

**CONSULTATION ON PROPOSALS  
FOR IMPLEMENTING THE  
CONSUMER CREDIT DIRECTIVE**

Government Response

DECEMBER 2009

In case of enquiries please contact:

Tord Johnsen

Consumer and Competition Policy Directorate

Department for Business, Enterprise & Regulatory Reform

1 Victoria Street

London

SW1H 0ET

Fax: 020 7215 0130

Email: [consumercreditdirective@berr.gsi.gov.uk](mailto:consumercreditdirective@berr.gsi.gov.uk)

### **Additional copies**

This government response is available electronically at [www.bis.gov.uk](http://www.bis.gov.uk). You may make copies of this document without seeking permission. Printed copies of the government response can be ordered on request from:

BIS Publications Orderline

ADMAIL 528

London SW1W 8YT

Tel: 0845-015 0010

Fax: 0845-015 0020

[www.bis.gov.uk/publications](http://www.bis.gov.uk/publications)

Other versions of this document can be made available on request in Braille, other languages, large fonts and other formats.

# Government Response to the Consultation on proposals for implementing the Consumer Credit Directive

## Contents

Contents	3
Glossary	4
Introduction	5
Overview of consultation responses	6
Summary of consultation responses	7
1.0 Scope, definition and subject matter	7
2.0 Advertising	12
3.0 Pre-contractual information	17
4.0 Adequate explanations	20
5.0 Creditworthiness	24
6.0 Database access	27
7.0 Contractual information	29
8.0 Information about the borrowing rate	34
9.0 Open end credit agreements	38
10.0 Right of withdrawal	40
11.0 Joint liability	45
12.0 Early repayment	46
13.0 Assignment of rights	53
14.0 Calculation of the APR	54
15.0 Credit intermediaries	59
16.0 Overdrafts and overrunning	61
17.0 Transitionals and impact assessment	67
Next steps	70
Appendix A: List of respondents	71
Appendix B: Consultation questions	73

## **Glossary**

APR	Annual Percentage Rate
BERR	Department for Business, Enterprise and Regulatory Reform
BIS	Department for Business, Innovation and Skills
CCA	Consumer Credit Act (both 1974 and 2006)
CCAR	Consumer Credit (Agreements) Regulations
CCAdR	Consumer Credit (Advertisements) Regulations
CCD	Consumer Credit Directive 2008/48/EC
TCCR	Consumer Credit (Total Charge for Credit) Regulations
PSD	Payment Services Directive
PSR	Payment Services Regulations
TCC	Total Charge for Credit

## **Introduction**

1. In April 2009, the former Department for Business, Enterprise and Regulatory Reform (BERR) published a consultation document seeking views on the Department's proposal for implementing the Consumer Credit Directive (CCD) 2008/48/EC. The purpose of the consultation was to obtain views from consumers, lenders, retailers, law enforcers and from any other interested parties, on the proposals presented by the proposed policy transposing the CCD. The consultation ended on 10 June 2009.
2. Publication of this response has been delayed beyond the normal 3 months to allow work to focus on drafting the implementing regulations so stakeholders could see them as soon as possible. A set of draft regulations was published for comments on 23 July, accompanied by a brief analysis of the policy position following consideration of the consultation responses. BIS held an informal consultation on these regulations which lasted until 1 September 2009.
3. This response also covers, where appropriate, comments received on the draft regulations published in July 2009, and how these have played into our decisions.

## Responses to the Consultation received

1. The consultation posed 68 questions about the Department's proposals for implementing the CCD.
2. A total of 67 written responses to the consultation paper were received. Figure 1.1 and Table 1.1 provides a breakdown by sector. Appendix A lists all of those that responded to the consultation.

