

The Consumer Credit Act 1974 (Electronic Communications) Order 2004 (“the Order”)

GUIDANCE NOTES

Introduction

This Order is made under sections 8 and 9 of the Electronic Communications Act 2000 to modify various provisions of the Consumer Credit Act 1974 (the Act) and secondary legislation made under that Act for the purpose of enabling and facilitating the use of electronic communications for concluding regulated agreements and when sending notices and other documents

Implementation Date

The Order will come into force on 31st December 2004.

What are electronic communications?

Section 15(1) of the Electronic Communications Act defines electronic communication as:

“a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa)—

- (a) by means of an electronic communications network; or
- (b) by other means but while in an electronic form”

Sending documents by post and transmission in electronic form

References in sections 61, 63(3), 64 and 176 of the Act to sending documents “by post” are amended to refer to “by an appropriate method” so that, where appropriate, documents may be sent electronically.

Articles 3 – 11 of the Order amend various Consumer Credit Regulations in a similar manner so that references to “post” and “postal address” are expanded to enable electronic communications.

The term “appropriate method” is defined in Article 2(8) in an amendment to section 189 of the Act to include the sending of documents, agreements or notices by the use of an electronic communication.

A new section 176A is inserted in the Act after section 176. This deals with the electronic transmission of documents.

It states that documents may be transmitted electronically if the consumer has agreed to the method of communication and the particular electronic form of the communication.

Documents must be sent to the address specified by the consumer and they must be capable of being stored for future reference in such a way that they can be reproduced without change.

Deemed service

References to notices or documents being sent ‘by post’ within the Act bring into the operation the Interpretation Act 1978 by which service is deemed to be effected by properly addressing and posting a letter containing a document. Unless the contrary is proved, service will be deemed to have been effected at the time when the letter would be delivered in the ordinary course of post.

For documents sent in the form of an electronic communication they will, unless the contrary is proved, be deemed to have been delivered on the working day immediately following the day on which it was transmitted by the sender.

However, section 69(7) provides that a cancellation notice is treated as effectively served on the addressee at the time of posting. This section is therefore amended to include an equivalent rule for notices of cancellation sent in the form of an electronic communication. A cancellation notice transmitted electronically is deemed to be served at the time of transmission. This is an exception to the deemed delivery provision contained in the new section 176A (2).

References to “paper”.

Where appropriate references to “paper” and “page” and other references to paper based communications in existing legislation have been amended to enable the use of electronic communications.

“Signature”

References in the Act to the term “signature” include electronic signatures.

Section 7 of the Electronic Communications Act 2000 refers to electronic signatures and describes how a signature given electronically may be admitted in evidence and may be taken as a valid means of establishing authenticity of documents.

Articles 4, 5 and 6 of the Order amend current Regulations including the Consumer Credit (Agreements) Regulations 1983 so that where the content of signature boxes and notices are prescribed, the creditor or owner may also include information about the process or means of providing, communicating or verifying the signature to be made by the debtor or hirer. These changes are specifically for enabling the creditor or owner to explain to the debtor or hirer how the document may be signed by an electronic communication. No amendment needs to be made to current forms and signature boxes if the Agreement is to be concluded on paper.

“Writing”

For the purposes of the Act and its regulations the definition of “in writing” in the Interpretation Act 1978 Schedule 1 is capable of being met in electronic communications.

Concluding agreements by telephone

The definition of 'electronic communication' includes telephones. How such technology may be employed in the conclusion of credit or hire agreements is a matter for individual businesses in determining their own practices and implementing their systems for complying with the requirements of the Act and its regulations.

Notices of Default, Termination and Enforcement.

The Consumer Credit (Enforcement, Default and Termination Notices) (Amendment) Regulations 2004

These regulations amend the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983 so that it is made clear that any default notice sent in accordance with these Regulations will continue to have to be written on paper and given to the debtor or hirer on paper.