

Notice of making an order to vary the Home Credit Market Investigation Order 2007 made pursuant to section 161 of the Enterprise Act 2002

Introduction

1. In November 2006, the Competition Commission (CC) published a report¹ (our 2006 report) on its investigation into the home credit market in the UK.
2. In September 2007, to remedy the adverse effect on competition (AEC) identified in our 2006 report, the CC implemented a remedy package through the CC's Home Credit Market Investigation Order 2007 (the Order), an enforcement order made under [section 161](#) of the Enterprise Act 2002 (the Act).² On 4 October 2007, the provisions of the Order came into force. The Order required home credit lenders to:
 - (a) share customer repayment data with other potential lenders. This was achieved by lenders having data sharing contracts with certain credit reference agencies. (Part 2: Articles 11 to 13);
 - (b) publish, on a 'LendersCompared' website set up for the purpose (www.lenderscompared.org.uk), information, notably price information, about the loans which they offer to customers. (Part 3: Articles 14 to 21);
 - (c) provide an account statement, at most every three months, free of charge, when any of their borrowers asks for one. (Part 4: Articles 22 and 23);
 - (d) comply with an adaption of the Consumer Credit (Early Settlement) Regulations 2004 regarding early settlement rebates. The terms were tailored to the circumstances of home credit. (Part 5: Articles 24 to 26); and
 - (e) provide further information in advertisements, in the payment books given to borrowers and in response to specific requests for information. (Part 6: Articles 27 to 32).

Change of circumstances identified by the Office of Fair Trading

3. Under [section 162](#) of the Act, the Office of Fair Trading (OFT) has a duty to consider whether, by reason of any change of circumstances, an enforcement order made under sections [158](#), [160](#) or [161](#) of the Act is no longer appropriate and needs to be varied or revoked. In October 2010, the OFT advised the CC that the coming into force of the European Union's Consumer Credit Directive (CCD) constituted a change of circumstances by reason of which it may be appropriate to vary or revoke parts of the Order.³
4. The CCD⁴ established a set of common rules for consumer credit providers on the form, content and manner of provision of pre-contractual, contractual and ongoing information on consumer credit agreements. The CCD is a maximum harmonization directive in part with respect to the areas within its scope. Maximum harmonization

¹Home credit market investigation, dated 28 April 2006.

²Home Credit Market Investigation Order 2007, dated 13 September 2007.

³www.offt.gov.uk/OFTwork/markets-work/register-orders-undertakings/reviews/.

⁴Directive 2008/48/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:133:0066:0092:EN:PDF>.

means that member states are unable to maintain or introduce requirements that go beyond or are different from those laid down in the directives for matters falling within the scope of the relevant directive.

5. The CCD was transposed into UK law via a group of six Consumer Credit Act 1974 Regulations (CCRs) which came into force on 30 April 2010 and 26 August 2010 and which were required to be complied with in full from 1 February 2011.⁵ The OFT, together with local trading standards offices, are responsible for enforcing the CCRs. The Department for Business, Innovation and Skills (BIS) issued guidance on the implementation of the CCRs in August 2010.⁶
6. Although the CCD applies to most consumer credit agreements including home credit agreements involving credit for 200 euros (about £160) or more, as set out in more detail below, the implementing regulations were extended to apply to agreements which were outside the scope of the CCD including those involving credit of less than 200 euros.
7. In its advice to the CC, the OFT advised that parts of the Order concern matters that are harmonized by the CCD and may diverge from its provisions. Articles 17 to 19 of the Order, which require home credit lenders to publish price information on the LendersCompared website, were identified by the OFT as potentially exceeding the requirements of the CCD. The OFT recommended that the CC consider whether those and other parts of the Order should be revoked or varied so as to remove any conflict with the CCD.

Our decision

8. In reaching our decision, we have considered the advice of the OFT and discussed the requirements of the CCD and CCRs with BIS and the extent to which these overlap with the Order. In this section, we set out:
 - (a) the relevance of the CCD and the CCRs to the Order;
 - (b) aspects of the Order which we have varied;
 - (c) aspects of the Order which we have not varied; and
 - (d) our consideration of the effectiveness and proportionality of the variations.

The relevance of the CCD and the CCRs to the Order

9. Article 2 (c) of the CCD sets out that the CCD does not apply to credit agreements involving a total amount of credit less than 200 Euros (about £160). Our 2006 report stated that 34 per cent of home credit loans were less than £250.⁷ A significant percentage of home credit loan agreements are not therefore captured by the CCD.
10. However, in order to maintain the coverage and integrity of existing UK consumer credit legislation, namely the Consumer Credit Act 1974 (CCA), and avoid unnecessary complexity and duplication/dual regimes, the UK (with some exceptions

⁵The Consumer Credit (EU Directive) Regulations 2010 (SI 2010/1010); The Consumer Credit (Total Charge for Credit) Regulations 2010 (SI 2010/1011); The Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013); The Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014); The Consumer Credit (Amendment) Regulations 2010 (SI 2010/1069); and The Consumer Credit (Advertisements) Regulations 2010 (SI 2010/1970).

⁶Consumer Credit Regulations: Guidance on the regulations implementing the Consumer Credit Directive:

www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1053-consumer-credit-directive-guidance.pdf.

⁷2006 report, Table 2.1.

and a degree of flexibility) applied the modifications required by the CCD to all credit agreements covered by the CCA. This means that the requirements of Articles 4, 5, 9, 10, 11, 13, 14, 16, 17 and 21 of the CCD do apply for small loans of less than £160.⁸

11. All home credit loans are therefore covered by the requirements of the CCRs.

Aspects of the Order which we have varied

12. We have found it appropriate to make a number of minor variations to the Order, which we have explained in the remainder of this Notice and set out in the Home Credit Market Investigation Order 2007 Variation Order 2011 (the Variation Order). We consider first the information to be published on the website set out in Articles 14 to 21, and then consider other amendments to the Order which we have also made.

Information to be published on the website (Part 3: Articles 14 to 21)

13. Articles 14 to 21 set out various aspects of information that are required to be published on the LendersCompared website. Display of this information was considered to amount to 'advertising' in our 2006 report. In paragraph 9.62 of our 2007 report, it was acknowledged that any display of 'information displayed on the website would need to comply with the advertising regulations'.

CCD requirements

14. Article 4 of the CCD requires that 'any advertising for credit agreements which indicates an interest rate or any figures relating to the cost of the credit to the consumer shall include the standard information in accordance with this Article...The standard information shall specify in a clear, concise and prominent way by means of a representative example:
 - (a) the borrowing rate, fixed or variable or both, together with particulars of any charges included in the total cost of the credit to the consumer;
 - (b) the total amount of credit;
 - (c) the annual percentage rate of charge;
 - (d) if applicable, the duration of the agreement;
 - (e) in the case of credit in the form of deferred payment for a specific good or service, the case price and the amount of any advance payment; and
 - (f) if applicable, the total amount payable by the consumer and the amount of the instalments.'
15. In Article 3 of the CCD:
 - (a) the 'total cost of the credit to the consumer' is defined as all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for notarial costs. The term 'cost of credit to the consumer' is

⁸See Explanatory Memorandum to the CCRs, www.legislation.gov.uk/ukxi/2010/1013/pdfs/ukxiem_20101013_en.pdf.

not separately defined; we have taken it to mean the same as the total cost of credit to the consumer; and

(b) the 'total amount of credit' is defined as the ceiling or the total sums made available under a credit agreement.

16. The same definitions are used in the Consumer Credit (Advertisements) Regulations 2010.

Overlap between the Order and the CCD

17. It was acknowledged in our 2006 report that any display of information on the LendersCompared website would need to comply with credit advertising regulations. Accordingly, given the requirements of the CCD and the CCRs, the website will need to display interest rates and cost of credit information by way of a representative example. We considered whether this overlap between the CCD and the CCRs and the Order had any impact on Articles 14 to 21.

- *Article 14*

18. In Article 14 of the Order, to ensure consistency with the CCRs, we have added the term 'representative APR' by reference to the Consumer Credit (Advertisements) Regulations 2010. There are also some other minor amendments to Article 14, as set out in the Variation Order.

