financial indicators are also required. Thirdly, we have amended the provisions relating to warnings about secured lending to ensure that they cover the same ground as the FSA in respect of lifetime loans and debt consolidation. Fourthly, we have re-drafted the provisions on disclosure of fees and charges to clarify that a general statement that fees or charges are payable will not trigger the key financial indicators, but that where those indicators are otherwise triggered, all fees and charges must be quantified. Finally, we have clarified that the warning about foreign currency mortgages will only be required where relevant; and then as part of the provisions on security in Regulation 7 and not as part of Schedule 2.

**Question 13: The purpose of this consultation is to simplify the regulation of consumer credit advertising. To that end, we propose to repeal the special provisions for credit advertisements in Regulations 4 –6 of the 1989 Advertisement Regulations. Do you see any reason for retaining these provisions?**

62. Respondents with an interest in or knowledge of the mail order sector pointed out the importance of Regulations 4 and 5 in particular to the ability of that industry to present advertisements in a practical way. It was not our intention to impose significant new burdens on particular sectors. The Regulations have therefore been amended to preserve the scope of the existing provisions that allow for split

advertisements in catalogues; and to provide that these provisions will apply equally to both advertisements in catalogues and to marketing material on retail premises (the latter replacing the existing Regulation 6).

**Question 14: Do you agree that the typical APR or a lower rate should reasonably be expected to be applied to at least 66% of borrowers given credit in response to a particular advertisement?**

63. While a majority of industry respondents who responded to this question agreed in principle with the need to have a typical rate that reflected the rate that most borrowers would receive, only a minority (albeit a significant one) was in full agreement with the proposed figure of a 66% typical rate. The balance of those in agreement favoured a 50% typical rate. A minority of industry respondents advocated the median or most common rate. A significant number of industry respondents sought guidance on how the test would be applied – specifically what constituted a “reasonable expectation” and how it would be measured, in particular in respect of new products. Clarification was also sought on whether the 66% would apply to loans made as a result of the advertisement, or to all loans of that type on the lender’s book.
64. The position was reversed in responses from consumer organisations and individuals. While a substantial majority of those who responded to this question agreed with the 66% proposal, those who disagreed wanted a higher figure – up to 80%.
65. All of the regulatory bodies and lawyers who responded to this question either agreed with the detailed proposals or agreed in principle with the policy.
66. The failure to achieve a consensus on this issue has not come as a surprise. However, we still believe that a figure of 66% presents the best practical means of presenting consumers with a meaningful and representative typical APR in advertisements for the purposes of comparison. We also have an imperative to achieve consistency, wherever possible, with the regime for mortgage regulation that the FSA will bring into force in October, and which also adopts a 66% standard. For these reasons, the figure of 66% has been retained in the Regulations. We will publish guidance alongside the Regulations clarifying how a “reasonable expectation” will be judged for enforcement purposes.

**Question 15: Do you agree with the proposal that “from” and “to” APRs should be permitted in advertisements? If not how would you inform consumers of the range of APRs applicable to a product?**

67. A substantial majority of the industry respondents who responded to this question either agreed with the proposal to permit the use of “from” and “to” rates or agreed in principle with the policy. However, a minority of industry respondents disagreed, and maintained that the typical rate would be sufficient.

68. A significant number of industry respondents wanted the freedom to include tables quoting the full range of rates available. While a number favoured using the actual highest rate available for the “to” rate, others suggested that quoting any sort of “to” rate might have the effect of driving some of the more vulnerable consumers out of the market.
69. It was also pointed out that the draft Regulations did not contain a provision to give effect to this proposal.
70. All of the consumer organisations and individuals who responded to this question either agreed with the detailed proposals or agreed in principle with the policy. However, some respondents favoured the use of the actual highest and lowest rates on offer.
71. All of the regulatory bodies and lawyers who responded to this question either agreed with the detailed proposals or agreed in principle with the policy. Again, there was support for the use of the actual lowest and – in particular – highest rates.
72. We have corrected the inadvertent omission of these provisions from the draft Regulations. In the light of the responses, we have drafted the Regulations to require the “to” rate – where shown – to be the highest rate on offer. We have not, however, adopted the lowest actual rate for the “from” rate. We have retained the 10% threshold because we feel that this is less susceptible to potentially misleading manipulation than would be the case with the lowest actual rate – which might be received by only a handful of borrowers.

