EXPLANATORY MEMORANDUM TO

THE CONSUMER CREDIT (ENFORCEMENT, DEFAULT AND TERMINATION NOTICES) (CORONAVIRUS) (AMENDMENT) REGULATIONS 2020

2020 No. 1248

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 The purpose of this instrument is to amend the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983 (S.I. 1983/1561) ("the 1983 Regulations") that govern the prescribed language in and form of Enforcement, Default and Termination Notices ("the Notices"). This instrument updates the content of these notices and aims to make them less intimidating and easier to understand.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Where this instrument seeks to make numerous amendments to a Schedule to the 1983 Regulations, this instrument does so by substituting a new, amended schedule, rather than by making various textual amendments. This approach necessarily involves replicating existing law within the substituted schedule. While HM Treasury acknowledges the principle that new law should not replicate old law, we believe this mitigates a genuine risk to consumers.

3.2 HM Treasury received evidence, based on previous similar regulatory changes, that multiple small additions and removals of text from existing regulations could be complex for lenders to follow. Ultimately, this could lead to delays in firms being able to implement the changes to the Notices required by this instrument. Given the importance to consumer welfare of changes to default notices being made quickly, this instrument reflects substantive amendments as one change, rather than reflecting each addition or removal of text individually.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Consumer Credit Act 1974 (the “Act”) created a consumer protection regime, which required creditors or owners to send notices to borrowers or hirers under regulated agreements before taking certain actions, like demanding early repayment due to a breach of contract. Regulated agreements, as defined by the Act, means consumer credit agreements and consumer hire agreements.

6.2 The Act further provided a power to make secondary legislation to determine the form of such notices, and to specify wording which must be included.

6.3 This instrument amends the 1983 Regulations, which prescribe the form of the notices which have to be given under sections 76 (duty to give notice before taking certain action), 87 (need for default notice) and 98 (duty to give notice of termination) of the Act.

6.4 This instrument uses the powers cited in the preamble to prescribe the content of or form of the Notices and relies on the definitions of “prescribe” and “regulations” in section 189(1) of the Act, but reads the former definition as if it referred to the Treasury, that being the clear intention.

6.5 This instrument contains a transitional provision which allows creditors or owners to issue notices served in accordance with the 1983 Regulations as they were in force immediately prior to commencement of this instrument for a period of six months.

7. Policy background

What is being done and why?

7.1 The Act forms part of the UK’s consumer credit regime and contains requirements for lenders to provide information to consumers in order to protect consumers by reducing the information asymmetry between firms and their customers. The information requirements are designed to enable and empower customers to make informed decisions, including by highlighting their rights and the actions a lender might take.

7.2 This instrument amends the information requirements in the Notices, the form and content of which is primarily set out in the 1983 Regulations. Since these were made, progress has been made in the understanding of mental health, the link between problem debt and mental health, and the impact of these notices on people’s mental health.

7.3 In 2018, the Money and Mental Health Policy Institute (‘MMHPI’) found that changing letters to those in debt would make a difference to consumers’ mental health. The Notices governed by the 1983 Regulations are a subset of such letters. MMHPI further found that, in England alone, over 100,000 people in problem debt attempted suicide each year. Given the financial and other wellbeing impacts of Coronavirus, this could underestimate the current scale of the problem we are seeking to address.

7.4 This legislation forms part of the government's effort to help to people struggling with their finances and their mental health. The instrument aims to reduce any adverse impacts of the Notices, reducing their negative impacts on borrowers' mental health and empowering borrowers to take control of their finances by making it easier to understand the Notices and access appropriate support.

7.5 Research and feedback from stakeholders has highlighted the adverse impacts caused by the widespread use of text in block capitals and technical legal language. Large quantities of text in block capitals in notices was found to be intimidating and therefore detrimental to consumer welfare. The use of block capitals in the Notices largely resulted from the requirement to make prescribed text "prominent" which was commonly done by putting text in block capitals.