- *Articles 17 to 19*

19. The information requirements of Part 3 of the Order are set out in Articles 17 to 19.
20. We found that Article 4 of the CCD ensures that advertisements for consumer credit which include either the interest rate or cost of credit information must include information that is represented consistently by way of a representative example. In our view, Article 4 of the CCD does not preclude requiring a credit provider to provide information on the cost of credit in addition to that required to be provided by way of a representative example. We therefore found that the requirements in the Order to display price and other information in a certain way do not conflict with the advertising requirements of the CCD.
21. Some of the requirements of the representative example required by Article 4 of the CCD are duplicated by the Order. In our view, these requirements can be achieved by Article 17 of the Order simply referring to the requirements of the CCRs:
- (a) Article 17(2)(d) on the APR is duplicated by Article (4)(2)(a) of the CCD. We have therefore deleted Article 17(2)(d) of the Order.
- (b) Article 17(3)(a) on the name and the postal address of the advertiser is duplicated by Article 3(c) and 4(b) of the Consumer Credit (Advertisements) Regulations 2010. We have therefore deleted Article 17(3)(a) of the Order.
22. Article 17(2)(a) on the duration of credit agreements is in part duplicated by Article 4(2)(d) of the CCD. However, we have retained this requirement because it is important to ensure that consumers are not misled contrary to the Consumer Protection from Unfair Trading Regulations 2008. CCD Article 4(4) makes clear that Article 4 is without prejudice to the Unfair Commercial Practices Directive.

23. Some other minor amendments have been made to Articles 17 to 19 to reflect the changes made in other articles.⁹
24. In our view, for the reasons set out in paragraph 20, all other requirements in Articles 17 to 19 are outside the scope of the CCD and we have retained those requirements.

Other amendments to the Order

25. We have made the additional changes to the Order set out in paragraphs 15 and 31 to 34 of the OFT's advice to ensure the Order is consistent with the CCD and CCRs. These changes include:
 - (a) Article 2(1)—‘the Advertisements Regulations’ has been redefined as ‘the Consumer Credit (Advertisements) Regulations 2010’; and
 - (b) Articles 27, 29, 30 and 31 and Schedule 1—these have been subject to minor changes to refer to the ‘representative APR’, to refer to the Consumer Credit (Advertisements) Regulations 2010 as necessary, and to delete spent clauses.
26. The changes are set out in full in the Variation Order.

Aspects of the Order which we have not varied

27. In this section we set out those aspects of the Order which in our view do not require variation. We consider first the part of the Order regarding early settlement rebates, which the OFT raised as a possible area that might need to be amended. For clarification, we then set out those other parts of the Order which we believe to be unaffected by the CCD and CCRs.

Early settlement rebates (Articles 24 to 26)

28. Articles 24 to 26 set out the changes that were made to the Consumer Credit (Early Settlement) Regulations 2004 to provide specific early settlement entitlements for home credit customers.

CCD requirements

29. Article 16 of the CCD, which relates to early repayment, provides that a consumer shall be entitled at any time to discharge fully or partially his obligations under a credit agreement and shall be entitled to a reduction in the total cost of the credit. This reduction consists of the interest and the costs for the remaining duration of the contract less any compensation to the creditor for possible costs linked directly to the early repayment.

Overlap between the Order and the CCD

30. For the reasons set out in paragraphs 26 to 28 of the OFT's advice, it is also our view that it is permissible for Article 25 of the Order to provide for a settlement date which is 13 days following receipt of notice by the lender and with no deferment of the settlement date.

⁹On the advice of the OFT, in Article 17 we have also changed ‘rounded up to the nearest penny’ to ‘rounded to the nearest penny’ as we were told that the current wording has caused some difficulties with the accuracy of the information appearing on the website.

31. We have also considered whether the CCD requires the calculation of early settlement rebates to be based on actual payments rather than contractual payments, as mentioned in paragraph 29 of the OFT's advice. In our view, Article 16 of the CCD draws no explicit link to early settlement rebates being based on actual rather than contractual payments and we do not therefore find it necessary to make a variation to the Order to this effect.

Other unaffected articles

32. We have also concluded that the other articles in the Order do not overlap with the CCD and do not need amending. The requirements of these articles are outside the scope of the CCD and the CCRs. Paragraph 35 of the OFT's advice sets out which articles these are.

Effectiveness and proportionality

33. In our view, the changes we have made to the Order do not materially alter the effectiveness of the Order as varied. In addition, the changes do not create any significant costs in addition to those already created by the CCD and the CCRs. We therefore find that the Order as varied continues to remain an effective and proportionate remedy to the AEC and detrimental effects.

Notice of making an order to vary the Home Credit Market Investigation Order 2007

34. On 19 January 2011 the CC in accordance with paragraph 2 of [Schedule 10](#) to the Act as applied by [section 165](#) of the Act gave notice of its intention to vary the Home Credit Market Investigation Order 2007 (the Notice).
35. The CC did not receive any representations following publication of the Notice.
36. The CC now gives notice of the Variation Order, which is published alongside this Notice. At the same time, we have also published for ease of reference an updated version of the Order and accompanying Explanatory Note including the variations.

Peter Freeman
Group Chairman
Competition Commission
24 February 2011

Home Credit Market Investigation Order 2007 Variation Order 2011

Background

1. In September 2007, the Competition Commission (CC) published a report on its investigation of the home credit market in the UK. The CC found that there was a detrimental effect on customers resulting from the adverse effect on competition and set out a remedy package intended to address the adverse effect on competition which it had found.
2. The CC decided to implement the remedy package through an enforcement order made under [section 161](#) of the Enterprise Act 2002 (the Act). The Home Credit Market Investigation Order 2007 came into force on 4 October 2007.
3. Under [section 162](#) of the Act, the Office of Fair Trading (OFT) has a duty to consider whether, by reason of any change of circumstances, an enforcement order made under sections [158](#), [160](#) or [161](#) of the Act is no longer appropriate and needs to be varied or revoked. The OFT advised the CC that the coming into force of the Consumer Credit Directive (CCD) constituted a change of circumstances by reason of which it may be appropriate to vary or revoke parts of the Home Credit Market Investigation Order 2007.
4. The CCD has been transposed into UK law via a group of six Consumer Credit Act 1974 Regulations which came into force on 30 April 2010 and 26 August 2010 and which are required to be complied with in full from 1 February 2011.
5. The CC has decided to make an order varying the Home Credit Market Investigation Order 2007 to take account of the change of circumstances advised by the OFT.
6. On 19 January 2011 the CC in accordance with paragraph 2 of [Schedule 10](#) to the Act as applied by [section 165](#) of the Act gave notice of its intention to vary the Home Credit Market Investigation Order 2007 (the Notice).
7. The CC did not receive any representations following publication of the Notice.

The Order

The CC makes this order in exercise of the powers it has in [section 161](#)(4) of the Enterprise Act 2002, for the purpose of varying the Home Credit Market Investigation Order 2007 having received advice from the OFT that by reason of a change of circumstances variation or revocation is appropriate. The Home Credit Market Investigation Order 2007 was made to remedy, mitigate or prevent the adverse effect on competition and any detrimental effects on customers so far as they have resulted, or may be expected to result, from the adverse effect on competition specified in the report of the CC entitled *Home Credit Market Investigation* (28 April 2006).

PART 1

1. Citation, Commencement and Purpose

- 1.1 This order may be cited as the 'Home Credit Market Investigation Order 2007 Variation Order 2011'.
- 1.2 This order shall come into force on 24 February 2011 which is the date the order is signed.
- 1.3 The purpose of this order is to vary the Home Credit Market Investigation Order 2007.

2. Interpretation

- 2.1 The definitions, interpretations and meanings ascribed to words and expressions in the Home Credit Market Investigation Order 2007 apply to this order except where words and expressions are expressly defined.

3. Variations to the Home Credit Market Investigation Order 2007

- 3.1 In Article 2(1):
 - (a) Delete footnote 2 to Article 2(1) and replace with "1974 c.39; relevant amendments are made by S.I. 2004/3236, S.I. 2010/1010, SI 2010/1969 and the Consumer Credit Act 2006 (c.14).".
 - (b) Delete the definition of "the Advertisements Regulations" and replace with "the Advertisements Regulations' means the Consumer Credit (Advertisements) Regulations 2010.³".
 - (c) Delete footnote 3 to Article 2(1) and replace with "S.I. 2010/1970.".
- 3.2 In Article 14(1):
 - (a) add a new definition for 'representative APR':

"representative APR' has the same meaning as in the Advertisements Regulations;"
 - (b) amend the definition of 'rounded APR' to delete the words "Total Charge for Credit" and replace with the word "Agreements" and delete "1980" and replace with "2010"; and,
 - (c) in footnote 5 delete the words "1980/51 as amended by S.I. 1989/596 and 1999/3077" and replace with "2010/1014".
- 3.3 In Article 14(2) delete the "," following 'APR' and add the word "the" immediately before the word "Schedule" and delete the figure "1" immediately following the word "Schedule".
- 3.4 In Article 14(3) delete "1(6)" immediately following the word "regulation" and replace with "1(4)(b)".

3.5 In Article 14(5) delete each occurrence of the phrase “debtor-credit” and replace in each case with the phrase “debtor-creditor”.