**Question 16:      *Please comment on the proposal for calculating APRs.***

73. A substantial majority of the industry respondents who responded to this question either agreed with the proposed assumptions for calculating the APR or agreed in principle with the policy. Specific comments focused on the practicalities and appropriateness of individual elements of the APR calculation – including the £1,500 assumption about the credit limit and the use of the “go to” rate.
74. In particular, a significant number of respondents suggested that the actual credit limit – if higher than £1,500 – should be permitted to be used; and there were concerns about how – if at all – the assumptions would apply to non-running account credit. Some respondents suggested that, by ignoring fees, the assumptions would distort the APR calculation.
75. All of the consumer organisations and individuals who responded to this question either agreed with the detailed proposals or agreed in principle with the policy. Respondents also noted the potential for fees to affect the APR calculation.

76. All but one of the regulatory bodies and lawyers who responded to this question either agreed with the detailed proposals or agreed in principle with the policy. Again, specific comments related to details about the assumptions chosen.
77. We can confirm that the assumptions for calculating the APR will apply only to running account credit.
78. The assumptions to be used have been inserted into Schedule 1 of the Advertising Regulations. These will, however, link to the provisions on calculating the APR in the Total Charge for Credit Regulations – and these make clear that fees and charges are to be included in the calculation.
79. As pointed out in the original consultation document, the assumptions that we have adopted are largely prescribed by the Consumer Credit Directive. On the issue of credit limits, however, our proposals on pre-contract information and the form and content of agreements will permit lenders to calculate the APR at those stages on the basis of the actual limit being offered.

**Question 17:        *Do you agree with the “go to” rate being used to calculate the APR?***

80. All but two of the industry respondents who responded to this question agreed with the proposal to use the “go to” rate. Those who disagreed felt that the inclusion of introductory rates would give consumers a truer indication of the overall cost of the product.
81. All but one of the consumer organisations and individuals who responded to this question agreed with the proposal to use the “go to” rate. The dissenter felt that the use of blended rates would better reflect the cost to the consumer.
82. All but one of the regulatory bodies and lawyers who responded to this question agreed with the proposal to use the “go to” rate. Again, the exception favoured the blended rate.
83. In the light of the strong support for its use, Schedule 1 of the Regulations has been drafted to include a reference to the “go to” rate in the assumptions for calculating the APR.

**Question 18:        *Are the controls on comparative advertising contained in ASA rules and the Control of Misleading Advertisements (Amendment) Regulations 2000 sufficient to deal with comparative advertising in the consumer credit sector?***

84. All of the industry respondents who responded to this question either agreed with the proposal to rely on these other controls or agreed in principle with the policy.

85. All but one of the consumer organisations and individuals who responded to this question also either agreed with the proposal to rely on existing controls or agreed in principle with the policy.
86. Opinions amongst the regulatory bodies and lawyers who responded to this question were mixed. While a majority of respondents either agreed with the proposal to rely on existing controls or agreed in principle with the policy, a minority disagreed and favoured the retention of specific provisions on the comparative advertising of consumer credit products.
87. The principle underpinning these reforms is to remove unnecessary regulation. In that context, we believe that existing specific rules and Regulations provide adequate controls in respect of comparative advertising across the board. We have therefore not retained specific provisions in respect of comparative advertising of consumer credit in our Regulations.

**Question 19: Do you agree that wealth warnings should appear in these circumstances?**

88. There was universal support from respondents in all categories for the proposal to require wealth warnings in the circumstances set out in the original consultation document. This position is reflected in the Regulations. Specific warnings required by the regulations cover not just secured lending, but also life-time loans, debt consolidation and foreign currency mortgages.

**Question 20: Do you think there should be additional rules concerning the prominence of the wealth warning?**

89. A significant majority of the industry respondents who responded to this question opposed the imposition of additional rules about the prominence of wealth warnings. A number of respondents felt that it was appropriate for wealth warnings to be of equal prominence to the key financial indicators listed in Schedule 2 of the Regulations. Others advocated consistency with FSA rules on mortgages.
90. However, all but one of the consumer organisations and individuals who responded to this question felt that some form of additional rules on prominence would be appropriate.
91. Similarly, all but one of the regulatory bodies and lawyers who responded to this question also favoured additional prominence rules – again with wealth warnings being at least as prominent as the other key financial indicators.
92. On balance, we are satisfied that the proposed level of prominence in the original consultation - namely equal prominence with the financial indicators in Schedule 2 - is sufficient. This approach also has the merit of retaining consistency with the FSA regime for mortgage regulation.

