

EXPLANATORY MEMORANDUM TO
THE CONSUMER CREDIT (INFORMATION REQUIREMENTS AND DURATION OF
LICENCES AND CHARGES) (AMENDMENT) REGULATIONS 2008

2008 No. 1751

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory instruments.

2. **Description**

- 2.1 The Consumer Credit (Information Requirements and Duration of Licences and Charges) (Amendment) Regulations 2008 (“the 2008 Regulations”) amend the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 (“the Principal Regulations”). The Principal Regulations, the majority of whose provisions come into force on 1 October 2008, specify the form and content of the various statements and notices that were introduced by the Consumer Credit Act 2006 (“the 2006 Act”) by way of amendment to the Consumer Credit Act 1974 (“the 1974 Act”). They also set out the maximum duration of a time-limited consumer credit licence following the general move to indefinite licences, and the period for payment of the ongoing maintenance fee for such indefinite licences.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The 2008 Regulations primarily make amendments to some information requirements provisions in the Principal Regulations to correct errors and clarify the application of certain provisions following representations made to the Department in respect of the Principal Regulations by organisations who are directly affected by those Regulations. The Department has also taken this opportunity to update the reference in the Principal Regulations to the website operated on behalf of the Competition Commission at which details of home credit loans can be compared and to bring the 2008 Regulations in line with information in the current Office of Fair Trading Default information sheet which was introduced as a requirement under the 2006 Act and drawn up after the Principal Regulations were made for implementation in October 2008. As the 2008 Regulations correct certain errors and clarify provisions in the Principal Regulations they are being issued free of charge to all known recipients of the Principal Regulations.

4. **Legislative Background**

- 4.1 The 2006 Act adds to and amends the 1974 Act and makes provision for a number of statements and notices that lenders are required to send to consumers so that the latter are kept aware of the state of their account on a regular basis, allowing them to make more informed decisions and be aware of any problems as they arise. In order to implement the 2006 Act the Principal Regulations prescribe the form and content of the various notices. The 2008 Regulations amend some provisions in the Principal Regulations for the purposes of correction and clarification.
- 4.2 The 2008 Regulations are made under the following provisions of the 1974 Act, as amended:

section 77A(2) – Statements to be provided in relation to fixed-sum credit agreements
section 78(4A) – Statements to be provided in relation to running-account credit agreements
section 86B(8) – Notices of sums in arrears under fixed–sum credit agreements
section 130A(6) – Notices of interest payable on debts
section 182(2) and (4) – Regulations and orders
section 189(1) – Definitions

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom. Consumer credit is a matter reserved to the UK Parliament in relation to Scotland and Wales. The responsibility for consumer credit is transferred to Northern Ireland under the devolved settlement. However it was agreed that the provisions of the 2006 Act would also apply to Northern Ireland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The Consumer Credit White Paper of 2003 set out the Government agenda for change in the consumer credit (and hire) market. Various pieces of secondary legislation, standardising the way APR (Annual Percentage rates) is calculated, the provision of key information in credit and hire agreements up front and the simplification of early settlement rules came into force in 2004.
- 7.2 The 2006 Act continued the aim of enhancing consumer redress, improving the regulation of consumer credit businesses and ensuring that regulation is appropriate.
- 7.3 One of the biggest areas of consumer detriment addressed by the 2006 Act was lack of transparency on the state of borrowers' accounts. The 2006 Act amended the 1974 Act so that periodic statements will now be required to be sent at least once a year to give a summary of everything that has happened on the account during the period of the statement. So that borrowers are alerted when problems arise, notices

will be required when a default sum is charged and when accounts go into arrears. Information will also be required to ensure borrowers are aware of the situation where a court judgment is obtained but the credit agreement allows the lender to charge and collect interest on the judgment sum and to ensure that they receive regular statements in these circumstances.