Figure 1.1 Responses by sector

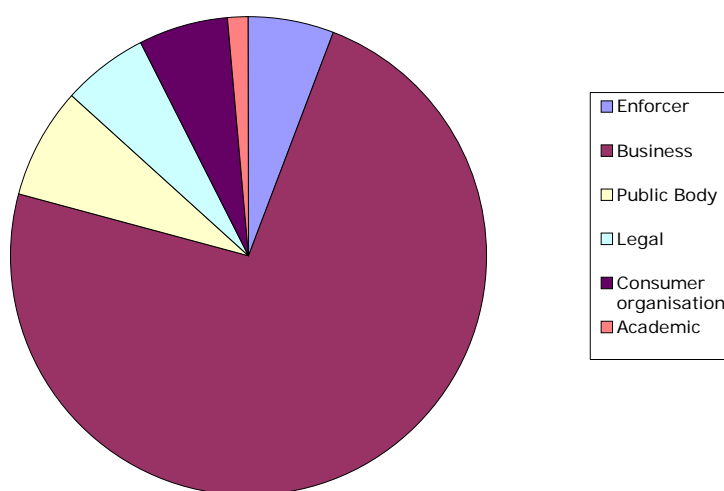


Table 1.1 Responses by sector

Sector	Number of Responses
Enforcer	4
Business	49
Public Body	5
Legal	4
Consumer organisation	4
Academic	1
<b>TOTAL</b>	<b>67</b>

# Overview of consultation responses and Government response

## 1.0 Scope, definitions and subject matter

### Questions 1 – 4

#### *Agreements not regulated by the Consumer Credit Directive (CCD)*

1.1 The consultation document set out BIS's proposed approach for dealing with the various exemptions provided for in Article 2.2 – 2.6 of the Directive. The majority of respondents agreed with the overall approach proposed whereby the existing coverage of the Consumer Credit Act 1974 (CCA) would be maintained regardless of whether or not particular types of credit agreement fell within the scope of the CCD.

1.2 Some of the categories of exemption provided for in Article 2 attracted particular attention:

- Agreements outside the CCD's financial thresholds (Article 2.2(c))
- Overdrafts repayable within one month (Article 2.2(e))
- Interest free loans (Article 2.2(f))
- Agreements which are the outcome of a court settlement, or which relate to deferred payments of an existing debt (Article 2.2(i) and (j))
- Pawn broking agreements (Article 2.2(k))
- Provision of services on a continuing basis

1.3 In respect of the above, some lenders believed that BIS should make more use of these exemptions, either exempting these types of agreements altogether, or, in the case of loans below €200 (£160), applying a lighter-touch regime to this size of loan, rather than to loans below £50 as is currently the case.

#### *Application of provisions on adequate explanations and right of withdrawal to business lending agreements and agreements above €75,000 (£60,260)*

1.4 The consultation document discussed whether certain provisions of the CCD should be applied to agreements not within its scope. In particular we focused on the potential application of the new provisions concerning adequate explanations to business lending agreements and agreements above £60,260. We also asked whether the CCD's provisions concerning the right of withdrawal should be applied to business lending agreements.

1.5 In respect of the application of the adequate explanations provisions to business lending agreements, opinions were divided. The majority of lenders as well as industry representative bodies thought that it was not necessary to apply these provisions or that if they were to be applied, this should be on an optional basis. The main arguments put forward here were concerned with

the nature of the customer – it being considered that these were more sophisticated than ordinary consumers, and such transactions often involved more detailed discussions about the agreement anyway which would negate the need for an adequate explanation of the agreement. The counter argument put forward by consumer bodies and enforcement agencies was that not all such customers will be sophisticated in credit matters. Some would be self-employed people whose business and personal credit use could be quite closely inter-connected. Consequently, some may experience similar problems to ordinary consumers.

1.6 With regard to agreements above £60,260, a clear majority of respondents expressed the view that the provisions on adequate explanations should not apply. On the other hand, some respondents felt that, as with small business loans, concerns regarding the potential vulnerability of consumers also applied here. However, the majority of respondents felt that these types of consumers, often high-net worth individuals, were usually well informed and would be well resourced when compared to the average borrower.

1.7 A clear majority of respondents were also opposed to applying the CCD's right of withdrawal provisions to business lending agreements. Similar arguments were put forward as to the distinct nature of this type of debtor, while one lender also argued that business customers often require a flexible approach with immediate access to funds which would not fit well with the right of withdrawal requirements. On the other hand, one consumer body thought that the right should apply on the basis that such types of consumers taking on large loans should still benefit from the protection of a cooling-off period if they subsequently thought that such a loan was unaffordable, or that a better deal was available elsewhere.