**Question 21:** *Do you think the changes to the rules on credit advertising will lead to additional costs for lenders and/or consumers? If so, please quantify the costs and state which are one-off costs and which are continuing costs.*

93. Most industry respondents predicted additional costs for lenders, although these showed a wide degree of variation – from “insignificant” to “extensive”. There was a broad consensus that the legislative changes would result in one-off costs around systems changes, staff training, replacing literature and legal advice; and that the timescale in which the changes were being implemented would exacerbate these. Ongoing costs were not highlighted as a particular burden. There were conflicting suggestions that costs might be passed on to consumers; and that consumers would benefit from the overall simplification of the Regulations.
94. Consumer organisations predicted that they would incur some increased costs associated with staff training and the production of literature. More widely, they anticipated benefits for consumers – better-informed consumers would be more likely to choose the products that best suited their circumstances.
95. Regulatory bodies envisaged that they would need to make an initial investment in training staff to enforce the new Regulations.

**Question 22:** *Will any costs be different for different types of business?*

96. Most industry respondents agreed that certain businesses and sectors would be affected disproportionately – in particular the credit card sector; the catalogue and distance selling market; credit intermediaries and brokers; small lenders; and lenders who buy-in their legal advice.
97. Those consumer organisations that responded to this question feared that additional costs in the unsecured market would be passed on to consumers; but suggested that increased costs would be minimal in the home credit sector.
98. No regulatory bodies or lawyers responded to this question.

**Question 23:** *Have you any comments on the draft regulations?*

99. We received numerous comments and suggestions on the draft Regulations – many directly related to or illustrating points made by respondents elsewhere in the consultation.
100. It would not be practicable to set all of these comments out in this summary of responses. However, constructive suggestions about how the drafting could be improved have been taken into account during the process of finalising the Regulations.

## **Form and Content of Agreement and Pre-Contract Information**

### **Breakdown of Responses**

101. In total 73 responses were received on this aspect of the consultation, the breakdown of which was:

- Retailers – 4
- Trade Association/bodies – 17
- Lenders – 22
- Regulatory/Supervisory bodies inc. Trading Standards – 9
- Consumer Organisations – 12
- Legal/academic – 5
- Others – 4 (companies and individuals)

### **Questions 24 - 34**

**Question 24:** *We would welcome your views on how best to ensure that consumers are fully aware of the rate they will pay before they are committed to a credit agreement. Is it feasible for this to be included in the pre-contractual information?*

102. Consumer consultees (five) tended to agree that the interest rate would ideally be included in the pre contract information (PCI). However, if this was not possible, all those who commented (eight) agreed that it should certainly be known before an agreement went live.

103. Many business consultees (ten) pointed out that where the interest rate depended on the individual credit assessment (rate for risk products) it was not possible to include the specific rate in PCI. Some credit card lenders (four) considered that if they had to put an additional step in the process to ensure that individuals knew their precise interest rate before they were committed to an agreement, it would add significantly to costs and deter consumers from completing the process. Some business consultees (three) were concerned that there was too much information in the PCI and this would be confusing for consumers. Quite a few business consultees (seven) did not see any problems in this area.

104. Taking into account the balance of comments, we have decided that PCI should contain the best known information available to the lender based on reasonable assumptions.

105. On the specific issue of credit cards, which vexed many, DTI has decided that consumers must know their rate before the contract can start. This does not necessarily mean that consumers will have to complete and return a further paper document. It could be achieved, for example, by consumers consenting via

telephone or email after an agreement containing the final interest rate has been sent to them. Many lenders already require a security phone call to activate a new card and it could become part of that process.

**Question 25: Do you agree with the intentions on pre-contract information? If not, what alternatives do you propose?**

106. Generally there was agreement from consumer consultees (twelve) that the PCI proposals were along the right lines.

107. Business consultees were more divided. Some (ten) wanted the agreement document to be an adequate substitute for PCI. Some (seven) feared that there was too much information specified. Some (seven) wanted secured loans exempted where s.58 of the Consumer Credit Act required a copy of the agreement to be mailed eight days before it could be signed. Others (eleven) were generally content with the proposals.