7.6 This instrument seeks to address these issues by targeting three main changes: (1) block capitals are banned from being used to aid prominence, (2) removing technical legal language and, where it is not possible to remove, providing simple explanations, (3) altering the wording and ordering of Notices to improve consumers' understanding of them.

7.7 This instrument now prohibits the use of block capitals by lenders where its intent is to aid prominence. This is to prevent formatting which could cause alarm or distress for vulnerable indebted borrowers, while allowing for alternative uses of capitals, such as acronyms or a creditor's name and branding.

7.8 The instrument removes technical legal language in the Notices. The terms enforcement and judgement, which were difficult for borrowers to interpret, have been removed from the new prescribed text. The word "surety" is not widely understood, however it is a term defined in the Act and sureties are given certain rights under the Act. Therefore it cannot be removed in all cases where Notices are sent. This instrument now requires firms to provide explanatory text to explain the term surety. The instrument also gives firms the flexibility to remove the term surety where there is none in place, or to use the more widely understood term guarantor instead of surety where this is appropriate.

7.9 This instrument updates the sources of support signposted in the Notices to the Money Advice Service, which provides advice or can direct consumers to other support and debt advice. The 1983 Regulations require lenders to signpost borrowers to specific sources of advice and support which have since become out of date.

7.10 In our stakeholder engagement, some stakeholders were unaware that the 1983 Regulations permit the term "the creditor" to be replaced by the name of the creditor or an appropriate pronoun. The updated prescribed text has been written with this in mind and the government encourages firms to take up these flexibilities where it would lead to greater clarity in their communications.

7.11 The amendments made by this instrument are, in part, being made in response to the economic and mental health impacts resulting from COVID-19, which are likely to exacerbate the adverse effects caused by the existing language and form of Default Notices. The changes to the prescribed content and form of notices have been designed to allow lenders to implement changes rapidly to ensure consumers can benefit from the changes quickly.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 This is not a consolidation instrument.

10. Consultation outcome

10.1 The government informally consulted lender and debt advice trade bodies, lenders, debt advice and mental health charities and organisations, and the Financial Conduct Authority (FCA).

10.2 All the stakeholders consulted were asked to provide feedback on policy proposals. Lenders and lender trade bodies were also asked to provide feedback on the costs and timelines required to implement the changes required by the instrument.

10.3 Stakeholders raised the absence of "consumer testing", where different proposed text would be tested against each other but reflected that this would delay the instrument coming into force. Some stakeholders supported removing language that highlighted to customers important, but rarely used, consumer protections such as Time Orders. Other stakeholders argued this language should be kept.

10.4 Stakeholders were otherwise supportive of the proposed approach and scope of this instrument.

10.5 As the consultation was informal and targeted, a formal summary and response has not been published.

11. Guidance

11.1 No guidance is required for this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because, in line with Better Regulation guidance, the Treasury consider that the net impact on businesses will be less than £5 million a year. Due to this limited impact, a de-minimis Impact Assessment has been carried out.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that very few small businesses will be impacted. Stakeholder feedback suggests businesses sending Enforcement, Default and Termination Notices will be disproportionately large, with many having legal, HR, sales, marketing and operations departments.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is we will conduct an internal review of the legislation within 12 months of it coming into force. This review will gather feedback from stakeholders to determine the impacts of the changes on consumers' understanding of the Notices and lenders ability to deliver the required changes.

14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 John Glen MP, Economic Secretary to the Treasury has made the following statement:

'In my view, and in line with the statutory guidance produced by the Department of Business, Energy and Industrial Strategy, the provisions of the 2020 Regulations do not require a statutory review clause given the low level of impact per business, the costs imposed on business are transitional, and the limited number of businesses affected by this instrument.'

15. Contact

15.1 William Glennerster at HM Treasury, Telephone: 0207 270 6056 or email: William.Glennerster@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

15.2 Anna Harvey, Deputy Director for Personal Finances and Funds, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen MP, Economic Secretary to the Treasury, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.