#### *Charge cards and second charge mortgages*

1.8 We also asked for views on how other categories of agreement currently regulated under the CCA should be treated, in particular second charge mortgages and charge cards. In respect of the former, it was pointed out that the regulations of this sector are under review and on that basis we proposed that it should remain subject to the existing CCA regime and not to apply any of the provisions that amend the CCA as a result of the implementation of the CCD.

1.9 The majority of respondents who answered this question agreed with the approach on second charge lending. However, one consumer body thought that some of the CCD's provisions – adequate explanation and assessing creditworthiness – should be applied given that these were arguably even more important for secured loans.

1.10 In respect of charge cards, we referred to the existing exemption in the Exempt Agreements Order and the connection to the exemption in Article 2.2(f) regarding interest free credit. Some lenders argued that it would be sensible to remove any possibility of charge cards being regulated under the CCA by making them subject to the Payment Services Regulations (PSR), which would in their view offer more appropriate consumer protections, while charge cards for business use where the amount of credit was in excess of

£25,000 would in any event be subject to the PSR. One enforcement agency questioned whether charge cards would in the future be able to benefit from any CCA exemption for interest-free credit given the requirement that only insignificant charges can be applied and thought it would be advisable to define in legislation what would constitute an insignificant charge. Another legal respondent commented that consideration of insignificant charges needed to recognise that the charges should be in relation to the payment service only rather than for the range of additional services covered by the annual fee applied for the product.

### *Existing UK exemptions*

1.11 The final question in this section was concerned with some of the existing exemptions in the Consumer Credit (Exempt Agreements) Order 1989. BIS's policy here was that where an exemption requires amendment in order to conform with the CCD, that amendment should apply to all agreements falling within it and not just those agreements that are within the scope of the CCD.

1.12 There was broad support for this position among those respondents who answered this question. Most respondents focused on the exemption relating to the number of payments (regulation 3 of the Exempt Agreements Order) and the one relating to High net worth individuals (section 16A CCA). On the former, some lenders and an industry representative body questioned why, in amending this exemption in order to conform with Article 2.2(f), BIS proposed to retain the requirement that the exemption should only apply to credit repayable within 12 months and by not more than four instalments given that this was not a requirement of Article 2.2(f). It was suggested that it would be a more accurate transposition of the CCD to exempt interest free credit altogether.

1.13 On the high net worth individual exemption, different lenders made a variety of points about the impact the CCD will have on the exemption. In particular, it was asserted that special treatment should be provided for high net worth individuals borrowing amounts in excess of £60,260. Proposals here ranged from allowing such individuals to opt out of some of the new CCD provisions, or exempting such individuals altogether where the agreement was above £60,260, to simply exempting all loans above this amount from CCA regulation.

### **Government response**

1.14 We do not consider it appropriate to create new categories of exemption from CCA regulation simply because they fall outside the scope of the CCD. The CCD sets out the agreements which should be covered by harmonised European rules, but not envisage that all other agreements should be unregulated, simply that it should be for member States to determine how they are regulated.

1.15 However, in respect of pawn broking agreements, we have varied some of the requirements in respect of pre-contractual and contractual information (see chapter 7.0 for more details). We have also modified our

approach concerning the treatment of larger loans. We are not requiring mandatory use of the SECCI/compliance with the new Consumer Credit (Agreements) Regulations (CCAR); right of withdrawal; and the requirement to provide amortisation tables on demand should apply to agreements for more than £60,260. In the consultation we suggested that this exemption should not apply where loans of this size were for the purpose of consolidating existing debts, however, we recognise that trying to define the circumstances when such a loan would or would not be for consolidation purposes would be very difficult. On this basis we now propose that the above requirements should apply to all loans up to the value of £60,260 but not to agreements in excess of this amount. In addition we will not be applying the provisions on adequate explanations to such loans.

1.16 On the other hand, we consider that small business lenders are often akin to ordinary consumers and require similar protections. Therefore, lending to small businesses, up to the value of £25,000, will continue to be regulated under the CCA and we think that it is also appropriate to apply the provisions on adequate explanations and right of withdrawal to such loans (except for business overdrafts).

1.17 Pending the review of second charge lending<sup>1</sup>, the regulation of agreements secured on land will not be affected by the amendments being made to the CCA as a result of the implementation of the CCD. This category of agreement will therefore remain subject to the existing provisions of the CCA; however, it will be open to lenders offering this type of agreement to comply with the provisions in the revised Disclosure and Agreements Regulations instead of the current provisions in respect of the provision of pre-contractual and contractual information so that those lenders who offer both secured and unsecured loans can rationalise their information systems if they wish rather than providing information in two formats.