- 7.4 While amendments to the 1974 Act introduced by the 2006 Act require lenders to send notices and includes trigger points, the secondary legislation specifies the form and content of statements and notices, in order to ensure that all statements contain similar information to allow consumers to be equally well-informed about the state of their account, whoever the lender is.
- 7.5 A consultation was held on a draft of the Principal Regulations and working groups with stakeholders were established. Following the making of the Principal Regulations industry stakeholders alerted the Department to the difficulties they were experiencing with implementation because of the way in which some of the provisions had been drafted and the 2008 Regulations address those concerns. Because the amendments in the 2008 Regulations are for the purposes of correction and clarity only, no formal consultation on them has taken place. However stakeholders have been consulted informally on the proposals and a draft of the 2008 Regulations was published on the BERR website and circulated to those organisations responding to the consultation on the Principal Regulations. Stakeholders have been mainly supportive of the amendments contained in the 2008 Regulations.
- 7.6 The Department has also taken the opportunity to update references in the Principal Regulations to the website operated on behalf of the Competition Commission, at which details of home credit loans can be compared, as specified in the Home Credit Market Investigation Order 2007 made by the Competition Commission under its powers in sections 161 and 164 of the Enterprise Act 2002¹ and to bring them in line with information contained in the current Office of Fair Trading Default information sheet – in both instances the relevant details were not available when the Principal Regulations were made. These amendments are for the purposes of consistency and clarity.
- 7.7 The Office of Fair Trading is providing guidance on the post-contract transparency requirements and the possibility of dealing with the corrections and clarifications contained in the 2008 Regulations through guidance was considered. However such guidance could only be a statement of the OFT's interpretation of the law, and how it believes the courts would be likely to interpret it. Moreover any such guidance would not be consistent with the wording used in the Principal Regulations where they contained errors. For these reasons it would not provide the necessary legal certainty or safeguard the policy intention that all statements contain similar information to ensure consumers are equally well-informed whoever their creditor is.

¹ <http://www.competition-commission.org.uk/inquiries/current/homecredit/order.pdf>

8. Impact

8.1 Much of the impact of the Principal Regulations was considered as part of the Regulatory Impact Assessment which accompanied the Consumer Credit Bill when it was introduced into the House of Commons in May 2005². An additional Regulatory Impact Assessment was published with the Principal Regulations². An Impact Assessment on the 2008 Regulations is attached to this memorandum.

8.2 The provisions set out in the 2008 Regulations have no significant impact on the public sector.

9. Contact

Sarah Carlin at the Department for Business, Enterprise and Regulatory Reform Tel: 020 7215 0145 or e-mail: sarah.carlin@berr.gsi.gov.uk can answer any queries regarding the instrument.

² <http://www.berr.gov.uk/consumers/consumer-finance/credit-act-2006/documents>

Summary: Intervention & Options

Department /Agency: Business, Enterprise and Regulatory Reform (BERR)	Title: Impact Assessment of Consumer Credit(Information Requirements & Duration of Licences and Charges)(Amendment)Regulations	
Stage: Final	Version: 1.0	Date: 2 July 2008
Related Publications: Statutory Instrument: The Consumer Credit (Information Requirements and Duration of Licence and Charges) Regulations 2007		

Available to view or download at:

<http://ialibrary.berr.gov.uk>

Contact for enquiries: Sarah Carlin

Telephone: 020 7215 0145

What is the problem under consideration? Why is government intervention necessary?

Some of the provisions within the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 as currently worded do not achieve the original policy intentions of providing clear and transparent information on the state of borrowers' accounts. Action is therefore required to correct some errors and clarify the application of certain provisions in order to provide clarity and legal certainty to industry and consumers and to ensure businesses do not incur unintended regulatory compliance costs.

What are the policy objectives and the intended effects?

To provide clarity on the information to be set out in annual statements for fixed sum credit agreements, statements for running account credit agreements and notices of sums in arrears. These correcting and clarifying amendments will resolve the current ambiguities that exist and avoid significant, unintended regulatory compliance costs, while maintaining the original policy intention of balancing the need to ensure that consumers are provided with relevant and clear information about the state of their credit accounts with ensuring that any burden on industry is not disproportionate.

What policy options have been considered? Please justify any preferred option.

