

EXPLANATORY MEMORANDUM TO
THE CONSUMER CREDIT (ADVERTISEMENTS) REGULATIONS 2010
2010 No. 1970

1 1.1 This explanatory memorandum has been prepared by the Department for Business, Innovation & Skills and is laid before Parliament by Command of Her Majesty.

1.2 This explanatory memorandum contains information for the Joint Committee on Statutory Instruments.

2 Purpose of the instrument

2.1 These Regulations revoke and replace the Consumer Credit (Advertisements) Regulations 2010 (SI 2010/1012) (“the earlier Advertisements Regulations”), which were made in March 2010 and which partially implement an EU Directive on consumer credit. They correct errors in the earlier regulations. They do not change the policy intention of those regulations.

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

3.1 As these Regulations make corrections to the earlier Advertisements Regulations, copies of these Regulations will be provided free of charge to those who purchased those regulations.

4 Legislative Context

4.1 The following regulations were made in March 2010 to implement the 2008 EC Consumer Credit Directive (“the implementing regulations”):¹

- The Consumer Credit (EU Directive) Regulations 2010, SI 2010/1010
- The Consumer Credit (Total Charge for Credit) Regulations 2010, SI 2010/1011
- The Consumer Credit (Advertisements) Regulations 2010, SI 2010/1012
- The Consumer Credit (Disclosure of Information) Regulations 2010, SI 2010/1013
- The Consumer Credit (Agreements) Regulations 2010, SI 2010/1014

4.2 The EU Directive Regulations make a number of amendments to the Consumer Credit Act 1974 (CCA 1974) and associated secondary legislation. The other four sets of implementing regulations replace existing secondary legislation made under the CCA 1974 in respect of most types of credit agreements. The Directive is maximum harmonisation and therefore the UK has had limited flexibility in how to implement it. Member States cannot impose different or additional requirements in those areas covered by the Directive. The UK already has a detailed consumer credit framework. Some of the Directive’s requirements are new to the UK

¹ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L133, Page 66, 22 May 2008).

but many are already covered in whole or part by existing law. Where possible we have maintained existing requirements and made only the necessary changes to existing UK law.

4.3 These Regulations repeal and replace the earlier Advertisements Regulations and will come into force on 1 February 2011, the same date as the regulations they repeal. A separate set of regulations² is being made to correct errors in the EU Directive Regulations, the Disclosure Regulations and the Agreements Regulations (which have already come into force), and has been laid at the same time as these Regulations.

4.4 A Transposition Note for these Regulations is attached at Annex A. The EM and a full Transposition Note for the implementing regulations (including the earlier Advertisements Regulations) can be found at <http://www.opsi.gov.uk/si/si201010>.

4.5 DTI submitted an EM on Council doc no. 14246/04 on 30 November 2004 relating to "Amended proposal for a Directive of the European Parliament and of the Council on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers repealing Directive 87/102/EC and modifying Directive 93/13/EC". The Commons European Scrutiny Committee considered it politically important and cleared it (Report 1, Session 05/06). The Lords Select Committee on the EU cleared it (PoS 21 Nov 2005, Report 13, Session 05/06).

4.6 DTI submitted an EM on Council doc no. 13193/05 on 1 November 2005 relating to "Modified proposal for a Directive of the European parliament and of the Council on credit agreements for consumers amending Council Directive 93/13/EC". The Commons European Scrutiny Committee considered it politically important and cleared it (Report 10, Session 05/06). The Lords Select Committee on the EU cleared it by letter on 27 April 2007 (PoS 27 April 2007, Report 27, Session 06/07).

4.7 BERR submitted an EM on Council doc no. 9948/2/07 REV 2 on 12 November 2007 relating to "Common Position adopted by the Council on 20 September 2007 with a view to the adoption of a Directive of the European Parliament and of the Council on credit agreements for consumers and repealing Council Directive 87/102/EEC". The Commons European Scrutiny Committee considered it politically important and cleared it (Report 4, Session 07/08). The Lords Select Committee on the EU cleared it (PoS 7 Feb 2008, Session 07/08).

5 Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. Although consumer credit is transferred to Northern Ireland, it has been agreed that these Regulations shall extend to Northern Ireland.

6 European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for Employment Relations, Consumer and Postal Affairs, Edward Davey, has made the following statement

² The Consumer Credit (Amendment) Regulations 2010 No. 1969

regarding Human Rights:

In my view the provisions of the Consumer Credit (Advertisement) Regulations 2010 are compatible with the Convention rights.

7 Policy background

What is being done and why

7.1 The explanatory memorandum for the implementing regulations (available at <http://www.opsi.gov.uk/si/si201010>) provides details of the policy background to the implementing regulations including the earlier Advertisements Regulations.