1.18 Concerning the treatment of charge cards, our view is that those cards currently regulated under the CCA should remain so. However, the exemption in Article 3(1)(a)(ii) of the exempt agreements order will need to be amended so that in order to qualify for exemption, the agreement would have to be repayable within 3 months by not more than 1 instalment and with either no charges or with only insignificant charges. We recognise the desire on the part of some stakeholders to define the term "insignificant", but we do not think we can do this in a way that would be relevant to all possible scenarios and which would be future-proofed. Therefore, we consider this is something best dealt with in guidance. In making amendments to the exempt agreements order, we also intend to amend section 75 CCA so that the Act's provisions on joint and several liability would not apply to charge cards.

1.19 As far as charge cards for business lending is concerned, we intend that, as is the case now, these will fall under the ambit of the CCA in respect

---

<sup>1</sup> See HM Treasury consultation on Mortgage Regulation –

[http://www.hm-treasury.gov.uk/consult\\_mortgage\\_regulation.htm](http://www.hm-treasury.gov.uk/consult_mortgage_regulation.htm)

of cards up to the limit of £25,000. We did consider carving out all charge cards for business use from the scope of the CCA, but as discussed above, we concluded that small business users were more akin to ordinary consumers and need similar protections under the CCA. However, charge cards with a credit limit in excess of £25,000 will be governed under the PSR.

1.20 On the connection between the CCD's exemption for interest free credit and the exemptions in Article 3(1)(a)(i) of the Exempt Agreements Order concerning the number of payments, we did consider carefully whether or not to retain the criteria regarding four repayments within 12 months. Our main concern was that to exempt interest free credit altogether would be to create a very different kind of exemption. Interest free credit (as opposed to pay as you go type arrangements) is credit regardless of whether or not it carries a charge and, given that it poses many of the same risks for consumers we consider that consumers entering into such arrangements should enjoy protection under the CCA. Therefore, we will modify current exemption so that it applies to agreements where a consumer pays by a limited number of payments (4 or fewer) within 12 months and where the credit is free of interest and charges.

1.21 We also considered representations made by some respondents concerning Article 3(c) of the CCD which says that the definition of a credit agreement for the purposes of the CCD would not include an agreement for the provision of services or the supply of goods on a continuing basis. Some respondents considered that on this basis insurance agreements should be exempted from the CCA. The meaning of Article 3(c) is not entirely clear. In our view there is a difference between the provision of insurance on a monthly basis and monthly payment for an insurance premium. In any event, our view is that where an agreement to pay for goods or services by instalments constitutes credit under the CCA, it is right and proper that consumers should be afforded the full protection of consumer credit legislation and we do not intend to alter the exemption regime on the basis of Article 3 (c).

1.22 The 2007 Exempt Agreements Order will also be amended so that the exemption concerning high net worth individuals will only apply to agreements above £60,260.

## **2.0 Article 4 – Standard information to be included in advertising**

### Questions 5 – 10

#### *Scope*

2.1 The majority of respondents agreed that the regulations implementing the advertising provisions of the Directive should apply to the same range of credit agreements as covered by the Consumer Credit (Advertisements) Regulations 2004 (the “existing Advertisements regulations”) (CCAdR).

2.2 Nevertheless, some industry respondents considered that the amended CCAdR should not apply to loans above £60,260. Some of these respondents took the view consumers borrowing amounts above £60,260 were “more financially sophisticated” and took “independent advice before entering into an agreement”, while others cited the €1,500 (£1,200) “representative” example as indicative of the inappropriateness of including loans above £60,260.

2.3 One consumer group considered that business lending and the APR for overdrafts should be included within the scope of the amended CCAdR. The view put forward here was that “relatively small-scale, self-employed businesses should be covered” and that lack of an APR can “mislead consumers on the implications and consequences of an overdraft and does not enable them to effectively compare it to other products”.

2.4 A few industry respondents considered that second-charge mortgages should be included within the scope of the amended CCAdR, “in order to avoid conflicts where loans are offered on a secured and unsecured basis”.