108. DTI has listened to these concerns and has concluded that we should not after all apply the same requirements on PCI to non-distance contracts as to distance contracts. For distance contracts, we are bound by the requirements of the Distance Marketing of Consumer Financial Services Directive (DMD). We intend, therefore, to implement its provisions for distance sales of regulated consumer credit products. This will allow lenders to use an agreement document as PCI as long as it is provided “in good time” (the Directive’s phrase). For non-distance contracts, DTI has decided that a separate PCI must be provided before the agreement stage. We have, however, substantially revised the prescribed content following the comments made during the consultation period. We have removed much information that was derived from the DMD and was relevant only to distance sales. This has helped to shorten the document. We have also followed the information that will be required in the up front part of the agreement. This will allow lenders to adopt one template design which is dual purpose and so cut costs. It will also introduce a consistency that should encourage understanding among consumers.

**Question 26: Do you consider that the new statutory wealth warning is appropriate? Is the wording acceptable or do you have alternative suggestions?**

109. Most consumer consultees (fifteen) were in support of the statutory wealth warning although there were suggestions for variations to the wording, such as mentioning court action, bankruptcy, default charges and losing a home; making consistent with other warnings and putting it in CAPITALS. Some (two) cautioned against making it any longer.

110. Business consultees were broadly supportive (thirty) although others (six) feared it would be ignored or contribute to information overload. The need for consistency with other warnings was raised again. It was pointed out (two) that a warning was not relevant to doorstep loans because these lenders did not impose

penalties for missed payments and did not submit information on defaults to credit reference agencies (CRAs).

111. DTI has decided not to lengthen the statement beyond making sure it is consistent with other warnings used by either FSA or in other DTI regulations. We have decided to change the title to “Missing Payments” following what we felt was valid criticism of “Statutory Wealth Warning” as the alternative. We have not exempted doorstep lenders because we wish to future proof our legislation and their strategies may change in the future (and have not been able to establish that all doorstep lenders always overlook missed payments).

**Question 27:** *Is there any other important information which you believe should be included in the Main Financial Details and Key Information sections? Is there anything we have included that you do not think needs to be?*

112. Consumer consultees (nine) were generally happy with the content. Some (four) wanted a box around them.

113. DTI has not specified a box around the prescribed data partly because of the need to future proof and because boxes may not be possible in all situations. We have been advised that boxes pose problems for computer technology.

114. Many business consultees (fifteen) were also content although some (four) cautioned against information overload. Some (five) wanted flexibility in the ordering. Some (three) made a plea to allow for cross referencing to the Terms and Conditions section. It was requested (three) that the Total Charge for Credit (TCC) requirement be dropped for running account credit where the assumptions necessary for calculation made it too artificial.

115. DTI has listened to the comments about information overload and has dropped some of the requirements such as the “Your Responsibilities” section. In that particular case, there were problems with the sanctions to be applied. We have also curtailed the occasions when the cancellation rights and “Your Home” statements have to appear. We have now prescribed a core set of financial facts that must appear at the start but these can be run in any order and the rest of the following (financial and other) facts can be run in any order within their two sections. On cross referencing, we have allowed for lenders to cross reference to the terms and conditions and to intersperse the information with subtotals of total amounts. On the TCC for running account products, we have decided that the requirement to show the TCC, and all its constituent parts, should remain.

116. DTI have renamed the Main Financial Details and Key Information sections as "Key Financial Information", "Other Financial Information" and "Key Information".

**Question 28: Do you agree with our intention for covering insurance products or do you have a preferred solution?**

117. Consumer consultees were generally in favour (twelve) of detailing separately products such as Payment Protection Insurance (PPI). Some (six) feared that too many consumers bought the products without realising it (inertia selling) or the true cost.
118. Some business consultees (seven) were concerned with possible overlap with FSA's regulation of insurance from 15 January 2005. Some (four) feared that the financial details would be broader than listed on page 74-75 of the consultation (page 23 was read by some as conflicting with this). Some (three) did not agree that any separate detailing was necessary. There were concerns (three) that the definition of the products to be covered needed better clarification. Other consultees (ten) were supportive.
119. The DTI consider that the FSA regulation of insurance will complement our proposals. FSA will cover mis-selling etc but the DTI want to highlight to the consumer that he is buying another product in addition to the main credit that was the basis of the initial contact with the lender. We have therefore decided that the consumer must sign an additional consent opting in expressly to the purchase of additional insurance products. This requirement applies to all insurance products that are either financed by additional credit under a subsidiary credit agreement or where a proportion of the credit provided under the principal credit agreement is used to pay for the insurance product.
120. Where additional products are purchased on credit under an agreement subsidiary to the principal credit agreement, the existing regulations already require that the financial and related particulars, other information and statements of protection and remedies relating to that additional credit agreement to be set out in the documents embodying the credit agreements.
121. Section 2(7A) of the current Regulations contains a derogation from this rule in relation to PPI and extended warranties requiring that only a heading relating to the principal agreement and certain statements of protection and remedies relating to the subsidiary agreement be shown. We have extended this derogation to include GAP insurance products, defined as a 'contract of shortfall insurance'.