3.6 Delete Article 17 and replace with:

“(1) The requirements referred to in article 16(1) are that the **advertisement** contains, in addition to information and a representative example required in order to comply with the **Advertisements Regulations**, the information described in paragraph (2).

(2) The information referred to in paragraph (1) is—

(a) the duration of such agreements expressed in months (in a case where **repayments of credit** are by monthly instalments) or in weeks (in any other case);

(b) the **total charge for credit** per £100 advanced, expressed in pounds and pence (rounded to the nearest penny);

(c) the frequency, number and amounts of repayments of **credit**, expressed in pounds and pence (rounded to the nearest penny) per £100 advanced to be made by the **debtor** under such agreements, on the assumption that the **debtor** complies with his obligations;

(d) whether or not any **charge** is made for late payments under such agreements and, if so, a description and the amount of the **charges**;

(e) whether or not any **charge** is made under such agreements for home collection and, if so, a description and the amount of the **charges**;

(f) whether there are any and if so, details of the limitations on the circumstances in which the person is normally willing to enter into such agreements other than limitations relating to—

(i) the ability of the **debtor** to meet his obligations under the agreement;

(ii) the area or areas in which the **debtor** resides; or

(iii) the maximum or minimum amount that can be advanced; and,

(g) if the information set out in the above sub-paragraphs concerning agreements falling within the **class** is different in different cases, details of the differences and the circumstances in which those differences arise.

(3) Where an **advertisement** displayed on the **relevant website** contains a link to other material on the website that other material shall be regarded as part of the **advertisement** for the purposes of this article.

(4) In paragraph (2)(d) and (e), a reference to a charge does not include any charge taken into account in determining the amounts referred to in paragraph (2)(c).”

3.7 In Article 18(1):

(a) at (b)(iii) delete the word “APR” and replace with “representative APR”;

- (b) at (f) insert the words “(except insofar as this is necessary in order to comply with the requirement to show a representative example under **the Advertisements Regulations**)” immediately after the word “information”; and,
- (c) at (h)(iv) insert the words “article 17 or by” immediately after the words “**advertisement** by”.
- 3.8 In Article 19(2) delete “17(2) and (3)” and replace with “17(2)”.
- 3.9 In Article 24 at footnote 9 insert “as amended by S.I. 2010/1010 and S.I. 2010/1969” immediately following “2004/1483”.
- 3.10 In Article 25(2)(b) delete “regulation 5(a)” and replace with “regulation 5(1)(a)”.
- 3.11 In Article 26:
- (a) at (1)(a) at footnote 10 insert “and S.I. 2010/1010” immediately following “3236”; and,
- (b) at (3) delete (b) and replace with:
- “(b) the 28 day settlement date shall be taken to be the settlement date as determined in accordance with regulation 5(1)(a) of the Consumer Credit (Early Settlement) Regulations 2004.”.
- 3.12 In Article 27:
- (a) insert the words “, ‘**representative APR**’” after “**relevant website**”; and
- (b) delete the words “; and ‘typical APR’ has the same meaning as in **the Advertisements Regulations**”.
- 3.13 In Article 29:
- (a) at (1)(a), delete the words “**typical APR**” and replace with “**representative APR**”; and,
- (b) at (2), delete (2)(b) and (c) and replace with:
- “(b) the wording is given the same prominence in the **advertisement** as any of the items listed in regulation 5 of **the Advertisements Regulations**;
- (c) if the advertisement is in printed or electronic form and includes any item referred to in sub-paragraph (b) above, the wording required under sub-paragraph (a) above is shown in characters of not less than the size of the characters in which those items appear.”.
- 3.14 In Article 30(2)(b) delete (b) and substitute with:
- “(b) if the **advertisement** includes any of the items listed in regulation 5 or regulation 6 of **the Advertisements Regulations**, the wording required under sub-paragraph (a) is shown in characters of not less than the size of the characters in which the items in regulation 5 appear or in any other case not less than the size of characters in Arial font size 11.”
- 3.15 In Article 30 delete paragraph (5).

3.16 In Article 31:

(a) delete paragraph (4) and renumber (5) to (4); and

(b) at new paragraph (4) delete the words “paragraphs (3) and (4) and replace with “paragraph (3)”.

3.17 In Schedule 1, delete the line containing “Typical APR...Article 27” and add a line containing “Representative APR...Article 14(1)”.

Signed by authority of the CC

Peter Freeman
Group Chairman
Competition Commission
24 February 2011

Explanatory Note

(This Note is not part of the Order)

1. The purpose of the Home Credit Market Investigation Order 2007 Variation Order 2011 is to vary the Home Credit Market Investigation Order 2007 (‘the 2007 Order’).
2. In October 2010 the OFT advised that the coming into force of the CCD¹ constituted a change of circumstances making variation or revocation of parts of the 2007 Order appropriate.
3. On 24 February 2011 the CC published a Notice setting out its reasons for deciding that by reason of a change of circumstances it was necessary to vary the 2007 Order.
8. The variations to the 2007 Order are set out in detail in Article 3. Variations were made to the following articles of the 2007 Order:
 - (c) Article 2(1): variation of definitions of ‘1974 Act’ and ‘the Advertisements Regulations’;
 - (d) Article 14(1): variation of definitions:
 - (i) to add a definition of ‘representative APR’; and,
 - (ii) to vary the definition of ‘rounded APR’;
 - (e) Article 14(2): variation of definition of ‘APR’;
 - (f) Article 14(3): variation to reflect updated regulations;
 - (g) Article 14(5): variations made to correct misspellings;
 - (h) Article 17: variations made to the nature of the information required to be included in advertisements which are required by Article 16 to reflect the changes

¹Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreement for consumers and repealing Council Directive 87/102/EEC.

to the Consumer Credit (Advertisements) Regulations 2010 made as a consequence of the CCD; and,

- (i) Article 18: variations made to reflect the changes to the Consumer Credit (Advertisements) Regulations 2010 made as a consequence of the CCD;
 - (j) Article 19: variation as a consequence of the variation to Article 17;
 - (k) Article 24: variation to reflect updated regulation;
 - (l) Article 25: variation to reflect updated regulation;
 - (m) Article 26: variations to reflect updated regulation;
 - (n) Article 27: variations to add 'representative APR' and delete 'typical APR';
 - (o) Article 29: variations to refer to 'representative APR' and to reflect updated regulations;
 - (p) Article 30: variations to reflect updated regulations and to delete a reference to the Consumer Credit Act 2006 coming fully into force as this Act is now fully in force; and,
 - (q) Article 31: deletion of a reference to the Consumer Credit Act 2006 coming fully into force as this Act is now fully in force.
 - (r) Schedule 1: variations to reflect the use of the term 'representative APR' in place of 'typical APR'.
9. Changes have also been made to the Explanatory Note that accompanies the 2007 Order so as to reflect the variations set out in this order.
10. [Section 167](#) of the Enterprise Act 2002 places a duty on any person to whom this order applies to comply with it. Subject to the defences in the section, any person who suffers loss or damage due to a breach of this duty may bring an action.
11. [Section 167](#) of the Act also provides that the OFT and the CC can seek to enforce this order by civil proceedings for an injunction or for any other appropriate relief or remedy.
12. The OFT has a general duty to monitor the operation of a CC enforcement order under [section 162](#) of the Act. This includes the duty to consider, from time to time, whether an enforcement order should be varied or revoked in the light of a change of circumstances.
13. Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and the provisions of the Order, the Order shall prevail.

THE HOME CREDIT MARKET INVESTIGATION ORDER 2007

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On 20 December 2004, the Office of Fair Trading, in the exercise of its powers under section 131 of the Enterprise Act 2002,¹ referred to the Competition Commission, for investigation and report, the supply of home credit in the United Kingdom.

On 30 November 2006, the Competition Commission published a report on the investigation and it contained the decision that there were adverse effects on competition.

On 29 June 2007 the Competition Commission gave notice of its intention to make this order in accordance paragraph 2 of Schedule 10 to that Act as applied by section 165 of that Act.

The Competition Commission, in accordance with section 138 of that Act and in exercise of the powers conferred by sections 161 and 164 of, and paragraphs 2, 8, 15, 18, 19, 21 and 22 of Schedule 8 to, that Act, and for the purpose of remedying, mitigating or preventing the adverse effects on competition concerned and for the purpose of remedying, mitigating or preventing detrimental effects on customers so far as they have resulted from, or may be expected to result from, the adverse effects on competition, makes the following Order.

PART 1

General

Citation and commencement

1. Citation and commencement

- (1) This Order may be cited as the Home Credit Market Investigation Order 2007.
- (2) This Order shall come into force on 4 October 2007.