#### *Triggering the APR*

2.5 In the consultation document, we raised the possibility that an APR should be required in all circumstances regardless of whether was required under the CCD. The majority of respondents held that an APR should not be required for all credit advertisements. Some industry and legal respondents also considered there would be no merit in requiring an APR for advertisements for high cost loans on the basis of the “difficulty” in defining what constituted a “high cost loan”. By contrast, some enforcement agencies took the view that an APR should be required in such advertisements and the term “high cost loan” defined.

2.6 Some industry respondents and enforcement agencies considered that applying an APR to very short term loans could be misleading. Some also noted the difficulty in applying an APR to advertisements in directories such as the Yellow Pages and other such publications with a long shelf life. Further concerns were expressed in relation to brand advertising involving a wide range of products advertised under the same brand. Similarly some industry respondents questioned how an APR could be included in “banner” advertisements appearing on-line or on the perimeter of sports grounds.

#### *The representative example*

2.7 The consultation document set out our thinking on how our implementing legislation should give effect to the requirement to display a representative example of the credit on offer. Where the amount of credit was not known (as would be expected at the advertising stage) we proposed that the amount of credit on offer should be assumed to be £1200. We also proposed that at least 50% of consumers should receive the terms set out in the advertisement (or better terms). There was broad support for our proposed approach on the first issue. Some industry respondents, a representative body and some enforcement agencies supported the 50% rule. However, one enforcement agency contended “the 50% figure should be set significantly higher”. On the other hand, a few industry respondents claimed the proposed 50% rule would discourage risk-based pricing, which “rewards low-risk customers with less expensive credit costs, while still making credit available, but at higher prices, to riskier borrowers”. Another representative body thought it might be difficult to provide an example of an offer that was representative of even 50% of consumers expected to enter into an agreement.

2.8 The vast majority of respondents disagreed with the proposals concerning the proposed £1,200 assumption for the representative total amount of credit. While it was acknowledged that this amount might be appropriate in some situations, such as an advertisement for a credit card, many industry respondents considered £1,200 as not representative of the amounts they usually loaned and therefore expressed concern that any advertising based on that amount would be “unhelpful”, “confusing” or even “misleading”. Most consumer groups and enforcement agencies also rejected the £1,200 amount, taking the view that where the amount of credit was likely to be different, a “more representative amount” should be used. Many industry respondents concurred with the idea of having the flexibility of determining the representative amount themselves based on their own likely lending amounts. A few industry respondents proposed substituting the £1,200 amount with £1.00 as the basis for calculating the representative example.

#### *Presentational issues*

2.9 Most respondents agreed that the requirement that the standard information be displayed prominently should mean that it stands out from other information. A significant number of respondents also considered the requirement in Regulation 8 of the CCAdR (that the APR be given greater prominence) should be retained. Some industry respondents considered that without an emphasis on the APR, products would no longer be as easily comparable between lenders, contending that a prominent APR focused on “one key, high level measure that the consumer understands”. One enforcement agency echoed this view, claiming “the APR (as the prime comparator) may be shown with greater prominence”.

2.10 By contrast, many other industry respondents welcomed the proposal not to single out the APR for greater prominence than other stated information, being of the view that it would not be appropriate to give the APR more prominence than other factors. Others considered that there was no

need to go further than the CCD's requirement for information to be prominent.

2.11 Nevertheless, some enforcement agencies were concerned about the proposed interpretation of "prominent" as meaning information must stand out from other information contained in the advertisement, claiming this would cause difficulties with respect to enforcement. One legal respondent also considered a "prominence requirement" to be "notoriously difficult to measure and enforce", and suggested carrying over the current regulations' "dogmatic line in relation to font sizes" in the interest of certainty.

#### *Existing legal requirements*

2.12 A variety of views were received in response to the proposals regarding the carrying forward of certain existing UK consumer credit advertising legal requirements. Some respondents disagreed with BIS' interpretation of Recital 18 (that Member States are free to regulate aspects of advertising other than information regarding the cost of the credit) and claimed that BIS did not have the vires to introduce requirements beyond those in Article 4.