1. Do nothing.
2. Providing clarification through guidance.
2. Providing clarification through secondary legislation - this is our preferred option. Guidance alone will not provide the necessary legal certainty to ensure the original policy objectives are achieved and a common approach is adopted by industry and, as relevant, the courts.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The policy will be reviewed within 3 years of the date of implementation.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Gareth Thomas

.....Date: 2nd July 2008

Summary: Analysis & Evidence

Policy Option: 3	Description: Amend the Consumer Credit (information Requirements and Duration of Licences and Charges) Regulations 2007
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'			
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 5px;">One-off (Transition)</td> <td style="width: 40%; text-align: center; padding: 5px;">Yrs</td> </tr> <tr> <td style="padding: 5px;">£ 0</td> <td></td> </tr> </table>		One-off (Transition)	Yrs	£ 0
	One-off (Transition)	Yrs			
	£ 0				
Average Annual Cost (excluding one-off)					
£ 0	Total Cost (PV) £				
Other key non-monetised costs by 'main affected groups'					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'			
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 5px;">One-off</td> <td style="width: 40%; text-align: center; padding: 5px;">Yrs</td> </tr> <tr> <td style="padding: 5px;">£ 46.6 million</td> <td style="text-align: center; padding: 5px;">7</td> </tr> </table>		One-off	Yrs	£ 46.6 million
	One-off	Yrs			
	£ 46.6 million	7			
Average Annual Benefit (excluding one-off)					
£ 4.6 million	Total Benefit (PV) £ 75.8 million				
Other key non-monetised benefits by 'main affected groups'					
Consumers will benefit from a common approach being adopted by lenders, from improved clarity in the information they receive and from increased compliance costs not being passed on by providers.					

Key Assumptions/Sensitivities/Risks Benefits based on assumptions about likely additional costs of certain amendments. Industry estimates used for costs to large and small businesses (based on small sample) and aggregated based on membership of 4 main consumer credit trade associations (a proxy for the whole affected market).

Price Base Year 2008	Time Period Years 7	Net Benefit Range (NPV) £ 75.8 million	NET BENEFIT (NPV Best estimate) £ 75.8 million
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What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	1 October 2008
Which organisation(s) will enforce the policy?	OFT
What is the total annual cost of enforcement for these organisations?	£ minimal
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No

Annual cost (£-£) per organisation (excluding one-off)	Micro £0	Small £0	Medium £0	Large £0
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £ 0	Decrease £ 0	Net Impact	£ 0

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

**THE CONSUMER CREDIT (INFORMATION REQUIREMENTS AND DURATION OF LICENCES AND CHARGES)
(AMENDMENT) REGULATIONS 2008 ("THE 2008 REGULATIONS")**

1) INTRODUCTION

- a) This impact assessment ("**IA**") examines the implications of amending the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 (the "**2007 Regulations**") to correct some drafting errors and to clarify the application of certain provisions and additionally to update some provisions, also for the purpose of improved clarity.
- b) Annex 1 accompanying this Impact Assessment sets out the detail impact of each of the amendments contained within the Consumer Credit (Information Requirements and Duration of Licences and Charges) (Amendment) Regulations 2008.
- c) On areas where it was difficult to quantify the costs and benefits, we have provided to the extent possible, the qualitative costs and benefits for the industry.

2) OBJECTIVES

- a) The proposals are intended to ensure that the policy intentions behind the information provisions under Consumer Credit Act 2006 ("the 2006 Act") of ensuring that consumers are provided with relevant and clear information about the state of their credit accounts whilst ensuring that any burden on industry in doing so is not disproportionate are achieved by correcting or clarifying certain provisions within the 2007 Regulations.

3) BACKGROUND

- a) The 2006 Act received Royal Assent on 30 March 2006. It is based around three main changes:
 - i) ensuring consumers are provided with clear information about the state of their credit accounts;
 - ii) improving consumers' rights and access to redress; and
 - iii) establishing a more targeted licensing regime for the regulation of consumer credit businesses.
- b) The post-transparency requirements introduced by the 2006 Act require lenders to provide specific information about credit agreements to consumers at required points in time. They are aimed at providing more information to consumers to enable consumers to better manage their borrowing and stay in control. They include sending regular statements so that consumers are kept up-to-date on their accounts (in particular where any additional interest, fees or charges might have been added) and sending notices of sums in arrears to consumers when they fall behind with their payments.
- c) The full regulatory impact assessment ("**RIA**")ⁱ for the Consumer Credit Bill published in November 2004 provided the evidence base to support these provisions.
- d) The 2007 Regulations were made on 31 March 2007 under the Consumer Credit Act 1974 as amended by the 2006 Act. They prescribe the form and content of the various statements and notices that lenders will be required to provide to all consumers about their regulated agreements. (They also set the maximum duration of limited licences and the period within which periodic fees for indefinite licences must be paid). The majority of these provisions come into force on 1 October 2008. The RIAⁱⁱ for the 2007 Regulations provides the evidence base to support the form and content requirements prescribed by the 2007 Regulations. The then Department of Trade and Industry ("DTI") consulted on a draft of the 2007 Regulations in August 2006 and issued a response to the consultation in March 2007. They were made on 31 March 2007.