**Question 29: Do you agree with our intention on signatures or do you prefer other alternatives?**

122. Consumer consultees who commented were almost all in favour (nine) of separate signatures for separate products.
123. Business consultees (twenty three) had serious concerns that in distance sales consumers would overlook signature requirements after they had dealt with

one. This could result in expensive chasing of signatures and agreements falling by the wayside at this point. Other consultees (fourteen) were content with two or more signatures. Some of the initial twenty three consultees (seven) were content with two or more signatures in non-distance sales.

124. As stated under Q28, DTI want to make the consumer acknowledge that he is buying another product in addition to the main credit that was the basis of the initial contact with the lender. We are, therefore, retaining our requirement to have separate signatures for PPI and/or GAP purchases. However, if both PPI and GAP are purchased, only one extra signature covering both products will be required. The signature for the main credit product will now come after the 'Key Financial Information', 'Other Key Information' and 'Key Information' segments rather than at the end of the agreement.

**Question 30: Do you agree with our intention on equal legibility requirements?**

125. There was widespread support from the consumer consultees who commented (twelve) on our proposal that the terms and conditions (T&Cs) should be no less prominent than the, now renamed, 'Key Financial Information', 'Other Key Information' and 'Key Information' segments. However, three also called for a minimum font size requirement (12, 11 and unspecified).

126. Some business consultees (eight) were also supportive but more were opposed (twenty eight). Many of the latter (seven) wanted a legibility requirement rather than prominence. Some (ten) stated that they wanted to give more prominence to key areas like 'Key Financial Information', 'Other Key Information' and 'Key Information'. Two feared problems with handwritten agreements or sections. There were complaints (nine) that it would add to the length of agreements.

127. DTI has decided to retain the no less prominent requirement proposal. We hope it will act as a discipline to encourage the removal of unnecessary terms and conditions. The new regulations cover the practicalities of allowing for handwritten sections. Headings will also be allowed more prominence.

**Question 31: In considering Chapter 4 overall, what additional costs will lenders incur as a result of implementing these changes to the rules on pre-contract information and form and content of agreements? Please quantify the costs and state which are one-off and which are continuing.**

128. Business consultees (twelve) advanced various figures, for additional costs. They ranged from one of costs of £25,000-1,260,000 to annual costs of £226,000-6,370,000. Others (four) said that costs would be significant but gave no figures. One business consultee suggested that the cost of our proposed changes would be minimal.

129. DTI has taken these figures into account in the revised Regulatory Impact Assessment.

**Question 32: Will costs be different for different types of businesses?**

130. Few consultees responded to this question but those that did made the point that SMEs would have higher proportionate costs than larger firms.

131. DTI note that their revised timetable (see Q34) should help SMEs on the cost front.

**Question 33: Have you any comments on the draft regulations?**

132. Several consumer and business consultees provided useful technical advice on wording the new regulations. Some business consultees (eleven) requested a transition period. Some (three) feared that the new rules would rule out the use of short form agreements for credit cards.

133. The final regulations allow for a transition period of three months for agreements conforming to the current Regulations that have been sent, presented or made available to debtors or hirers but not become executed agreements before the coming into force of the new Regulations. On the issue of short form agreements, we listened to industry concern regarding short form agreements and removed the requirement for 'other terms and conditions' from the prescribed order of information.

**Question 34: We are seeking views on this timetable and would welcome comments together with evidence, particularly in relation to costs.**

134. Two consumer consultees did not foresee problems in meeting the 31 October 2004 timetable but four had concerns that trading standards officers would not have time to undertake training nor to plan for effective policing. It was stated that it was more important to get it right than rush it in.

135. There was vociferous business opposition (thirty nine) to the proposed timetable. Many stated that they would need 12-18 months to implement the changes necessary. It was noted that there would be insufficient expert legal advice available to deal with the changes in the timescale. Scarcity would also drive up the cost of the bought in expertise.