2.13 One industry respondent disagreed in particular with the proposal to retain the wealth warnings in Regulation 7 of the current CCAdR, contending that UK lenders wishing to operate "cross border" would be placed at a "competitive disadvantage". While another industry respondent agreed that the existing requirements with respect to the name and address of the advertiser and wealth warnings should be retained, it contended that if information on charging orders were to be required, then "this warning should also be put onto utility and other types of bills where such judgement orders can be obtained". Another, while also agreeing with the carrying forward of the requirements for name and address of the advertiser and wealth warnings, sought greater consistency between the FSA and BIS/OFT regimes. A few industry respondents considered the "Consumer Protection from Unfair Trading Regulations 2008" already provided adequate consumer protection and saw Regulation 9 of the current CCAdR, in particular, as unnecessary.

2.14 Consumer groups and enforcement agencies were generally supportive of the proposals, particularly with respect to the retention of wealth warnings. A few enforcement agencies considered the exception from the requirement to specify a postal address in Regulation 4 of the existing CCAdR for advertisements on the premises of dealers or creditors, "seemed to just cause confusion and may be best removed".

#### *TV, radio and internet advertisements*

2.15 With respect to internet advertisements, most respondents agreed with the view that "clicking" between items in order to access key information should be allowed. One enforcement agency nevertheless considered that "it should not be possible to apply for credit online without having passed through all relevant screens". Some enforcement agencies considered that dealing with "internet, TV and radio advertisements within the confines of the regulations would be cumbersome and might lead to interpretational issues".

These agencies considered that such advertisements would be “better dealt with by way of guidance”. While one industry respondent expressed concern about using guidance to create specific rules, preference for a more-flexible, less-prescriptive approach to internet advertising was also expressed by industry respondents and a legal respondent.

### **Government response**

2.16 It is proposed that new Regulations will be introduced to replace the 2004 regulations except in relation to agreements secured on land. The 2004 regulations will continue to apply to credit advertisements which relate to agreements secured on land.

2.17 The Government agrees with the broad thrust of opinion concerning a mandatory APR for all advertisements and does not propose to require one to be given for all credit advertisements regardless of whether the standard information is triggered. However, it will keep this issue under review, in particular in light of the OFT review of high-cost lending which will include consideration of the factors that influence consumers’ decisions in this sector.

2.18 Under the new regulations credit advertisements that contain information that, although not about the cost of the credit, would amount to an incentive for consumers – e.g. non-status availability – will need to display an APR. Such advertisements would not, however, need to display the other standard information required under Article 4.2. However, this would not mean that credit advertisers that choose to display an APR do not need to provide the rest of the standard information set out in Article 4.2. In this situation, a representative example containing all the standard information would still be required.

2.19 In respect of the amount of credit to be quoted as part of the standard information, given the opposition expressed in the consultation, we have recognised that the approach of deeming the representative total amount of credit to be £1,200 does not work for all types of credit products. We have therefore refined the approach in the regulations so that this amount should only be used for calculating the representative APR in the case of running account credit. We believe this approach is appropriate here given that even though the credit limit may be in excess of this amount, the consumer will not necessarily draw down on the maximum available credit. On this basis, we believe it makes sense to stipulate a common denomination. However, in the case of fixed sum loans the example given should be representative of the amount actually lent under the agreements the advertiser expects to be entered into as a result of the advertisement. This reflects current practice in the existing CCAAdR.

2.20 The draft regulations also clarify that if an advertisement sets out a number of examples of credit offers, the requirement for a "representative example" will be satisfied provided at least one of the examples satisfies the requirements concerning the presentation of standard information by means of a representative example. We did consider alternative formulations that would allow something in lieu of a global representative example in certain circumstances, to try to cater for specific forms of advertisement covering

more than one offer (e.g. step-banded advertisements) but were concerned that such a provision would be very complicated and may not be consistent with the basic requirement in the CCD to provide a representative example of the offer.

2.21 We remain of the view that requiring the APR to be shown with greater prominence than the other standard information goes beyond what is permitted by the CCD. However, the new regulations will provide that the standard information should be more prominent than any other information in the advertisement relating to the cost of the credit. This is to ensure that important information concerning the cost of the credit is sufficiently clear and to give effect to the CCD's requirements that the standard information is "prominent". In our view, "prominent" means that the standard information should stand out from other information relating to the cost of the credit, but it would not need to be displayed with greater prominence than other unrelated information in the advertisement such as a company logo. Although we recognise the concerns some stakeholders have expressed on this issue, we feel that it is important to spell out what prominence means in this context in order to ensure that important information concerning the cost of the credit is sufficiently clear to the consumer and to ensure consistent and acceptable level of compliance among credit advertisers.