- e) During the consultation process for the draft 2007 Regulations DTI maintained an open and constructive dialogue to ensure that any requirements on industry were in proportion to the consumer benefits being sought. A draft SI was issued with the consultation document. PricewaterhouseCoopers (PWC) were also commissioned to provide an independent analysis of the challenges facing industry in meeting the requirements of the Act in terms of both time and cost. Their reportⁱⁱⁱ highlighted the complexity of information systems across the industry, the work that would be involved in adapting them to meet the Act's requirements and the risks of insufficient testing before commencement. It also established that implementation costs would be significantly higher than predicted in the initial RIA for the 2006 Act. The Department responded by making significant modifications to the draft SI to reduce costs while maintaining consumer protection objectives and by postponing implementation of the information requirements from April 2008 to October 2008.
- f) Following the making of the 2007 Regulations lenders expressed concern about some aspects of the 2007 Regulations as drafted. Largely because of the complex and technical nature of the 2007 Regulations these issues came to light only after they had been made and the focus turned to implementation. We agreed that there were some drafting errors and that in some areas the 2007 Regulations as drafted did not fully reflect our original policy intentions. The Department also considered that it would be helpful for purposes of greater clarity to take the opportunity to take account of subsequent developments which would impact on the 2007 Regulations – the Competition Commission's Home Credit Market Investigation Order 2007 and the list of organisations contained in the finalised version of the Office of Fair Trading's Information Sheets.

4) CLARIFICATION OF FORM AND CONTENT REQUIREMENTS

a) Rationale for Government Intervention

- i) The policy intention under the 2006 Act was that a creditor when providing a fixed sum credit agreement annual statement, a running-account statement or a notice of sums in arrears should provide information which is relevant, clear and transparent. Certain provisions in their current form do not fully implement this policy intention and therefore corrective amendments are required. The detailed amendments and the reasons for the amendments are set out in Annex 2 to this IA.
- ii) We are concerned that failure to resolve these matters will lead to inconsistent implementation of the 2007 Regulations by the industry and to consumers being provided with statements and notices which are confusing and do not fulfil the original policy intention of providing information which is relevant, clear and transparent. We are also concerned that failure to clarify the requirements could lead to technical challenges relating to the form and content of notices by consumers. This could have serious consequences for creditors due to the sanctions available to a consumer where a fixed sum statement, running account statement or notice of sums in arrears is served in an incorrect form.
- iii) Options 1 and 2 are included here to show the alternative options considered to address this problem. However, as it is not possible to pursue these options to address the identified issues, we have not provided an assessment of their costs and benefits.

b) Option 1: Do nothing

- i) In the absence of any corrective action consumers will potentially be provided with confusing or misleading information. Lenders will be faced with increased costs of compliance. This will be due to the difficulties faced by lenders of providing information which will only be held on systems in aggregated form and also through having to deal with consumers who query the content of statements and notices relating to their accounts. The difficulties faced could give rise to serious non-compliance and defeat the original policy intention of the 2007 Regulations to provide clear, relevant and transparent information. The Department could await the outcome of the review of the legislation, to take place within 3 years, before making

the changes but this would mean lenders would incur additional costs in making further revisions to their systems to address these issues at that stage.

c) Option 2: Providing clarity through guidance

- i) Whilst it would be possible to issue guidance setting out the policy intention behind these provisions this would not be consistent with the wording of the relevant regulations and would not provide legal certainty to industry that they were compliant when providing the prescribed statements and notices. Nor would it safeguard the policy intention that all statements should contain similar information to ensure consumers are equally well-informed whoever their creditor is. The consequences would be the same as set out under Option 1.