136. DTI noted these grave concerns and that FSA had been rather more generous in their timetabling for their October 2004 changes. We have therefore decided on a 31 May 2005 final deadline, approximately 12 months after the regulations were laid. Lenders will be able to provide the PCI immediately as there are no current provisions relating to this type of information. However, lenders will only be able to switch to agreements made under the new

Regulations for agreements that are executed after 31 May 2005 when the Regulations come into force.

## **Distance Marketing of Financial Services Directive**

137. Our intention was always to introduce new regulations required by the Distance Marketing of Consumer Financial Services Directive (DMD) alongside our more fundamental reforms of the form and content of agreements regulations. This would ensure a consistent approach across the credit industry; regardless on whether an agreement has been concluded at a distance or face to face. This would allow for a 'single step' approach to the changes of both pre-contract information and agreements. It will make it more cost effective for business to introduce changes in one go. It would also make consumer education easier. Consumer bodies were very concerned about a two-stage implementation due to the possible confusion it may create among consumers.
138. Given, the credible case industry has made for delaying implementation, we are moving the implementation date from 31 October to 31 May 2005 to ensure businesses have one year from when the regulations are laid before Parliament.
139. However, we will require implementation of DMD cancellation rights by 31 October 2004. We will be writing to stakeholders shortly about our draft regulations and intend to publish regulations by early July 2004. This is to minimise any possible Francovich damages that may arise if a consumer were to sue the UK Government for compensation where damages have been suffered as a result of the failure to implement the Directive. We take the view that such damages could most likely arise from late implementation of the DMD cancellation rights and therefore, whilst taking the considered risk on late implementation of those aspects of the DMD relating to our form and content reforms, we will require timely implementation of the cancellation rights.

## **Online Agreement Regulations**

140. The regulations to facilitate the transactions of consumer credit agreements electronically are hoped to be available within the next two months. As it is enabling legislation, not requiring companies to do anything but allowing them to contract by electronic means if they so choose, lenders will not be faced with compliance difficulties as a result of the limited notice so we still intend to bring the regulations into force on 31 October 2004. We aim to publish them as soon as they are agreed in-house. We aim to provide sight of Draft regulations for all stakeholders at the latest early September.

## **Breakdown of Responses**

141. In total 24 responses were received, the breakdown of which was:

- Trade Association/bodies – 5
- Lenders – 8
- Regulatory/Supervisory bodies inc. Trading Standards – 4
- Consumer Organisations – 4
- Legal/academic – 2
- Others – 1 (companies and individuals)

## **Questions 35 - 36**

**Question 35:                      *What additional costs will lenders incur as a result of implementing these changes to allow agreements to be concluded electronically?***

142. Generally consumer consultees welcomed the proposals although it was noted that on-line transacting would bring about both costs and cost savings. It was noted that there were really no regulatory costs since companies were not to be forced to transact business in this way. Two respondees noted that important documentation (default notices etc) should be sent by hard copy mail as well. Solitary comments included that there should be a separate dispute resolution system for IT because of its frequent problems; that a license requirement should be that websites were secure and that consumers should be warned how data might be shared.

143. Business consultees generally also welcomed the proposals. There were three estimates of actual one-off costs ranging from £40,000-300,000. Three respondees suggested that lenders and consumers should be allowed to switch from IT to paper – or vice versa - during the process of contracting. One of these, plus another lender, noted that if consumers demanded to switch from a cheap IT mode of communicating to an expensive paper way, after their contract had started, then they should be charged any higher costs they caused. Solitary

comments included that money laundering checks would add to the costs; that the consent indicator would be an important determinant of success for on-line; that prescribed digital signatures could be very expensive; that attempts should be made to future proof and encompass uninvented methods and that any regulations should not be too prescriptive.

**Question 36: Will costs be different for different types of businesses?**

144. Few consultees responded to this question but those that did made the point that SMEs would have higher proportionate costs than larger firms.