Interpretation

2. General interpretation, index of defined expressions etc.

- (1) In this Order—

‘CC’ means the Competition Commission;

‘the 1974 Act’ means the Consumer Credit Act 1974;² and

‘the Advertisements Regulations’ means the Consumer Credit (Advertisements) Regulations ~~2010004~~.³

¹2002 c.40. There are no relevant amendments.

²1974 c.39; relevant amendments are made by S.I. 2004/3236, [S.I. 2010/1010](#), [SI 2010/1969](#) and the Consumer Credit Act 2006 (c.14).

(2) In this Order, the following expressions have the same meanings as in **the 1974 Act**—

‘advertiser’;

‘associate’;

‘credit’ (except in the expressions ‘home credit loan agreement’, ‘home credit voucher agreement’, ‘home credit business’ and ‘home credit loan business’);

‘creditor’;

‘credit reference agency’;

‘debtor’;

‘debtor-creditor agreement’;

‘individual’;

‘licence’;

‘licensed’;

‘OFT’.

‘regulated agreement’; and

‘representation’.

(3) In this Order, ‘advertisement’ has the meaning given by section 189(1) of **the 1974 Act** and a reference to the publishing of advertisements shall be construed in accordance with that provision.

(4) For convenience, expressions defined in this Order are (except in the places where they are defined and in Schedule 1) printed in bold.

(5) Schedule 1 contains an index of provisions defining or otherwise explaining expressions used in this Order.

3. ‘Home credit loan agreement’ and ‘home credit voucher agreement’

(1) A ‘home credit loan agreement’ is a **debtor-creditor agreement** which satisfies either or both of the conditions set out in paragraph (3).

(2) A ‘home credit voucher agreement’ is a **regulated agreement** for the provision of **credit** in connection with the use of a **relevant voucher** and which satisfies either or both of the conditions set out in paragraph (3).

(3) The conditions referred to in paragraphs (1) and (2) are that—

(a) the agreement provides that all or most of the sums payable by the **debtor** are to be collected by or on behalf of the **creditor** at the **debtor’s** home or at the

³S.I. [2010/1970](#)~~2004/1484~~ as amended by S.I. 2007/827.

home of a natural person who makes payment to the **creditor** on the **debtor's** behalf (or, in either case, to be so collected if the **debtor** so wishes); and

- (b) as at the time the agreement is entered into, the **debtor** could reasonably expect, from representations made by or on behalf of the **creditor** at or before that time, that all or most of the sums payable would be so collected (or, in either case, would be collected as specified in sub-paragraph (a) if the **debtor** so wished).
- (4) A relevant voucher is a card, check, voucher, coupon, stamp, form, booklet or other document or thing given to an **individual** by a person who undertakes—
- (a) that on the production of it (whether or not some other action is also required) he will supply goods and services (or either of them) on **credit**, or
 - (b) that where, on the production of it to a third party (whether or not any other action is also required), the third party supplies goods and services (or either of them), he will pay the third party for them (whether or not deducting any discount or commission), in return for payment to him by the **individual**.

4. 'Home credit business' and 'home credit loan business'

- (1) 'Home credit business' means any business being carried on by a person so far as it comprises or relates to the provision of **credit** by him under **home credit loan agreements** or **home credit voucher agreements**.
- (2) 'Home credit loan business' means any business being carried on by a person so far as it comprises or relates to the provision of **credit** by him under **home credit loan agreements**.

5. 'Agent' and 'employed'

- (1) An agent is a natural person who is **employed** by a person carrying on a **home credit business** to collect payments due to that person under **home credit loan agreements** or **home credit voucher agreements** (or both) at the homes of **debtors** (whether or not he is **employed** by the person to perform other functions).
- (2) For the purposes of this article, where payments are collected at the home of a natural person on behalf of a **debtor**, they shall be treated as though they were collected from the home of the **debtor**.
- (3) For the purposes of this Order, the number of agents regarded as **employed** by a person on any particular date shall be the **applicable number**.
- (4) The 'applicable number' is—

$$\frac{1}{4} (A + B + C + D)$$

where A, B, C and D are the number of agents **employed** by him respectively on 25 March, 24 June, 29 September and 25 December (in each case) in the previous calendar year.

- (5) Where a person carrying on a **home credit business** has one or more **associates** who carry on such a business, the number of agents he employs shall be calculated

by adding together the respective **applicable number** of that person and each of his **associates**.

- (6) For the purposes of this Order, 'employed' means employed under a contract of service or a contract for services or otherwise.

6. 'Home credit turnover'

- (1) The home credit turnover, on any particular date, of a person carrying on a **home credit loan business** shall, subject to paragraph (2), be the **applicable turnover** for the **business year** preceding that date.
- (2) Where in an application of this article there is any period in respect of which there is no preceding business year then the **applicable turnover** shall be the turnover for that period.
- (3) 'Applicable turnover' of a person carrying on a **home credit loan business** shall be the amounts derived by that person from the provision of **credit** under **home credit loan agreements** in the United Kingdom.
- (4) Where a person carrying on a **home credit loan business** has one or more **associates** who carry on such a business, the **applicable turnover** shall be calculated by adding together the respective applicable turnover of that person and each of his **associates**.
- (5) For the purposes of this article, 'business year', in relation to a person carrying on a **home credit loan business**, means a period of more than six months in respect of which that person prepares or is required to prepare accounts.

Miscellaneous

7. Suspension of provisions of this Order

- (1) If the **OFT** has published a notice that any provision of this Order which imposes an obligation or restriction on a person is to be suspended, the operation of the provision shall be suspended in accordance with the terms of the notice.
- (2) If the **OFT** has given a person notice that any Part of this Order (other than this Part) is to be suspended, the operation of the provision shall be suspended in relation to that person in accordance with the terms of the notice.
- (3) A suspension under paragraph (1) or (2) shall be subject to such conditions and shall apply in such circumstances and apply for such period or description of period as may be specified or described in the notice.

8. Delegated powers of direction

- (1) The **CC** may give directions falling within paragraph (2) to—
- (a) a person specified in the directions; or
 - (b) a holder for the time being of an office so specified in any body of persons corporate or unincorporate.
- (2) Directions fall within this paragraph if they are directions—

- (a) to take such actions as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or
 - (b) to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.
- (3) The **CC** may vary or revoke any directions so given.

9. Multiple agreements

- (1) For the purposes of this article, the relevant categories are **home credit loan agreements** and **home credit voucher agreements**.
- (2) This article applies to an agreement if its terms are such as—
 - (a) to place a part of it within one **relevant category** of agreement, and another part of it within the other **relevant category**, or within a category other than a **relevant category**; or
 - (b) to place it, or a part of it, within both **relevant categories**.
- (3) Where a part of an agreement falls within paragraph (2), that part shall be treated for the purposes of this Order as a separate agreement.
- (4) Where an agreement falls within paragraph (2)(b), it shall be treated as a **home credit loan agreement**.

10. Modifying agreements

Section 82(2) of **the 1974 Act** shall apply for the purposes of this Order as it applies for the purposes of that Act.

PART 2

Data sharing

11. Interpretation

- (1) In this Part—
 - (a) ‘the Principles’ means the document produced by the Steering Committee on Reciprocity (a body established by persons engaged in the finance industry) known as ‘the Principles of Reciprocity’ and dated June 2006 as from time to time varied or replaced (with or without modification); and
 - (b) ‘the Rules Managing SCOR’ means the document known by that name and dated October 2004, being the document referred to by that name in the document mentioned in sub-paragraph (a).
- (2) In this Part, a reference to a CRA is a reference to—
 - (a) Experian Limited (company registration number 00653331), Equifax plc (company registration number 02425920), Callcredit Limited (company registration number 03961870) (those companies being CRAs within the meaning of **the Principles**); and

- (b) each person whom the **OFT**, from time to time and at its discretion, nominates under this paragraph upon it being satisfied that he meets the requirements of paragraph (3) and that he either—
 - (i) meets the requirements of paragraph (4) or
 - (ii) is otherwise suitable to be nominated as a CRA for the purposes of this Part.

and a reference to all the CRAs shall be construed accordingly.

- (3) In order to meet the requirements of this paragraph, a person must either—
 - (a) be **licensed** to carry on the business of operating a **credit reference agency**; or
 - (b) be a person who, by virtue of paragraph 15(3) of Schedule 3 to the Financial Services and Markets Act 2000⁴ (which relates to EEA firms), does not need a **licence** to carry on such a business.
- (4) In order to meet the requirements of this paragraph, a person must have—
 - (a) at least 50 **subscribers to shared data**;
 - (b) at least 10 per cent of **shared records**;
 - (c) appropriate arrangements for independent audit of security;
 - (d) appropriate arrangements for ensuring compliance with the Principles; and
 - (e) appropriate arrangements for ensuring compliance with the Data Protection Act 1998 and other relevant legislation.
- (5) In this article ‘subscribers to shared data’ and ‘shared records’ have the same meanings as in the footnote to paragraph 3.5 of **the Rules Managing SCOR**.