d) Option 3: Provide clarification through secondary legislation

- i) The issues identified arise directly through inconsistency and lack of clarity in the legislation and therefore require corrective action through amendment to the 2007 Regulations. This is our preferred option.

ii) Benefits

This option provides both clarity and legal certainty to the industry as well as ensuring consumers receive relevant information. The proposals will ensure that the original policy objective is achieved and that, as far as possible, a common approach is adopted by lenders. They will also provide clarity to consumers who will benefit from clear and consistent information. The amendments will also reduce unnecessary burdens on industry in having to comply with regulations which are unclear or contain errors as well as deal with an increase in consumer queries to provide explanation as to the confusing content of certain of the statements and notices.

iii) Costs

The proposals will reduce the overall compliance cost burden for industry in complying with the post-contract transparency requirements estimated by PWC to be around £500 million in total. The full RIA for the Consumer Credit Bill recognised that the provision of annual statements would be an incremental cost to most businesses as many already provide this information to consumers in some form. These proposals will keep those costs to a minimum by providing clarity in the legislation thus avoiding unintended or unnecessarily complicated and expensive system changes.

We have contacted industry representatives to obtain details of any annual costs and benefits which will be made through the implementation of the amendments. Certain of the amendments are correcting errors and will impose no additional costs burden on the industry. For these amendments it is also not possible for industry to provide details of annual benefits as they were never intended to be implemented in their current form. Within this category are amendments to Regulations 6, 14, 15, 16, 17, 19, 38, 40 and Part 3 of Schedule 3. In addition there are a number of amendments (those to Regulation 12 and Schedule 5 Paragraph 6) which are updating the Regulations in the light of other regulatory developments. For these amendments it is not appropriate to request details of costs from industry

For other clarifying amendments including amendments to Regulations 7, 9, 20, 50, 21 and 23 industry representatives have not been able to provide any figures relating to the annual costs and benefits. In relation to these amendments it would be fair to assume that the amendments will not impose any additional burdens and will lead to reduced costs for lenders.

For the amendment to Regulation 10 one stakeholder association estimates that if the amendment is not introduced there will be systems development costs to extract the relevant

information so that it can be included on the annual statement. This would be up to £250,000 for the association's larger members giving rise to industry costs of £0.8m to £1m. The association believes that there would be on-going costs to deal with customer confusion with estimated costs to industry of over £200,000 per year.

For Regulation 22 a stakeholder association estimates that the costs of identifying the information and then carrying out systems changes to ensure the information is included on the notice would be £50-70,000 for smaller members and £1.6 to £2m for larger members leading to one-off industry costs in the region of £45m. On-going costs of dealing with customer queries would be in the region of £2m.

iv) Risks

The provisions in the 2007 Regulations in the areas identified for amendment are incorrect, inconsistent or lack clarity and consequently if not amended there is a high risk that there will be a high-level of non-compliance. As drafted it would be difficult for industry to comply with some of the 2007 Regulations.

The proposals will also avoid confusing and potentially inconsistent information being provided to consumers.

In addition, the proposals will also reduce the serious financial risk to industry if they were found to be non-compliant as this could, in certain circumstances, restrict the ability of the lender to enforce the agreement or to collect interest and other charges falling due during any period of non-compliance.

There is also the potential for reputational risk in our not making these changes where we are aware of errors in the original drafting. In the absence of amendment these errors will have to be incorporated by lenders into their current systems builds. If we were to make amending legislation at a later stage to take account of these corrections and clarifications additional burdens would be placed on lenders by requiring further systems changes. Correcting the errors now will avoid unnecessary systems build in the future.

5) WHO WILL BE AFFECTED?

- a) The proposals will impact businesses providing fixed-sum and running-account credit as well as consumers involved in those markets.

6) ISSUES OF EQUITY AND FAIRNESS

- a) After initial screening as to the potential impact of this policy/regulation on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both.

