
STATUTORY INSTRUMENTS

2009 No. 0000

CONSUMER CREDIT

Consumer Credit (Advertisements) Regulations 2009

Made - - - -

Laid before Parliament

Coming into force - - -

11th June 2010

The Secretary of State makes these regulations in exercise of the powers conferred by sections 44, 151(1), 182(2) and 189(1) of the Consumer Credit Act 1974(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Consumer Credit (Advertisements) Regulations 2009 and shall come into force on 11th June 2010.

(2) In these Regulations, unless the context otherwise requires —

“the 2004 Regulations” means the Consumer Credit (Advertisements) Regulations 2004;

“the Act” means the Consumer Credit Act 1974;

“advance payment” includes any deposit but does not include a repayment of credit or any insurance premium or any amount entering into the total charge for credit;

“APR” means the annual percentage rate of charge for credit determined in accordance with the Schedule to these Regulations and the Total Charge for Credit Regulations;

“borrowing rate” means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;

“cash price” in relation to any goods, services, land or other things means the price or charge at which the goods, services, land or other things may be purchased by, or supplied to, the debtor for cash, account being taken of any discount generally available from the dealer or supplier in question;

“cash purchaser” means, in relation to any advertisement, a person, who for a money consideration—

(a) acquires goods, land or other things, or

(b) is provided with services,

under a transaction which is not financed by credit;

“cost of the credit” means any costs, including interest, commissions, taxes and any other kind of fees which are required to be paid by or on behalf of the debtor or a relative of the debtor in connection with the consumer credit agreement, whether payable to the creditor or to any other person, and which are known to the creditor, except for notarial costs;

“credit advertisement” means an advertisement to which Part 4 of the Act applies by virtue of it falling within section 43(1)(a), or which falls within section 151(1) of the Act in so far as section 44 is applied to such an advertisement;

“dealer” means, in relation to a hire purchase, credit sale or conditional sale agreement under which he is not the creditor, a person who sells or proposes to sell goods or other things to the creditor before they form the subject matter of any such agreement and, in relation to any other agreement, means a supplier or his agent;

“relevant date”, in relation to an advertisement relating to credit to be provided under a consumer credit agreement, means—

- (a) in a case where a date is specified in or determinable under the agreement at the date of its making as that on which the debtor is entitled to require provision of anything the subject of the agreement, the earliest such date, and
- (b) in any other case, the date of the making of the agreement;

“the representative APR” is an APR at or below which the advertiser reasonably expects, at the date on which the advertisement is published, that credit would be provided under at least 51% of the agreements which will be entered into as a result of the advertisement. In the case of an advertisement which falls within section 151(1) of the Act, “advertiser” means the person carrying on the business of credit brokerage;

“standard information” means the information listed in regulation 5(1);

“supplier” has the meaning assigned to it by section 189(1) of the Act, except that it does not include, in relation to a hire purchase, credit sale or conditional sale agreement, a creditor to whom goods, land or other things are sold or proposed to be sold by a dealer before becoming the subject matter of such an agreement;

“total amount payable” means the sum of the total amount of credit and the total charge for credit;

“total amount of credit” means the credit limit or the total sums made available under a consumer credit agreement;

“total charge for credit” means the total charge for credit determined in accordance with the Schedule to these Regulations and the Total Charge for Credit Regulations; and

“the Total Charge for Credit Regulations” means the Consumer Credit (Total Charge for Credit) Regulations 2009.

- (3) In these Regulations, references to repayment of credit are references to repayment of credit with or without any other amount.
- (4) The definition of “authorised deposit taker” in paragraph (2) must be read with-
 - (a) section 22 of the Financial and Services Act 2000;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.
- (5) In these Regulations as they apply to Scotland, any reference to bailment is a reference to hiring.
- (6) In these Regulations, any reference to the name of any person is-
 - (a) in the case of any person covered by a standard licence, a reference to any name of his specified in the licence; and
 - (b) in the case of any other person, a reference to any name under which he carries on business.

Duty to comply

2.—(1) A person who causes a credit advertisement to be published shall ensure that the advertisement complies with all applicable requirements of these Regulations.

(2) Subject to paragraph (3) below, these Regulations shall apply to credit advertisements published on or after 11 June 2010.

(3) [A person who causes a credit advertisement to be published on or after [11 March] 2010 may choose to comply with the requirements of these Regulations rather than those of the 2004 Regulations in which case the 2004 regulations shall not apply.]