12. Contracts with credit reference agencies

- (1) A person who carries on (or who has an **associate** who carries on) a **home credit loan business** shall not, as a **creditor**, enter into a **home credit loan agreement** or a **home credit voucher agreement** unless the following condition is met.
- (2) The condition is that there is in existence a contract between the person and a **CRA** and a contract between the person and a different **CRA**, each of which contracts complies with Schedule 2.
- (3) Paragraph (1) does not prevent a person entering into any agreement—
 - (a) at a time when the number of **agents employed** by him is less than 60 and his **home credit turnover** is less than £2 million; or
 - (b) at any time during the period of six months beginning with the date of this Order.

⁴2000 c.8. Relevant amendments are made by the Enterprise Act 2002 (c.40), Sch.25, para.40(1) and (19).

13. Requirement to obtain debtors' consent to sharing data

- (1) A person who carries on (or who has an **associate** who carries on) a **home credit loan business** shall not, as a **creditor**, enter into a **home credit loan agreement** or a **home credit voucher agreement** unless the following condition is met.
- (2) The condition is that, under the terms of that agreement, the **debtor** has consented to him providing all the **CRAs** with information of the kind referred to in paragraph 3 of Schedule 2 and relating to the agreement.
- (3) Paragraph (1) does not prevent a person entering into any agreement at a time when the number of **agents employed** by him is less than 60 and his **home credit turnover** is less than £2 million.

PART 3

Website

14. General interpretation of Part 3

- (1) In this Part—
 - 'the accredited operator' has the meaning given in article 15(1);
 - 'the relevant date' has the meaning given in article 15(2);
 - 'the relevant website' is the website operated for the time being by the **accredited operator** for the purposes of this Order;
 - 'repayment of credit' has the same meaning as in **the Advertisements Regulations**;
 - 'representative APR' has the same meaning as in the Advertisements Regulations;
 - 'rounded APR' means the annual percentage rate of charge for credit determined in accordance with the Consumer Credit (Total Charge for Credit Agreements) Regulations ~~1989~~2010⁵ rounded up to the nearest whole number; and
 - 'total charge for credit' has the same meaning as in **the Advertisements Regulations**.
- (2) In this Part, 'APR' (except in the expression 'rounded APR') has the same meaning as in **the Advertisements Regulations** and paragraph 2 of the Schedule 4 to those Regulations (permissible tolerances in disclosure of APR) shall apply to a requirement to show an APR under this Part as it applies to a requirement to show an APR under those Regulations.
- (3) In this Part, a reference to the name of a person shall be construed in accordance with regulation 1(~~4~~6)-(b) of **the Advertisements Regulations**.
- (4) In this Part, 'the authority' means the **CC** before the **relevant date** and the **OFT** on or after that date; and for the purposes of article 18(1)(k), (l) and (m), anything done

⁵S.I. 2010/1014, 980/51 as amended by S.I. 1989/596 and 1999/3077.

by the **CC** before the **relevant date** shall have effect on or after that date as if it had been done by the **OFT**.

- (5) For the purposes of this Part, a special credit agreement is a **debtor-creditor agreement** in respect of which the following conditions are satisfied—
- (a) the agreement is not a **home credit loan agreement**;
 - (b) the agreement provides for the **debtor** to pay by instalments; and
 - (c) at the time he enters into the agreement, the **creditor** expects the instalments (or most of them) to be made in coins of the realm or bank notes;

and the reference in this paragraph to a **debtor-creditor agreement** includes a reference to an agreement that would be a **debtor-creditor agreement** but for regulation 4(1)(a) of the Consumer Credit (Exempt Agreements) Order 1989⁶ (which relates to certain agreements entered into by credit unions).

- (6) For the purposes of this Part, **home credit loan agreements** with the same **creditor**, the same **rounded APR**, the same frequency of **repayments of credit** and the same duration shall be deemed to constitute a class of home credit loan agreements; and a reference to a class of home credit loan agreements, and other cognate expressions shall be construed accordingly.
- (7) For the purposes of this Part, **special credit agreements** with the same **creditor**, the same **rounded APR**, the same frequency of **repayments of credit** and the same duration shall be deemed to constitute a class of special credit agreements; and a reference to a class of special credit agreements, and other cognate expressions shall be construed accordingly.
- (8) For the purposes of this Part, a **large lender**, on any particular date, is a person carrying on a **home credit loan business** who at the beginning of the calendar year comprising that date—
- (a) employs at least 200 **agents**; or
 - (b) has a **home credit turnover** of at least £10 million,

and a reference to the large lenders collectively shall be construed accordingly.

- (9) Without prejudice to section 11 of the Interpretation Act 1978,⁷ 'enactment' has the meaning given by section 183(1) of the Enterprise Act 2002.

15. Accredited operator, relevant date and certain notices to be given by the CC in connection therewith

- (1) In this Part, 'the accredited operator' means the single person for the time being approved by the **CC** for the purposes of this Part.
- (2) In this Part, 'the relevant date' is six months after the **CC** has first published, in accordance with paragraph (3), a notice that it has approved an **accredited operator** or such later date as from time to time specified for the purposes of this Part in a notice published by the **CC**.

⁶S.I. 1989/869; relevant amendment is made by S.I.1999/1956.

⁷1978 c.30.

- (3) When the **CC** approves a person as the **accredited operator** or withdraws such an approval it shall publish a notice indicating that it has done so.
- (4) The **CC** shall not withdraw such an approval unless the **OFT** advises that such a withdrawal is appropriate.
- (5) When the **accredited operator** is ready to receive information for publication under article 16, the **CC** shall publish notice of the fact and of the address of the **relevant website**.

16. Duty to publish

- (1) Where a person carrying on a **home credit loan business holds himself out** as willing to enter into **home credit loan agreements** falling within any particular **class**, he shall, so long as that remains the case, cause an **advertisement** complying with the requirements of article 17 to be continuously published on the **relevant website**.
- (2) Paragraph (1) does not require the person to cause anything to be published in relation to the **class**—
 - (a) during the period of 28 days beginning with the date that the person first holds himself out as willing to enter into **home credit loan agreements** falling within the **class** (or, where applicable, he first does so again after he last ceased to do so);
 - (b) while the total number of **home credit loan agreements** falling within the **class** entered into by him within the previous 12 months is less than 100; or
 - (c) before the **relevant date**.
- (3) If the person **holds himself out** as willing to enter into **home credit loan agreements** falling within more than one **class**, the previous provisions of this article shall apply in relation to each **class** separately.
- (4) In this article, a reference to a person holding himself out as willing to enter into **home credit loan agreements** is a reference to him holding himself out as willing to enter into such agreements with members of the public.

17. Information to be published

(1) The requirements referred to in article 16(1) are that the **advertisement** contains, in addition to information and a representative example required in order to comply with the **Advertisements Regulations**, the information described in paragraph (2).

~~(1) —contains—~~

~~(—) the information described in paragraph (2) about the terms on which, and the circumstances in which, the **advertiser is willing** to enter into **home credit loan agreements falling within the class in question** with members of the public; and~~

~~(—) the further information described in paragraph (3).~~

(4)(2) The information referred to in paragraph ~~(4)(a)(1)~~ is—

- (a) the duration of such agreements expressed in months (in a case where **repayments of credit** are by monthly instalments) or in weeks (in any other case);
- (b) the **total charge for credit** per £100 advanced, expressed in pounds and pence (rounded ~~up~~ to the nearest penny);
- (c) the frequency, number and amounts of repayments of **credit**, expressed in pounds and pence (rounded ~~up~~ to the nearest penny) per £100 advanced to be made by the **debtor** under such agreements, on the assumption that the **debtor** complies with his obligations;

~~(d) the **APR**;~~

~~(e)~~(d) whether or not any **charge** is made for late payments under such agreements and, if so, a description and the amount of the **charges**;

~~(f)~~(e) whether or not any **charge** is made under such agreements for home collection and, if so, a description and the amount of the **charges**;

~~(g)~~(f) whether there are any and if so, details of the limitations on the circumstances in which the person is normally willing to enter into such agreements other than limitations relating to—

- (i) the ability of the **debtor** to meet his obligations under the agreement;
- (ii) the area or areas in which the debtor resides; or
- (iii) the maximum or minimum amount that can be advanced;~~and if so, details of the limitations;~~ and

~~(h)~~(g) if the information set out in the above sub-paragraphs concerning agreements falling within the **class** is different in different cases, details of the differences and the circumstances in which those differences arise.