7) COMPETITION ASSESSMENT

- a) There is no change in the nature or number of businesses affected by these provisions to that intended originally under the Consumer Credit Bill. The proposals are corrective and simplifying measures to ensure that the original policy intentions are achieved in each case. We have fully considered the questions posed in The Office of Fair Trading competition assessment test and conclude that as these Regulations are correcting errors and clarifying the requirements of the 2007 Regulations they are unlikely to hinder the number or range of suppliers or the ability and incentive for businesses to compete.

8) SMALL FIRMS IMPACT TEST

- a) There is no change in the nature or number of businesses affected by these provisions to that intended originally under the Consumer Credit Bill. The proposals are corrective and simplifying

measures to ensure that the original policy intentions are achieved in each case. They will benefit all businesses, regardless of size, involved in the consumer credit market ensuring compliance costs are kept to the minimum necessary.

9) ENFORCEMENT AND SANCTIONS

- a) The existing provisions in the 1974 Act apply. There are no new burdens and hence no new enforcement implications in these proposals.

10) CONSULTATION

- a) Because the amendments are for purposes of correction and clarity only, no formal consultation on the 2008 regulations has been held. The 2007 Regulations were subject to full consultation when policy issues were considered by all relevant stakeholders^{iv}. Our intention to amend the 2007 Regulations was publicised through the BERR website and a stakeholder notice covering a draft SI was issued in March 2008 inviting views. In addition we have informally discussed the amendments with industry and with consumer organisations who responded to the original consultation on the 2007 Regulations. Industry representatives have welcomed the proposals as providing greater clarity and consistency. Some consumer organisations sought reassurance that any amendments would maintain the original policy intention of balancing the need to provide relevant and clear information with that of ensuring the burden on industry was not disproportionate, but welcomed the intention to correct errors and improve clarity.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No

Annex to Impact Assessment

Rationale for Government Intervention

This Annex sets out the detailed impact of each of the amendments contained within the Consumer Credit (Information Requirements and Duration of Licences and Charges)(Amendment) Regulations 2008.

1. Annual Statements for Fixed Sum Credit Agreements

Regulation 2(a) – amends Regulation 6

Purpose

Removes the requirement to set out the date of interest becoming due as required by Schedule 1 Part 1 para 3(h)

Background

3(h) of Schedule 1 of the 2007 Regulations requires a creditor to include in an annual statement for fixed sum credit the amount and date of any interest or other charges are added to the account. Regulation 6 permits creditors to set out as one amount interest on an annual statement for fixed sum credit where the rate or rates of interest provided for under the agreement are not applicable on a per annum basis. In the absence of amendment creditors would be required to include the date interest is added but not the amount. This could potentially lead to dates being included with no explanation as to why the date is included causing consumer confusion and not providing relevant, clear and transparent information as set out in the policy intention.

Regulation 2(b) – amends Regulation 7

Purpose

Aligns aggregation provisions in Regulation 7 with other provisions so that certain of the provisions for notices in arrears apply equally to statements

Background

Regulation 7 allows certain information provided in an annual statement for a fixed-sum credit agreement to be presented as an aggregated amount where the creditor and debtor have entered into an agreement to aggregate. When formulating this regulation it was recognised that the interests of the consumer had to be balanced with the practical constraints on lenders of identifying the required information. By amending this regulation to permit the opening balance required by paragraph 3(f) of Schedule 1 and the balance at the end of the period as required by paragraph 3(j) of Schedule 1 to be set out in an aggregated amount the consumer will be presented with clear information without requiring lenders to undertake extensive manual exercises in retrieving information which is not commonly held separately on current IT systems. This aligns the requirements for statements with those which apply to notices of sums in arrears. As a result of the amendment to Regulation 7 certain consequential amendments are required to Regulations 9. These amendments will ensure information is provided consistently and clarifies the requirements of the Regulation. These amendments are set out in Regulations 2(c).

Regulation 2(c) – amends Regulation 9

Purpose

Ensures there is no duplication between the requirements of Regulation 7 and 9

Background

As a result of the amendment to Regulation 7 certain consequential amendments are required to Regulations 9. These amendments will ensure information is provided consistently and clarifies the requirements of the Regulation.