## **Financial Limits**

### **Breakdown of Responses**

145. In total 13 responses were received to this aspect of the White Paper, the breakdown of which was:

- Industry 8
- Consumer Organisations 3
- Regulatory Bodies 2

### **Issues**

#### ***Abolition of Financial Limits:***

146. Those industry respondents who were content to see the limit removed expressed concerns about the consequences this would have for some higher value consumer credit agreements. Specifically, they sought provisions to lessen the extent of Consumer Credit Act jurisdiction over agreements concluded with individuals who could be characterised as enjoying a “high net worth” and might therefore be expected to have a greater level of financial sophistication and acumen than the average borrower; and to mitigate the potential adverse effect on lenders resulting from the early termination under section 95 of the Consumer Credit Act of hire agreements. One industry respondent opposed the abolition of the limit.

147. All of the consumer organisations that expressed a view supported the removal of the limit – one asked for the change to be applied retrospectively to all secured lending.

148. The sole regulatory body that responded also supported the removal of the limit – but in addition suggested that secondary legislation be brought forward in October 2004 to effect an interim raising of the limit.

149. In the light of these comments, we propose to proceed with the abolition of the financial limit. The vehicle will be primary legislation, brought forward as soon as Parliamentary time permits. While we do not propose to apply the changes retrospectively, or to raise the limit in the interim, we have adopted proposals to introduce special arrangements for “high net worth” individuals. To that end, we envisage a specific exemption for such individuals under section 16 of the Consumer Credit Act – evidenced by a process of independently-verified self-certification along the lines of similar provisions introduced by the FSA in the Financial Services and Markets Act 2000 (Financial Promotions Order) 2001.

150. We have also undertaken to conduct a further consultation into the issue of voluntary terminations. These allow consumers to hand back goods without any further liability after they have paid 50% of the amount owing under a hire

purchase (HP) agreement. This poses particular problems in the motor sector where certain brands depreciate quickly and steeply. We will look into whether HP voluntary termination is still valid in the 21<sup>st</sup> century across all sectors.

### ***Business lending:***

151. All of the industry respondents who responded either agreed with the proposals on business lending or agreed in principle with the policy. Specific comments stressed the need for a clear definition of what would constitute business lending; expressed concerns about the proposal to regulate agreements where any part of the loan is for a non-business purpose – irrespective of the amount advanced; and argued in favour of buy-to-let loans being defined as business lending.
152. No consumer groups commented on this aspect of the package.
153. Both of the regulatory bodies that responded also supported the proposal. Here, specific comments stressed that regulation would be appropriate where any part of the loan is for consumer purposes; that there should always be protection where the borrowing is secured on the family home; that the onus of deciding what are business purposes should fall to the lender; and that clarification was required on the status of buy-to-let loans.
154. We therefore intend to proceed with the retention of the £25,000 limit for business lending; and to restrict the definition of business lending to credit agreements made with sole traders, unincorporated bodies and partnerships of three or fewer. We reserve the right to increase this limit as necessary in the future.
155. On reflection, we are now proposing a test for business lending that will mean that the Consumer Credit Act will not apply to transactions where the borrower is entering into the agreement “wholly or predominantly” for business purposes. The classification of an advance as a business loan will be evidenced principally by self-certification on the part of the borrower. We believe that drawing the line here creates the most equitable balance between the need to protect consumers and avoiding burdens on business.
156. In the light of the comments received about the status of buy-to-let loans, we intend to further refine the definition of business lending to ensure that it covers lending secured on land or property that is intended for use other than as the family home – the effect will be that only buy-to-let loans for less than £25,000 will be capable of being regulated under the Consumer Credit Act.

### ***Enforcing Credit Agreements:***

157. The sole industry respondent who responded agreed with the proposal to seek a more proportionate approach to the enforceability of agreements.

158. Consumer organisations had mixed opinions. Respondents advocated, however, the retention for loans below £25,000 of the provisions in sections 127(3) and 127(4) of the Consumer Credit Act that respectively make contracts unenforceable where certain requirements governing the form and content of agreements; and where requirements to provide copies of agreements and notice of cancellation rights have not been complied with.

159. The sole regulatory body that responded sought the retention of the provisions in section 127(4) for all agreements.

160. In the light of both the comments received and subsequent discussions with interested parties, we now propose to repeal those elements of section 127 that result in automatic unenforceability and to give the courts full discretion to rule on the enforceability of improperly executed agreements. This will be done in the context of the implementation of the proposals for stronger licensing regime and a new test of unfairness for credit transactions, which will provide additional protections for consumers.

***Exemptions:***

161. Only one regulatory body responded on this point, advocating a general simplification of the exemptions in section 16 of the Consumer Credit Act – including by removing the automatic exemptions enjoyed by bank subsidiaries, but retaining those that apply to local authorities and housing associations.