~~(5) The information referred to in paragraph (1)(b) is—~~

~~(—) the **name** of the **advertiser**, a postal address where he may be contacted and a United Kingdom telephone number (not being a premium rate number); and~~

~~(—) such further information that needs to be included in order to ensure that the **advertisement** complies with the **Advertisements Regulations**.~~

~~(8)~~(3) Where an **advertisement** displayed on the **relevant website** contains a link to other material on the website that other material shall be regarded as part of the **advertisement** for the purposes of this article.

~~(9)~~(4) In paragraph (2)(~~ed~~) and (~~fe~~), a reference to a charge does not include any charge taken into account in determining the amounts referred to in paragraph (2)(c).

18. Further provisions concerning the manner of publication

- (1) While a person is required by article 16 to cause an **advertisement** to be published on the **relevant website**, he shall cause the **relevant website** to comply with the following requirements relating to the publication—

- (a) any person can easily and quickly gain access to the website free of charge;
- (b) the website has search facilities that can be used easily and quickly by any person, free of charge, to compare the terms on which different **creditors** are willing to enter into **home credit loan agreements** and **special credit agreements** and those facilities include—
 - (i) a facility enabling searches to be made by reference to a specific area;
 - (ii) a facility enabling the results of such searches to be ranked according to total charge for credit per £100 advanced; and
 - (iii) a facility enabling the results of such searches to be ranked according to representative APR.
- (c) any person can easily and quickly reproduce, free of charge, information on the website electronically and on paper;
- (d) no **advertisements** are displayed on the website other than **advertisements** indicating that the **advertiser** is willing to enter into **home credit loan agreements** or is willing to enter into **special credit agreements**;
- (e) no **advertisement** is displayed on the website unless the **advertiser** has complied with the requirements of paragraphs (2) and (5) of article 19 in relation to the **advertisement**;
- (f) no **advertisement** displayed on the website contains information (except insofar as this is necessary in order to comply with the requirement to show a representative example under the Advertisements Regulations) about—
 - (i) more than one **class** of **home credit loan agreements** or more than one **class** of **special credit agreements**; or
 - (ii) a **class** of **home credit loan agreements** and also a **class** of **special credit agreements**;
- (g) no page of the website contains more than one **advertisement** relating to the same **class** of **home credit loan agreements** or to the same **class** of **special credit agreements**;
- (h) no **advertisement** displayed on the website contains any information concerning the **advertiser** other than—
 - (i) the terms of the **home credit loan agreements** or **special credit agreements** the **advertiser** is willing to enter into and the circumstances in which he is willing to enter into them;
 - (ii) one or more **names** of the **advertiser** and telephone numbers;
 - (iii) one or more addresses at which the **advertiser** may be contacted; and
 - (iv) information required to be included in the **advertisement** by article 17 or by any enactment;
- (i) no **advertisement** concerning **home credit loan agreements** falling within any particular **class** is displayed on the website unless—

- (i) it is published pursuant to article 16 (and is accordingly required by that article to comply with the requirements of article 17);
 - (ii) it is not published pursuant to article 16 but nevertheless complies with the requirements of article 17; or
 - (iii) it complies with conditions set out in paragraph (3);
- (j) no **advertisement** concerning **special credit agreements** falling within any particular **class** is displayed on the website unless—
- (i) it complies with the requirements of article 17, as if references in article 17 to **home credit loan agreements** were references to **special credit agreements**; or
 - (ii) it complies with conditions set out in paragraph (3);
- (k) the website contains no hyperlinks to another website other than such links (if any) as are for the time being approved by the **authority**;
- (l) the website includes guidance on consumer rights in such terms as are for the time being approved by the **authority**;
- (m) the website includes an explanation, in such terms as are for the time being approved by the **authority**, on how to interpret the information it contains;
- (n) the website includes a notice giving all persons permission to reproduce the contents of the website;
- (o) the website includes a notice displaying a postal address and a telephone number where any person can contact the **accredited operator**;
- (p) the information published on the website is retained so long as this Order remains in force and is available to the **OFT**;
- (q) there is available to the **OFT** information concerning the number of times persons have gained access to the website and the duration of that access;
- (r) there is available to the **OFT** information concerning service levels and other information which the **OFT** requires for the purpose of monitoring the performance of the website.
- (2) Where an **advertisement** displayed on the **relevant website** in response to a search contains a link to other material on the website, that other material shall be regarded as part of the **advertisement** for the purposes of paragraph (1)(d), (e), (f), (i) and (j).
- (3) The conditions referred to in paragraph (1)(i) and (j) are that the **advertisement**—
- (a) includes a specified amount which may be advanced;
 - (b) does not include any other amount or a range of amounts which may be advanced;
 - (c) includes the **total charge for credit** and the amounts of **repayments of credit** expressed (in each case) in pounds and pence (rounded up to the nearest penny); and

- (d) complies with the requirements of article 17, disregarding the requirements for it to contain the **total charge for credit** per £100 advanced and the amounts of **repayments of credit** per £100 advanced;

19. Requirements referred to in article 18(1)(e)

- (1) This article has effect for the purpose of specifying the requirements referred to in article 18(1)(e).
- (2) In order to have complied with this paragraph, the **advertiser** must have supplied the **accredited operator** with both the information described in article 17(2) ~~and (3)~~ and the following information in writing—
- (a) the **postcode districts** in which payments by the **debtors** are to be collected; and
- (b) the number of the **licence** under which he operates (if applicable).
- (3) For the purposes of this article, the postcode district in which a place is situated is the first of the two groups of letters and numbers comprised in the full postcode for that place; and a reference to a postcode district shall be construed accordingly.
- (4) Accordingly, for example, if instalments are to be collected from addresses with a postcode set out in the left-hand column of the table below, the information to be provided under paragraph (2)(a) would be the letters and numbers indicated in the corresponding entry in the right-hand column.

<i>Full postcode</i>	<i>Postcode district</i>
WC1B 4AD	WC1B
EC4Y 8JX	EC4Y

- (5) In order to comply with the requirements of this paragraph, an **advertiser** must, within 12 months after the **advertisement** is first published on the **relevant website** and thereafter at intervals of not more than 12 months, inform the **accredited operator** in writing that he is still willing to enter into agreements of the **class of home credit loan agreements** or **special agreements**, to which the **advertisement** relates, with members of the public and if so—
- (a) whether the published information is or is not correct; and
- (b) whether the last information that the **advertiser** supplied to the **accredited operator** in writing concerning the **postcode districts** in which payments by the **debtors** is or is not still correct.

20. Further provisions concerning large lenders and special loan agreements

- (1) The cost of setting up and operating the **relevant website** shall be borne wholly by the **large lenders** and by persons who cause advertisements relating to **special credit agreements** (such an **advertisement** being referred to below as a 'special advertisement') to be published on that website with—
- (a) the **large lenders** paying on the basis of the principle set out in paragraph (2); and

- (b) each **special advertisement** being paid for by the **advertiser**, the amount in each case being the additional cost that the **accredited operator** incurs in publishing the **special advertisement**.
- (2) The principle is that fees are to be calculated in relation to successive 12 month periods and, in relation to each period, the amount borne by each person who is a **large lender** on the first day of the period shall be equal to the total amount borne by all persons who are large lenders on the first day of the period multiplied by the ratio of his **home credit turnover** on the first day of the period to the sum of the **home credit turnover** of all persons who are **large lenders** on the first day of the period.
- (3) Within 14 days after the **relevant date**, every person who is a **large lender** on that date shall inform the **OFT** of the amount of his **home credit turnover** as at the **relevant date**.
- (4) Within 14 days after every anniversary of the **relevant date**, every person who is a **large lender** on that anniversary shall inform the **OFT** of the amount of his **home credit turnover** as at the date of that anniversary.
- (5) The **OFT** may supply such of the information it receives under paragraphs (3) and (4) to the **accredited operator** as it considers necessary for effect to be given to paragraph (1).
- (6) The **large lenders** must ensure persons who carry on a **home credit loan business** other than **large lenders** are able to cause **advertisements** that relate to **home credit loan agreements** and are consistent with the provisions of article 18 to be published free of charge on the **relevant website**.

21. Extent of obligations under this Part

A person shall not be regarded as having contravened this Part if he took all reasonable steps and exercised all due diligence to avoid contravening it.

PART 4

Statements on request

22. Duty to give information to debtor

- (1) A **creditor** under a **home credit loan agreement**, within seven days after receiving a request (oral or in writing) to that effect from the **debtor**, shall **give** the **debtor** a statement that complies with the requirements of paragraph (2).
- (2) Subject to paragraphs (3), (4) and (5) the statement must—
- (a) comply with the requirements of the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007⁸ ('the 2007 Regulations') as they apply to statements under section 77A of **the 1974 Act** separately in relation to each **home credit loan agreement** that has been made between—

⁸S.I. 2007/1167.