Regulation 2(d) – amends Regulation 10

Purpose

Removes the requirement to include details of interest and charges in a statement as required by Schedule 1 Part 1 para 3(h) where these are debited to another account

Background

Regulation 10 requires that where a creditor and a debtor have entered into an arrangement to debit interest and charges from a separate account a statement to that effect must be included in the form of annual statement for the fixed-sum credit agreement. To avoid duplication of information and potential consumer confusion the information relating to the amount and date of the charges as required under paragraph 3(h) of Schedule 1 should be omitted from the annual statement for the fixed sum agreement as these charges will appear as a debit item on the another account. This amendment will clarify the requirements of the Regulation.

Regulation 2(e) – amends Regulation 12

Purpose

Updates to reference to the Competition Commission website at which details of home credit loans can be compared

Background

Regulation 12 imposes certain requirements where the credit agreement is a “home credit loan agreement”. These requirements were included in anticipation of the Competition Commission’s report into the home credit market. In order to conform the 2007 Regulations to the final order made by the Competition Commission in September 2007 certain minor amendments are required. These amendments will ensure information is provided in a clear and consistent way by home credit providers. This amendment takes into account a subsequent development and will achieve a consistent approach for lenders and consumers of home credit.

2. Statements for Running-Account Credit Agreements

Regulations 2(f), 2(g), 2(h) and 2(i) – amends Regulation 14, 15, 16, 17

Purpose

Ensures appropriate information will be included in periodic statements for running-account credit agreements.

Background

Regulation 14 requires certain prescribed wording relating to the payments made under running-account agreements to be included in the regular statement required to be sent to the consumer under Section 78 of the CCA 1974. These prescribed statements relate to the making of minimum payments under certain types of running account credit agreements. As drafted these notices would be required to be included in statements where no minimum payment is required and conversely would not be required where minimum payments are required. This will mean that the policy intention behind the notices, which is to ensure that consumers are aware of the consequences of making only a minimum payment or of failing to make a minimum payment, will not be achieved. This amendment clarifies the original drafting.

3. Notices of Sums in Arrears

Regulation 2(j)(ii) – amends Regulation 19

Purpose

Ensures appropriate statement relating to the availability of further information is provided in a notice of sums in arrears

Background

Regulation 19(2)(c) requires a statement to be included in a notice of sums in arrears for a fixed-sum statement stating that further information must be provided by the creditor on request if that information is omitted from the statement. As drafted the relevant information referred to is that in Regulation 19(1). Regulation 19(1) applies to all notices of sums in arrears. The original intention was that the wording should only be included where further detailed information as prescribed by Regulation 19(2)(b) is omitted from the notice. Failure to amend the regulation would mean that a consumer would not be made aware that they have a right to request further information. This amendment clarifies the original drafting.

Regulation 2(j)(iii) and (iv) – amends Regulation 19(3)

Purpose

Aligns provisions relating to the inclusion of interest with the provisions which apply to statements

Background

Under Regulation 6 in an annual statement for fixed-sum interest where the rate or rates of interest provided for under an agreement are not applicable on a per annum basis, paragraph 3(h) of Schedule 1 does not require the amounts of interest which become due to be set out separately in the statement. This amendment aligns the requirements which apply to notices of sums in arrears with this provision.

Regulation 2(r)(ii) – amends Schedule 3 Paragraph 10

Purpose

Provides clarity as to information requirements for notices of sums in arrears and ensures information is not duplicated

Background

Schedule 3 sets out the content requirements for notices of sums in arrears under fixed-sum credit agreements. Paragraphs 8 and 9 require, respectively the amount and date of any payment made into the account by, or to the credit of, the debtor or hirer during the period to which the notice relates and the amount and date of any interest or other charges payable by the debtor or hirer which became due during the period to which the notice relates. Paragraph 10 then requires any other movement in the account and not included under paragraph 8 to be included. As the addition of interest and other charges to the account are movements in the account this could require the repetition of information leading to consumer confusion and a lack of clarity in the form of the notice. This amendment will clarify the requirements of the Regulation.