2.22 It is proposed that the new regulations should retain the warning on security (current regulation 7(1)) but that the remaining warnings (regulations 7(2)-7(5)) should not be replicated in the new regulations given that these concern lending on land. We agree with the views expressed concerning additional risk warnings at the advertising stage, and therefore, the proposed warning concerning charging orders will not be required in these regulations but will be a requirement in the new Disclosure and Agreements regulations.

2.23 In respect of internet advertisements, we remain of the view that "clicking" between items in order to view information would be permissible, subject to all the prescribed information being at least equally accessible as compared with other information concerning the cost of the credit. However, the regulations do not contain any specific provisions here and we believe these kinds of issues are best dealt with in the explanatory guidance.

### **3.0 Article 5 – Pre-contractual information**

#### Questions 11 – 13

##### *Scope/choice of information regime*

3.1 In the consultation document, we set out our approach that the requirement to provide pre-contractual information under the Directive should remain in respect of all the agreements currently covered by the Disclosure of Information Regulations. The consultation document also proposed that it should be permissible for lenders to provide pre-contractual information either according to the requirements of the existing Disclosure of Information Regulations or via the Directive's requirements as set out in the Standard European Consumer Credit Information (SECCI) form in respect of business lending, lending secured on land under the CCA and regulated agreements (except for consolidation purposes) worth more than £60,260. The majority of respondents agreed with the proposal to allow lenders the flexibility to provide pre-contractual information either via the SECCI or under the existing Disclosure of Information rules

3.2 Nevertheless, some enforcement agencies considered that this proposed flexibility for lenders should not be allowed and that the SECCI "should apply across the board". They contended that having a single regime promoted consumer understanding and facilitated product comparison. A legal respondent also expressed concern regarding the maintenance of a "dual regime" and considered it preferable "to have a suitable period of transition, in which either form is acceptable".

3.3 Some industry respondents considered that for loans above £60,260, customers should have the choice of whether or not to receive the SECCI. One considered they should be advised to take their own legal advice. Some also considered that consolidation loans above £60,260 should not require the SECCI; considering loans "for consolidation purposes" to be difficult to define.

3.4 A significant number of respondents considered that pawn broking should be excluded from the requirements to provide information in the manner set out in the SECCI. One consumer group noted that it had very little evidence of consumer problems in relation to pawn broking, although considered that provision of the SECCI across all types of credit may increase consumer awareness of pre-contractual information. Some respondents contended that pawn broking customers were repeat customers who "readily understood" the nature of the agreement they were entering into and therefore did not require the SECCI.

3.5 Some enforcement agencies saw pre-contractual information as having little advantage for consumers in many instances, including pawn broking, as the information would be presented at the same time as the final contract. By contrast, one enforcement agency contended that the SECCI should apply to all credit agreements, including pawn broking agreements. It considered the SECCI enabled the consumer to compare different quotes, including those from different pawnbrokers, as well as compare different credit products, such as pay-day loans. It claimed that while a repeat customer may be broadly

familiar with a trader's terms and conditions, they may be unaware of some key elements of the agreement such as charges if a pledge is not redeemed on time or a right of withdrawal or early repayment.

3.6 One industry respondent considered agreements under £160 and interest free loans should be exempt and went on to suggest that for all agreements outside the scope of the CCD the lender should have the option of complying either with the SECCI or with the existing regime.

#### *The format of the SECCI*

3.7 A significant number of respondents provided views on the proposed language in the SECCI and made suggestions on how to help improve consumer understanding of the form. Many saw the need to use "consumer-friendly" language that was easily comprehended by UK consumers. Some industry respondents considered lenders should be given flexibility on wording and format, particularly with respect to the right hand side of the form, to enable it to fit in with the terms and conditions of their products.

3.8 A few industry respondents made detailed recommendations on the layout of the SECCI and what it should contain. Some of these suggestions included the removal of boxes, reducing the length of the SECCI, consistent question formatting, using "if applicable" in all sections, including key features of products, and flexibility to amend the SECCI for revolving credit products.