- (i) the **debtor** and the **creditor**; or
 - (ii) the **debtor** and any person who is an **associate** of the **creditor** on the date the request is received; and
- (b) set out the total of the amounts shown in the statement by virtue of paragraph 3(j) of Schedule 1 to **the 2007 Regulations** as applied by sub-paragraph (a) above.
- (3) In its application to this article, **the 2007 Regulations** shall have effect as if—
- (a) at the end of regulation 11, there were added—
 - ‘(3). Paragraphs (1) and (2) shall not apply in the case of a statement given pursuant to a request under the Home Credit Market Investigation Order 2007 and, in such a case, the statement shall relate to a period—
 - (a) beginning with the date of the making of the agreement or 12 months before the request is received (whichever is the later); and
 - (b) ending on a date not more than 14 days before the statement is given.’; and
 - (b) regulations 45 to 48 (transitional provisions) were omitted.
- (4) Paragraph (1) does not apply to—
- (a) a request made less than three months after a previous request by the **debtor** to the **creditor** or any of his **associates** made under that paragraph was complied with; or
 - (b) a request received before the date that section 6 of the Consumer Credit Act 2006 comes fully into force.
- (5) Paragraph (1) does not apply to a request of the kind mentioned in that paragraph if every **home credit loan agreement** that has been made between—
- (a) the **debtor**; and
 - (b) the **creditor** or person who is an **associate** of his on the date the request is received;
- was finally discharged more than 12 weeks before the request was received by the **creditor**.
- (6) For the purposes of this article, an agreement is finally discharged on the first day that the following condition is satisfied, namely that no sum is, or will or may become, payable by the **debtor** under the agreement.
- (7) In this article, ‘give’ has the same meaning as in **the 1974 Act**.
- (8) For the purposes of this article, a request received by an **agent employed** by the **creditor** shall be deemed to be a request made to the **creditor**.

23. Prohibition on provisions inconsistent with this Part

A person shall not, as **creditor**, enter into a **home credit loan agreement** that is inconsistent with the rights of the **debtor** under this Part.

PART 5

Early settlement rebates

24. Interpretation of Part 5

In this Part, 'early settlement' and 'rebate' have the same meanings as in the Consumer Credit (Early Settlement) Regulations 2004.⁹

25. Amount of rebate

- (1) A person shall not, as a **creditor**, enter into a **home credit loan agreement** unless it contains an express provision giving the **debtor** the right, in the event of **early settlement**, to a **rebate** that would in all circumstances be equal to or greater than the amount determined in accordance with paragraph (2).
- (2) The amount determined in accordance with this paragraph is the **rebate** the **debtor** would be entitled to under the Consumer Credit (Early Settlement) Regulations 2004 if—
 - (a) in regulation 4(2), the words 'where the creditor so elects' were omitted;
 - (b) in regulation 5(1)(a), for '28 days' there were substituted '13 days'; and
 - (c) regulation 6 (deferral of settlement date) were omitted.
- (3) For the purposes of this article, an agreement embodies a provision if the provision is set out either in the agreement or in another document referred to in it.
- (4) Paragraph (1) shall not apply to an agreement entered into during the period of three months beginning with the date of this Order.

26. Early settlement statements

- (1) This article applies where—
 - (a) a **creditor** under a **home credit loan agreement** has received a request under section 97 of **the 1974 Act** and is, accordingly, required by that section to give the **debtor** a statement in the form prescribed by the Consumer Credit (Settlement Information) Regulations 1983;¹⁰
 - (b) the agreement was entered into after the expiration of the period of three months beginning with the date of this Order;

⁹S.I. 2004/1483 [as amended by S.I. 2010/1010 and S.I. 2010/1969](#).

¹⁰S.I. 1983/1564 as amended by S.I. 2004/1483 and 3236 [and S.I. 2010/1010](#).

- (c) the **debtor** would be entitled to a **rebate** under the agreement on **early settlement** if **early settlement** takes place not later than the **13 day settlement date**; and
 - (d) **the 13 day settlement date** is earlier than **the 28 day settlement date**.
- (2) In such a case, the **creditor** shall include in the statement, in addition to the information required under those Regulations—
- (a) the amount of the **rebate** the **debtor** would be entitled to under the agreement on **early settlement** calculated on the assumption that **early settlement** takes place on the **13 day settlement date**; and
 - (b) the total amount payable by the **debtor** required to discharge his indebtedness under the agreement after taking into account the amount of the **rebate** shown in accordance with sub-paragraph (a).
- (3) For the purposes of this article—
- (a) the 13 day settlement date shall be taken to be the date of the expiration of a period of 13 days after the day on which the **creditor** has received the request from the **debtor**, unless a later date is requested by the **debtor**; and
 - (b) the 28 day settlement date shall be taken to be the settlement date as determined in accordance with the regulation ~~3(5(1)(a)2)~~ of the Consumer Credit (~~Early Settlement Information~~) Regulations ~~1983~~2004.

PART 6

Further information requirements

27. Interpretation of Part 6

In this Part—

‘appointed day’ means such date as is specified for the purposes of this Part in a notice published by the **CC**, being a date that is at least 21 days after the **relevant date**;

‘**relevant date**’, ‘**relevant website**’, ‘**representative APR**’ and references to a **class of home credit loan agreements** have the same meanings as in Part 3;

‘supply’, in relation to information, means communicate the information orally or **give** a statement in writing containing the information; ~~and~~

~~‘typical APR’ has the same meaning as in the Advertisements Regulations.~~

28. Supply of information to the OFT

Schedule 3 shall have effect.

29. Duty to refer to the relevant website in advertisements

- (1) Subject to paragraph (3), this article applies to every **advertisement** which—

- (a) is required by **the Advertisements Regulations** to specify a **typical representative APR**; and
 - (b) is published for the purposes of a person's **home credit loan business**.
- (2) Subject to paragraph (4), a person carrying on a **home credit loan business** (or an **associate** of such a person) who causes such an **advertisement** to be published must ensure that —
- (a) the **advertisement** contains the form of wording set out in Part 1 of Schedule 4;
 - (b) the wording is given **greater the same** prominence in the **advertisement than as**—
 - ~~(c) any of the items listed in **Schedule 2 to regulation 5 of the Advertisements Regulations**; and~~
 - ~~(c) any indication or incentive of a kind referred to in article 8(1)(c) or (d) of the Advertisements Regulations;~~
 - ~~(e)(c) if the advertisement is in printed or electronic form and includes any of the items **referred to in sub-paragraph (b) above, listed in Schedule 2 to the Advertisements Regulations**, the wording required under sub-paragraph (a) above is shown in characters of not less than the size of the characters in which those items appear.~~
- (3) This article does not apply to an **advertisement** which—
- (a) is an **advertisement** to which article 30 applies or a document to which article 31 applies; or
 - (b) is an **advertisement** published on the **relevant website**
- (4) A person is not required by this article to ensure that an **advertisement** contains any particular form of wording before the **appointed day**.

30. Duty to provide information in documents delivered to an individual

- (1) Subject to paragraph (3), this article applies to every **advertisement** which is a document delivered or sent to an **individual** or left at the address of an **individual** for the purposes of a person's **home credit loan business**.
- (2) Subject to paragraphs (4) and (5), a person carrying on a **home credit loan business** (or an **associate** of such a person) who causes such an **advertisement** to be so delivered, sent or left must ensure that—
 - (a) the **advertisement** contains the forms of wording set out in Parts 1 and 2 of Schedule 4; and
 - (b) if the **advertisement** includes any of the items listed in **regulation 5 or regulation 6 of Schedule 2 to the Advertisements Regulations**, the wording required under sub-paragraph (a) is shown in characters of not less than the size of the characters in which ~~those the~~ items **in regulation 5** appear or in any other case not less than the size of characters in Arial font size 11.
- (3) This article does not apply to an **advertisement** which is a document to which article 31 applies.

- (4) A person is not required by this article to ensure that an **advertisement** contains the form of wording set out in Part 1 of Schedule 4 if it is so delivered, sent or left before the **appointed day**.