General requirements

3. Every credit advertisement shall—

- (a) use plain and intelligible language,
- (b) be easily legible (or, in the case of any information given orally, clearly audible), and
- (c) specify the name of the advertiser.

Content of advertisements

4. (1) Where a credit advertisement includes an interest rate or any figure relating to the cost of the credit, the advertisement shall also—

- (a) Subject to paragraph (2), include standard information by means of a representative example in accordance with regulation 5;
- (b) specify a postal address at which the advertiser may be contacted; except—
 - (i) in the case of advertisements published by means of television or radio broadcast;
 - (ii) in the case of advertisements in any form on the premises of a dealer or creditor (not being advertisements in writing which customers are intended to take away);
 - (iii) in the case of advertisements which include the name and address of a dealer; and
 - (iv) in the case of advertisements which include the name and a postal address of a credit broker.

(2) Paragraph (1)(a) shall not apply where regulation 6(1) applies and the credit advertisement does not indicate any interest rate or other figure relating to the cost of the credit other than the APR.

Representative Example

5.—(1) Subject to paragraph (5), the representative example referred to in regulation 4(1)(a) shall comprise the following items of standard information —

- (a) the borrowing rate, whether fixed, variable or both;
- (b) particulars of any charges included in the total charge for credit;
- (c) the total amount of credit;
- (d) the representative APR;
- (e) the duration of the agreement except where the agreement is open ended;
- (f) in the case of credit in the form of a deferred payment for specific goods, services, land or other things, the cash price and the amount of any advance payment;
- (g) if applicable, the total amount payable by the debtor; and
- (h) if applicable, the amount of each repayment of credit.

(2) For the purposes of the representative example, the information referred to in paragraphs 1(a) to (c) and (e) to (h) above shall be that which the advertiser reasonably expects at the date on which the advertisement is published to be representative of agreements to which the representative APR applies.

(3) For the purposes of paragraph (2), “agreements to which the representative APR applies” in the case of paragraph (1)(f) means agreements providing credit for the purchase of specific goods, services, land or other things to which the representative APR applies.

(4) For the purposes of paragraph (1)(a), where the consumer credit agreement provides different ways of drawdown with different borrowing rates, the borrowing rate shall be assumed to be the highest rate applied to the most common drawdown mechanism for the product to which the consumer credit agreement relates.

(5) Paragraphs (1)(d) to (h) shall not apply to a credit advertisement relating to an agreement falling within section 74(1)(b) of the Act.

(6) The standard information contained in the representative example shall be—

- (a) specified in a clear and concise way;
- (b) accompanied by the words “representative example” or “typical example”;
- (c) presented together [and each item of information shall be given equal prominence];
- (d) given greater prominence than any other any information relating to the cost of the credit in the credit advertisement except for any statement relating to an obligation to enter into a contract in respect of an ancillary service referred to in regulation 7(1); and
- (e) given greater prominence than any indication or incentive of a kind referred to in regulation 6(1).

[(7) Where a credit advertisement displays more than one example of credit on offer at least one of the examples shall be a representative example in accordance with this regulation.]

APR

6.—(1) A credit advertisement shall specify the representative APR if the advertisement—

- (a) indicates in any way, including by means of the name given to a business or of an address used by a business for the purposes of electronic communication, that—
 - (i) credit is available to persons who might otherwise consider their access to credit restricted, or
 - (ii) any of the terms on which credit is available is more favourable (either in relation to a limited period or generally) than corresponding terms applied in any other case or by any other creditors, or
- (b) includes any incentive to apply for credit or to enter into an agreement under which credit is provided.

(2) For the purposes of this regulation, the representative APR shall given greater prominence than any indication or incentive of a kind referred to in paragraph (1).

(3) An APR shall be denoted in an advertisement as “%APR”.

(4) Where an APR is subject to change it shall be accompanied by the word “variable”.

(5) This regulation does not apply to a credit advertisement relating to an agreement falling within section 74(1)(b) of the Act.

Ancillary services

7.—(1) Subject to paragraph (3), a credit advertisement shall include a clear and concise statement in respect of any obligation to enter into a contract in respect of an ancillary service relating to the credit agreement, in particular insurance services, where—

- (a) the conclusion of that service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions advertised, and
- (b) the cost of that service cannot be determined in advance.

(2) The statement referred to in paragraph (1) shall be—

- (a) as prominent as any standard information included in the credit advertisement;
- (b) presented together with any representative APR included in the advertisement.

(3) This regulation does not apply to a credit advertisement relating to an agreement falling within section 74(1)(b) of the Act.

