

EXPLANATORY MEMORANDUM TO
THE CONSUMER CREDIT (AMENDMENT) REGULATIONS 2011

2011 No. 11

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 correct errors in three of the five sets of regulations which were made in March 2010 to implement an EU Directive on consumer credit, more specifically:

- 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 (Disclosure of Information) Regulations 2010, SI 2010/1013.

2.2 They do not change the policy intention of those implementing regulations.

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

3.1 As these Regulations are making corrections to earlier instruments, copies of these Regulations will be provided free of charge to those who purchased any of the earlier regulations.

4. Legislative Context

4.1 The following regulations were made in March 2010 to implement the 2008 Consumer Credit Directive:¹

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

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).

4.2 In August 2010, the following additional regulations were made:

- The Consumer Credit (Amendment) Regulations 2010, SI 2010/1969 (the Amendment Regulations)
- The Consumer Credit (Advertisements) Regulations 2010, SI 2010/1970 (the Advertisements Regulations), which revoked and replaced the Consumer Credit (Advertisements) Regulations 2010, SI 2010/1012, made in March.

4.3 The EU Directive Regulations and Amendment 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.

4.4 These Regulations make various corrections to the EU Directive Regulations², the TCC Regulations and the Disclosure Regulations, amending both the CCA 1974 and associated secondary legislation.

4.5 With the exception of the Advertisements Regulations, the UK introduced a transitional period for the implementing regulations in order to give lenders time to make the necessary changes to comply with the new regulations. Lenders were able to start complying with the legislation from 30 April 2010, although they do not have to comply until 1 February 2011. As lenders may have already taken steps to prepare their systems to enable them to comply with the implementing regulations from 1 February 2011, transitional provisions have been included in these Regulations (see regulation 9). This will allow a grace period for creditors to use Forms that comply with the legislation as it stands before these amendments come into force. There is also transitional provision for creditors who are choosing to comply with the new regime early.

4.6 A Transposition Note was attached to the explanatory memorandum for the implementing regulations and can be found at <http://www.opsi.gov.uk/si/si201010>. None of the changes made by these Regulations required the Transposition Note to be updated.

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 Business and Enterprise, Mark Prisk has made the following statement regarding Human Rights:

² We have obtained approval from Parliamentary Counsel for the correction to new section 95A which amends primary legislation.

In my view the provisions of the Consumer Credit (Amendment) Regulations 2011 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 These Regulations correct errors in some of the implementing regulations to ensure that those regulations have the intended impact and the provisions are clear. They do not change the policy intention of the implementing regulations but ensure that the intention is correctly expressed and the regulations are clear for those who will use them.

7.2 The only material error relates to the early repayment regime and the levels of compensation the creditor may claim. Consumers have a right to repay their credit early and where the creditor incurs costs because of this, the creditor may claim compensation. Regulation 32 of the EU Directive Regulations inserts a new section 95A into the CCA 1974, which sets out the limits on the levels of compensation that can be claimed. Section 95A(3)(c) as it is currently drafted allows the creditor to claim “whichever is the higher of” the relevant percentage (which is defined in section 95A(4)) and the total amount of interest that would have been paid by the debtor had he not repaid early.

7.3 This was not the intention and is not a proper implementation of the Directive - the creditor should only be able to claim “whichever is the lower of” those amounts. The effect of the error is that a creditor could claim more compensation in the event of early repayment than the borrower would save by making the early repayment. We are therefore amending the wording accordingly.

7.4 Section 95A is a permission rather than a requirement and is only applicable in limited situations. Indications are that lenders who would be able to take advantage of section 95A are not planning to do so, certainly not during the initial stages of the implementation process when they are focusing on obligatory provisions. Any cost on business of making this amendment now will therefore be minimal.

7.5 In addition, we are taking the opportunity to correct five other minor errors that would not otherwise have merited amending regulations: one instance of subparagraphs being duplicated, two occasions where the wrong word or phrase has been used, and two missed consequential. It is worth noting that the missed consequential corrected in regulation 4 of these Regulations is amending the relevant forms to be included in the agreement. It merely places the words “in writing” in square brackets and provides that they only need to be included in an agreement where the agreement is secured on land. However, the whole of the original regulation has been replaced for the sake of clarity and ease of use.

7.6 There is unlikely to be any public or media attention in the changes. Interest will be confined to those businesses that will have to comply with the implementing regulations, legal firms and enforcement agencies.

7.7 The changes are not politically or legally important.

- *Consolidation*

7.8 The Department for Business, Innovation & Skills has no plans to consolidate the CCA 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 Directive ran from 14 April 2009 to 10 June 2009.³

8.2 Given the nature of the changes, the Department has not consulted on these Regulations. The Department alerted key stakeholders to the amendment to section 95A and confirmed with them the minimal impact.

9. Guidance

9.1 In August 2010, the Department published a plain English guide and a quick start guide to the changes made by the implementing regulations. It will not be necessary to update the Department's guidance to reflect any of these amendments.

10. Impact

10.1 These Regulations (together with the implementing 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 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>. A separate Impact Assessment has not been prepared for these Regulations as they have no cost or benefit beyond that identified for the implementing regulations (see paragraph 7.4).

11. Regulating small business

11.1 The legislation applies to creditors that are small businesses.

12. Monitoring & review

12.1 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

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

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.