7.2 These Regulations differ from the earlier Advertisements Regulations in only minor respects (mainly to correct minor and typographical errors to ensure that the regulations have the intended impact). These Regulations do not change the policy of the earlier regulations. Of the minor changes, the following are the more significant:

7.2.1 The definition of “interest rate” in regulation 1(3) has been moved to regulation 5(7) since it is intended to apply only in the context of describing the representative example;

7.2.2 Regulation 5(2) has been amended so that regulation 5(2) does not apply to certain overdrafts (see regulations 5(5));

7.2.3 In regulation 12 the cross-reference to the Consumer Credit (EU Directive Regulations 2010 (SI 2010/1010) has been amended.

7.3 There has been no public or media attention in the changes. Interest has been confined to those businesses that will have to comply with the changes, legal firms and enforcement agencies.

7.4 The changes are not politically or legally important.

- ***Consolidation***

7.5 The Department for Business, Innovation & Skills has no plans to consolidate the Consumer Credit Act 1974 or the secondary legislation that has been amended by these Regulations.

8 Consultation outcome

8.1 A public consultation on the policy proposals for implementing the Consumer Credit Directive (including the changes on advertising) ran from 14 April 2009 to 10 June 2009.³ Further information on the consultation is available in the explanatory memorandum to the implementing regulations.

³ Consultation on proposals for implementing the Consumer Credit Directive. April 2009. URN 09/876.

8.2 Given the nature of the changes, the Department has not consulted formally on these revised Regulations. Many of the errors in the earlier Advertisements Regulations were identified by companies and legal firms who will be using the regulations. A list of proposed amendments was circulated to stakeholders for informal comment in early June.

9 Guidance

9.1 The Department will be publishing in August a plain English guide to the changes made by the implementing regulations including these Regulations. The Office of Fair Trading may also publish further guidance for creditors on its approach to enforcement of the regulations

10 Impact

10.1 These Regulations will have an impact on any business that offers credit to consumers. It is estimated that there are 3,500 – 5,000 businesses holding consumer credit licences in the UK. They have no impact on the charitable sector or voluntary bodies.

10.2 An Impact Assessment for the implementing regulations (including the earlier Advertisements Regulations) is available on the BIS website:
<http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/10-916-implementation-impact-assessment-consumer-credit-directive.pdf>.

10.3 A separate Impact Assessment has not been prepared for these Regulations as they have no cost or benefit beyond that identified for the earlier Advertisements Regulations.

11 Regulating small business

11.1 The legislation applies to creditors that are small businesses.

12 Monitoring & review

12.2 The European Commission is expected to review the Directive in 2013 and if appropriate would put forward proposals to amend the Directive. The Department proposes to carry out a review of the effectiveness of the implementing legislation to a similar timescale.

13 Contact

Valerie Carpenter at the Department for Business, Innovation and Skills, Tel: 020 7215 0225 or email: valerie.carpenter@bis.gsi.gov.uk can answer any queries regarding the instrument.

TRANSPOSITION NOTE

IMPLEMENTATION OF DIRECTIVE 2008/48/EC

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC

**The Consumer Credit (Advertisements) Regulations 2010
No. 2010/1970**

This table has been prepared by the Department for Business, Innovation & Skills. It sets out the objective of the relevant article of the Directive as it applies to advertising consumer credit agreements, and how it is to be implemented in the United Kingdom. The Secretary of State is responsible for implementation.

The transposition of Directive 2008/48 in respect of its requirements on advertising takes the form of the replacement of existing regulations under the Act with new regulations.

The Directive was required to be implemented in Member States by 11 June 2010. The Consumer Credit (Advertisements) Regulations 2010 require lenders to comply by 1 February 2011 in recognition of the time needed by lenders to adopt the necessary changes.

Article	Objective of Article	Implementation	Responsibility
4.1	Credit advertisements that indicate an interest rate or any figures relating to the cost of the credit have to include standard information about the credit on offer. In addition, Member States whose legislation already requires the inclusion of an APR in advertisements that do not indicate an interest rate or any figures relating to the cost of the credit can continue to do so.	Regulation 4 of the Consumer Credit (Advertisements) Regulations 2010	Secretary of State
4.2	The standard information is defined as representative example made up of specific information, e.g. interest rate and charges, APR, the amount of credit.	Regulation 5 of the Consumer Credit (Advertisements) Regulations 2010	Secretary of State
4.3	If the consumer has to also take out an ancillary service and the cost of the service is not known at the advertising stage, the advertisement must make this clear.	Regulation 8 of the Consumer Credit (Advertisements) Regulations 2010	Secretary of State
4.4	Article 4 is without prejudice to the Unfair Commercial Practices Directive (2005/29/EC)	No action necessary. EC 2005/29 was implemented by the Consumer Protection from Unfair Trading Regulations 2008.	Secretary of State