162. In the light of this comment and further consultation with interested parties, we propose to level the playing field between bank and building societies by removing the automatic exemptions that apply to the former group in respect of secured lending on residential property. We also propose to close a loophole relating to the treatment of regulated utility and telecoms companies by extending the exemption to all providers of metered equipment in the home.

163. These exemptions are in addition to that proposed above for “high net worth” individuals.

***Modifying agreements:***

164. The sole industry respondent who responded felt that there was a need to amend the provisions on modifying agreements in section 82 of the Consumer Credit Act to guard against the possibility of further advances under an existing agreement becoming regulated – and perhaps unenforceable – after the removal of the limit.

165. On balance, we are not persuaded that reform of these provisions is necessitated by the removal of the financial limit.

***Multiple agreements:***

166. The sole industry respondent who responded felt it would be helpful if section 18 of the Consumer Credit Act could be amended to make it clear that credit cards are unitary – and not multiple – products.

167. In the light of the lack of comments on this issue, and aware of the likely impact of re-defining multiple products on the rest of the Consumer Credit Act, we have decided to leave section 18 as it stands. On the specific point raised by the respondent, we believe that our proposals to increase the transparency of credit advertising, pre-contract information and credit agreements themselves will go a substantial way to removing difficulties with regard to credit cards.

## **LIST OF RESPONDENTS:**

Abbey National Plc  
ABCUL  
Advertising Standards Authority  
AdviceUK - Condoc  
AdviceUK - White Paper  
American Express Services Europe Limited  
Andrew Leyshon  
APACS  
Argos Retail Group Financial Services  
Association of British Insurers  
Aviva Plc - Norwich Union Insurance  
Bank of Ireland UK Financial Services  
Barclays Plc  
Berwin Leighton Paisner  
Bob Imrie  
Bright House  
British Bankers Association  
BVRLA  
Capital One Bank (Europe) plc  
Cattles Plc  
CBI  
Citizens Advice - Condoc  
Citizens Advice - White Paper  
Citizens Advices Scotland  
Civcil Court Users Association  
Community Development Finance Association  
Consumer Credit Association  
Consumer Credit Trade Association  
Consumers' Association  
Council of Mortgage Lenders  
David Pike  
Debt Free Direct  
Direct Marketing Association  
Egg Banking  
Experian  
Faculty of Advocates  
Field Solutions Ltd  
Fife Council  
Finance and Leasing Association  
Finance Industry Standards Association  
Financial Services Authority  
FOR Consultants Iceland  
GE Consumer Fonance  
General Consumer Council for Northern Ireland  
Glasgow City Council Trading Standards  
H L Brown & Son Ltd  
HBOS Plc  
HFC Bank  
Highland Council Trading Standards  
HSBC  
Hull & District Credit Traders' Association  
Ian Lindsey  
Information Commissioner  
Institute of Consumer Affairs  
Institute of Credit Management  
Institute of Practitioners in Advertising  
ISBA  
JCB Finance Ltd  
LACORS  
Littlewoods  
Lloyds TSB Group Plc  
London Mortgage Company  
Lovells  
Lynx Financial Systems Ltd  
Mail Order Trader's Association  
Martin Hart  
MBNA Europe  
Money Advice Association  
Money Advice Scotland  
Money Advise Trust  
Morgan Stanley  
Morton Fraser  
National Australia Bank Letter  
National Austria Group Europe Ltd  
National Consumer Council  
National Newspapers Mail Order Protection Scheme  
National Pawnbrokers Association  
Nationwide Building Society  
Norwich Union Life  
Office of Fair Trading  
Open + Direct  
Peninsula Finance Plc  
Peter Mowat  
Protect  
RAB and CRCA  
Radio Advertisers Clearance Centre  
Registers of Scotland  
Retail Motor Industry Federation  
Royal Bank of Scotland  
Royal National Institute for the Blind  
Scottish Consumer Council  
Scottish League of Credit Unions  
Selwood Research  
Shop Direct Group Ltd  
Southern Pacific Mortgage Ltd  
SWIFT - Mock Ups  
SWIFT - Response  
The Advertising Association  
The Co-Operative Bank  
The Newspaper Society  
Trading Standards Institute  
Trading Standards North West  
Tyne and Wear Trading Standards Joint Committee  
Unisys  
Wilma Urquhart  
Yes Car Credit