Security

8. Where the subject matter of a credit advertisement is a facility for which security is or may be required, the advertisement shall—

- (a) state that security is or may be required, and
- (b) specify the nature of the security.

Restrictions on certain expressions in credit advertisements

9.—(1) A credit advertisement shall not include—

- (a) the word “overdraft” or any similar expression as describing any agreement for running – account credit except an agreement enabling the debtor to overdraw on a current account;
- (b) the expression “interest free” or any similar expression indicating that a customer is liable to pay no greater amount in respect of a transaction financed by credit than he would be liable to pay as a cash purchaser in relation to the like transaction, except where the total amount payable by the debtor does not exceed the cash price;
- (c) the expression “no deposit” or any similar expression, except where no advance payments are to be made;
- (d) the expression “loan guaranteed” or “pre-approved” or any similar expression, except where the agreement is free of any conditions regarding the credit status of the debtor, or
- (e) the expression “gift”, “present” or any similar expression except where there are no conditions which would require the debtor to return the credit or items that are the subject of the claim.

(2) A credit advertisement shall not include in relation to any repayment of credit the expression “weekly equivalent” or any expression to the like effect or any expression of any other periodical equivalent, unless weekly payments or the other periodical payments are provided for under the agreement.

Exclusions

10.—(1) These Regulations do not apply to any advertisement which—

- (a) whether expressly or by implication indicates clearly that a person is willing—
 - (i) to provide credit, or
 - (ii) to enter into an agreement for the bailment of goods, for the purposes of another person’s business, and
- (b) does not indicate (whether expressly or by implication) that a person is willing to do either or those things otherwise than for the purposes of such a business.

(2) References in paragraph (1) to a business do not include references to a business carried on by the advertiser or any person acting as a credit-broker in relation to the credit facility to which the advertisement relates.

(3) These Regulations do not apply to any advertisement in so far as it is a communication of an invitation or inducement to engage in investment activity within the meaning of section 21 of the Financial Services and Markets Act 2000, other than an exempt generic communication.

(4) An “exempt generic communication” is a communication to which subsection (1) of section 21 of the Financial Services and Markets Act does not apply, as a result of an order under subsection (5) of that section, because it does not identify a person as providing an investment or carrying on an activity to which the communication relates.

(5) These Regulations do not apply to any advertisement in so far as it is a communication of an invitation or inducement to enter into a regulated home purchase plan within the meaning of article 63F of the Financial Services and Markets Act (Regulated Activities) Order 2001.

(6) These Regulations do not apply to any advertisement relating to an agreement secured on land.

Date

Minister for Further Education, Skills, Apprenticeships and Consumer Affairs
Department for Business Innovation & Skills

Name

DRAFT

SCHEDULE

Regulation 1(2)

PROVISIONS RELATING TO CALCULATION AND DISCLOSURE OF APR

Assumptions about running-account credit

1. In the case of an advertisement relating to running-account credit, the assumption in paragraph (a) below shall have effect for the purpose of calculating the representative APR in place of the assumption in regulation 5(o) the Total Charge for Credit Regulations that might otherwise apply -

- (a) in a case where credit is to be provided subject to a credit limit of less than £1,200, an amount equal to that limit.

Permissible tolerances in disclosure of an APR

2. For the purposes of these Regulations, it shall be sufficient compliance with the requirement to show an APR if there is included in the advertisement—

- (a) a rate which exceeds the APR by not more than one, or
- (b) a rate which falls short of the APR by not more than 0.1,

or in a case to which paragraph 3 or 4 of this Schedule applies, a rate determined in accordance with those paragraphs or whichever of them applies to that case.

Tolerance where repayments are nearly equal

3. In the case of an agreement under which all repayments of credit but one are equal and that one repayment does not differ from any other repayment by more whole pence than there are repayments of credit, there may be included in an advertisement relating to the agreement a rate found under regulation 7 of the Total Charge for Credit Regulations 1980 as if that one repayment were equal to the other repayments to be made under the agreement.

Tolerance where interval between relevant date and first repayment is greater than interval between repayments

4. In the case of an agreement under which—

- (a) three or more repayments of credit are to be made at equal intervals, and
- (b) the interval between the relevant date and the first repayment is greater than the interval between the repayments,

there may be included in the advertisement relating to the agreement a rate found under regulation 7 of the Total Charge for Credit Regulations 1980 as if the interval between the relevant date and the first repayment were shortened so as to be equal to the interval between repayments.

EXPLANATORY NOTE

(This note is not part of the Order)

DRAFT