Regulation 2(m) – amends Regulation 22

Purpose

Aligns aggregation provisions for first and second notices of sums in arrears and with the aggregation provisions which apply to statements

Background

Regulation 22 permits the aggregation of certain information where there is an agreement to aggregate to which Regulation 2(8) of the Consumer Credit (Agreements) Regulations 1983 applies in notices of sums in arrears which are not the first required arrears notices. The original policy intention was to permit aggregation of information in all notices of sums in arrears (including the first required notice) and this will be achieved through the proposed amendment. This amendment clarifies the original drafting. The provisions relating to the aggregation of information for annual statements permit aggregation of certain items of required information and as a result the policy objective of presenting clear and transparent information will not be undermined if all notices of sums in arrears also show aggregated rather than separate information. Similarly the amount of any arrears shortfall shown in the notice will be viewed as one amount by the borrower and so should also be permitted to be shown in as aggregated amount. This amendment will ensure consistency of approach for annual statements and notices of sums in arrears which was the original policy intention.

Regulation 2(q) – amends Regulation 50

Purpose

Aligns aggregation provisions for any pre-commencement arrears which are included in a notice with the provisions applying to the content of the notice under Regulations 20 to 22

Background

Regulation 50 allows creditors to include pre-commencement arrears in notices of sums in arrears. If such arrears are to be included in the notice then, consistent with Regulations 20-22, the information will be clearer to a consumer if it can be presented in an aggregated form as a consumer will not differentiate between pre- and post commencement arrears. This amendment will provide clarity in the interpretation of Regulation 50 and will as a result achieve a consistent approach by lenders.

Regulations 2(j)(i), (k), (l), (n), (r) – amends Regulations 19(1), 20(3), 21, 23 and Schedule 3

Purpose

Clarifies the information to be included when sums are paid into the debtor's account with the creditor

Background

To ensure the 2007 Regulations can be interpreted in a clear and consistent way certain amendments are required where reference is made in the Regulations to "payments". To ensure the term "payments" includes all credits made to an account the wording has been amended to refer to "sums paid".

4. Other Amendments

Regulations 2(o) – amends Regulation 38

Purpose

Corrects an error in the original regulations

Background

Regulation 38 requires certain information in running-account statements to be shown together as a whole and not interspersed with any other information or wording. Regulation 38(2) contains a reference to fixed-sum statements which is not relevant and therefore should be omitted to avoid legal uncertainty and potential confusion.

Regulations 2(p) – amends Regulation 40

Purpose

Exempts Regulation 33 from the requirements of Regulation 40 relating to prominence of information as the Consumer Credit ((Enforcement, Default and Termination Notices) Regulations 1983 which are amended by Regulation 33, already contain requirements as to the layout and prominence of information

Background

Regulation 40 requires that information and wording which is required by the 2007 Regulations must, in general, be no less prominent than other information required by the regulations. Regulation 33 includes certain amendments to the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983. These regulations specify that certain required information must be given prominence and as a result there is a potential mismatch between the new prominence requirements in Regulation 40. In order to

ensure the existing prominence requirements of the Consumer Credit (Enforcement, Default and Termination Notices) Regulations are maintained Regulation 33 will be excluded from the Regulation 40.

Regulations 2(s) – amends Paragraph 6 of Schedule 5

Purpose

Amends the list of organisations in Schedule 5 to bring it into line with the corresponding list in the OFT Information Sheet

Background

Schedule 5 prescribes the information to be included in notices required under section 130A of the 1974 Act which provide information relating to the recovery of post-judgment interest. Paragraph 6 of Schedule 5 requires a statement to be included setting out where the borrower can obtain advice and information and refers to the OFT default information sheet. The list set out in the notice prescribed in paragraph 6 of Schedule 5 is not the same as that set out in the OFT information sheet which was compiled after the Regulations were made. Consequently it may be difficult for lenders to comply with as it stands and may lead to customer confusion. This amendment brings the list into line with that contained in the OFT information sheet for purposes of clarity and consistency

ⁱ The Regulatory Impact Assessment for the Consumer Credit Bill is available at <http://www.berr.gov.uk/files/file24434.pdf>

ⁱⁱ The Explanatory Memorandum, Response to the consultation and Regulatory Impact Assessment for the 2007 Regulations is available at http://www.opsi.gov.uk/si/si2007/em/uksiem_20071167_en.pdf

ⁱⁱⁱ The PWC Report is available at <http://www.berr.gov.uk/files/file38292.pdf>

^{iv} The consultation for the 2007 Regulations is available at <http://www.berr.gov.uk/files/file32773.pdf>