~~(31) A person is not required by this article to ensure that an **advertisement** contains the form of wording set out in Part 2 of Schedule 4 if it is so delivered, sent or left before section 6 of the Consumer Credit Act 2006 comes fully into force.~~

32-31. Duty to provide information in payment books etc

- (1) This article applies to every document which—
- (a) is delivered or sent by a **creditor** to a **debtor** (or person acting on the **debtor's** behalf) under a **home credit loan agreement** or left by such a **creditor** at the address of such a **debtor** (or a person acting on the **debtor's** behalf); and
 - (b) is for recording payments under the agreement.
- (2) Subject to paragraphs (3) and (4), a **creditor** under a **home credit loan agreement** who causes such a document to be so delivered, sent or left must ensure that—
- (a) the forms of wording set out in Parts 1 and 2 of Schedule 4 are set out on the front cover (if the document is in the form of a book) or (in any case) the first page of the document; and
 - (b) the wording required under sub-paragraph (a) is shown in characters of not less than the size of characters in Arial font size 11.
- (3) A person is not required by this article to ensure that a document contains the form of wording set out in Part 1 of Schedule 4 if it is so delivered, sent or left before the **appointed day**.

~~(4) A person is not required by this article to ensure that a document contains the form of wording set out in Part 2 of Schedule 4 if it is so delivered, sent or left before section 6 of the Consumer Credit Act 2006 comes fully into force.~~

~~(5)~~(4) The references in paragraphs (3) ~~and (4)~~ to such a document being so delivered, sent or left is (where applicable) a reference to the last time it was so delivered, sent or left.

33-32. Duty to supply product information on request

- (1) This article applies where a person ('the enquirer') makes a request (oral or in writing and however expressed) to a person who carries on a **home credit loan business** ('the supplier') to be provided with particulars of the terms on which the **supplier** is willing to enter into **home credit loan agreements**.
- (2) In those circumstances, the **supplier** shall **supply** the **enquirer** with the information described in article 17(2)(a), (b) and (c) in relation to each **class of home credit loan agreement** that he holds himself out as willing to enter into with members of the public.

- (3) However, if the request is in terms that indicate that the **enquirer** requires only a limited category of information, paragraph (2) shall apply only to the extent that it includes that category of information.
- (4) Subject to paragraph (5), if the request is made orally the **supplier** shall—
 - (a) communicate the information to the **enquirer** orally within 24 hours after receiving the request; or
 - (b) **give** him a statement in writing containing the information within seven days after receiving the request.
- (5) The **supplier** shall **give** the **enquirer** a statement in writing containing the information within seven days after receiving the request if—
 - (a) the request is made orally and the **enquirer** asks for the information to be given in writing; or
 - (b) the request is made in writing.
- (6) For the purposes of this article, a request received by an **agent employed** by a person who carries on a **home credit loan business** shall be deemed to be a request received by that person.
- (7) Nothing in this article shall affect the operation of section 49 of **the 1974 Act** (prohibition on canvassing).
- (8) In this article, 'give' has the same meaning as in **the 1974 Act**.

Signed by authority of the CC

.....

Peter Freeman
Group Chairman,
Competition Commission,
13 September 2007

SCHEDULE 1

Article 2(5)

Expression	Provision in the order
Accounts	Schedule 2, para. 1(b)
Accredited operator	Article 15
Advertisement and references to publishing an advertisement	Article 2(3)
Advertiser	Article 2(2)
Agent (and number of agents employed)	Article 5
Applicable number	Article 5(4)
Applicable turnover	Article 6(3)
Appointed day	Article 27
APR (other than in the expression 'rounded APR')	Article 14(2)
Associate	Article 2(2)
Authority	Article 14(4)
Business year	Article 6(5)
CC	Article 2(1)
Charge (for the purposes of article 17(2)(e) and (f))	Article 17(5)
Class (in relation to home credit loan agreements)	Article 14(6)
Class (in relation to special agreements)	Article 14(7)
Commencement date	Schedule 2, para. 1(a)
CRA	Article 11(2)
Credit	Article 2(2)
Creditor	Article 2(2)
Credit reference agency	Article 2(2)
Data subject	Schedule 2, para. 1(d)
Debtor	Article 2(2)
Debtor-creditor agreement	Article 2(2)
Early settlement	Article 24
Employed	Article 5(6)
Enactment	Article 14(9)
Give (in relation to article 22)	Article 22(7)
Give (in relation to article 32)	Article 32(8)

Holds himself out	Article 16(4)
Home credit business	Article 4
Home credit loan agreement	Article 3
Home credit loan business	Article 4
Home credit turnover	Article 6
Home credit voucher agreement	Article 3
Individual	Article 2(2)
Large lender	Article 14(8)
Licence	Article 2(2)
Licensed	Article 2(2)
Name	Article 14(3)
OFT	Article 2(2)
Personal data	Schedule 2, para. 1(d)
Postcode district	Article 19(3) and (4)
Positive, delinquent and default data	Schedule 1, para. 1(b)
Rebate	Article 24
Regulated agreement	Article 2(2)
Relevant agreement	Schedule 1, para. 1(c)
Relevant agreement in question	Schedule 1, para. 2
Relevant contract	Schedule 1, para. 2
Relevant date	Article 15
Relevant category	Article 9(2)
Relevant website	Article 14(1)
Relevant voucher	Article 3(4)
Repayment of credit	Article 14(1)
Rounded APR	Article 14(1)
Representation	Article 2(2)
<u>Representative APR</u>	<u>Article 14(1)</u>
Shared records	Article 11(5)
Special credit agreement	Article 14(5)
Special advertisement	Article 20(1)
Subscribers to shared data	Article 11(5)
Supplier	Article 32(1)
Supply	Article 27
The Advertisements Regulations	Article 2(1)

The 1974 Act	Article 2(1)
The 2007 Regulations	Article 22(2)(a)
The Principles	Article 11(1)(a)
The Rules Managing SCOR'	Article 11(1)(b)
The 13 day settlement date	Article 26(3)
The 28 day settlement date	Article 26(3)
Total charge for credit	Article 14(1)
Typical APR	Article 27

Requirements for data sharing contract

1. In this Schedule—
 - (a) ‘commencement date’ means the date that this Order comes into force.
 - (b) ‘positive, delinquent and default data’ and ‘accounts’ have the same meanings as in paragraph 2.1 of the **Principles**;
 - (c) ‘relevant agreement’ means a **home credit loan agreement** or a **home credit voucher agreement**; and
 - (d) ‘personal data’ and ‘data subject’ have the same meanings as in the Data Protection Act 1998.¹
2. In order for a contract (‘the relevant contract’) between a person and a CRA to be treated, for the purposes of article 12, as a contract between the person and the CRA which complies with this Schedule at the time the person enters into a **relevant agreement (‘the relevant agreement in question’)**, the contract must comply with the following provisions of this Schedule.
3. **The relevant contract** must impose a requirement on the person—
 - (a) to provide **positive, delinquent and default data** on a regular (minimum monthly) basis to the **CRA** on all **accounts** relating to **relevant agreements** (within the meaning of this Schedule) which he has entered into as the **creditor**; and
 - (b) to indicate, when providing such data, that the data relate to a **relevant agreement** within the meaning of this Schedule.
4. The requirement must be in force at the time the **relevant agreement in question** is entered into.
5. Paragraph 4 shall not apply if—
 - (a) **the relevant contract** provides for the requirement to come into force within a specified period (not exceeding three months) after the person enters into **the relevant contract** and that period has not expired when he enters into **the relevant agreement in question**; and
 - (b) the person has not prior to entering into the **relevant contract**, entered into more than one contract which imposes a requirement on him that complies with paragraph 3(a) and (b).
6. For the purposes of paragraph 5, any contract that terminated before the **commencement date** shall be ignored.
7. Paragraph 3 does not require the **relevant contract** to impose a requirement on the person to provide to the **CRA personal data** which satisfy both of the following conditions.

¹1998 c.29.

8. The conditions are that—

- (a) the **personal data** relate to a **relevant agreement** entered into before the **commencement date**; and
- (b) the **data subject** has not consented to the **personal data** being provided to the **CRA**.

Supply of information to the OFT

1. Any person carrying on a **home credit loan business** is required to provide to the **OFT** any information and documents required for the purposes of enabling the **OFT** to monitor and review the operation of this Order or any provisions of this Order.
2. Any person carrying on a **home credit loan business** may be required by the **OFT** to keep and produce those records specified in writing by the **OFT** that relate to the operation of any provisions of this Order.
3. Any person carrying on a **home credit loan business** and whom the **OFT** believes to have information which may be relevant to the monitoring or the review of the operation of any provisions of this Order may be required by the **OFT** to attend and provide such information in person.
4. The **OFT** may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the **OFT** in the discharge of its functions under or in connection with this Order.

**Form of wording to be used in advertisements and documents
for recording payments**

Part 1

'Compare the price of home collected and other cash loans available in your area at [Note 1]'

NOTE 1: Insert the address of the **relevant website**.

Part 2

'All home credit customers are entitled to a free detailed statement once every 3 months; just ask'