#### *In good time*

3.9 We set out our view in the consultation document that the Directive's requirement for the SECCI to be provided "in good time" will depend on the precise circumstances of the transaction but that the Directive is not intended to preclude consumer from proceeding straight to the conclusion of the agreement if they wished, provided they were not pressurised into concluding the agreement before they had time to properly consider. The majority of respondents supported this position and did not recommend further definition in the legislation of "in good time", taking the view that its lack of definition in other legislation had not caused consumer detriment or complaint.

### **Government response**

3.10 We propose to introduce new Disclosure Regulations which will apply in respect of most regulated consumer credit agreements. However, the Consumer Credit (Disclosure of Information) Regulations 2004 will continue to apply to agreements secured on land; agreements over £60,260; and agreements entered into wholly or predominantly for the purposes of a business carried on, or intended to be carried on. Distance contracts involving credit continue to be regulated by the Financial Services (Distance Marketing) Regulations 2004 which are to be amended in order to give effect to requirements set out in Article 5.2 and 5.3.

3.11 On balance, we believe that it is appropriate that creditors should be free to provide the pre-contractual information in different formats in respect of certain categories of out of scope agreements as we consider that the information the consumer will receive through either format is sufficient for

them to make an informed decision about the product. Therefore, in respect of the following types of agreements, a creditor may provide pre-contractual information either by using the SECCI or by continuing to comply with the requirements of the existing Disclosure Regulations:

- An agreement entered into wholly or predominantly for the purposes of a business carried on, or intended to be carried on;
- An agreement under which the credit provided exceeds £60,260;
- An agreement secured on land

3.12 In to loans above £60,260, the proposal in the consultation document was, however, not to allow the choice of pre-contractual information to apply where the loan was for debt consolidation purposes. Having considered this further, it is now proposed to allow the choice to apply in respect of regulated loans above £60,260 whether or not for purposes of consolidating existing debt. The evidence showed that it was highly unlikely that a lender would provide this level of unsecured credit to ordinary consumers.

3.13 The requirement to provide pre-contractual information will not apply automatically in respect of pawn agreements given the very specialised nature of the sector. Here the new regulations will set out that pre-contractual information is to be provided where the debtor specifically requests it or where the debtor is a new customer. A new customer is defined as one who has not entered into a pawn agreement with that creditor within the preceding 3 years.

3.14 We have made further adaptations to the SECCI. The revised version seeks to adopt a more consistent approach as to the text in the left-hand and right-hand columns. The text in the left hand one, including the italicised text, is intended to appear in all SECCIs. The right hand column is for the creditor to fill in with the text in square brackets providing a description of the type of information they should provide. We have taken note of the comments concerning formatting, in particular the need to include the various pieces of information in a boxed format. In our view, lenders do not have to provide the SECCI in boxed format provided all the required information is included in the correct order. However, we do not believe that all the information set out in the SECCI can be deemed “if applicable” as some consultees suggested, as the Directive is very specific about which pieces of information should be regarded as such.

3.15 In our view, a single SECCI may be provided if the agreement covers more than one type of credit – for example where an insurance product is connected to a loan. In relation to modifying agreements, the draft regulations provide that it is not necessary to provide a further SECCI but the creditor should provide the debtor with details of any of the provisions of the earlier agreement which have been varied or supplemented, along with a statement that the other information set out in the earlier agreement remains unchanged.

3.16 In line with the majority of views expressed, we do not propose that the legislation should elaborate on the term “in good time” with regard to the timing of the provision of the SECCI.

## **4.0 Article 5.6 – Adequate explanations**

### Questions 14 and 15

4.1 Article 5.6 of the CCD requires Member States to ensure that creditors provide adequate explanations to consumers in order to enable them to assess whether proposed credit agreements are suited to their needs and financial situation. Member States are given considerable freedom in implementing this requirement and, for the purposes of consultation, BIS set out a prescriptive approach, setting out four categories of information (basic generic, additional generic, basic product-specific and additional product-specific) about which explanation should be given, although the extent to which these categories would have to be explained would have depended on the nature of the credit.

4.2 The proposed approach then identified different categories of consumer credit and set out the precise explanation requirements which would apply depending on the category and size of a loan. It was proposed that the basic generic and basic product-specific information should apply in pretty well all cases and that the additional basic and product-specific information should apply to those loans which might be considered to be more risky for consumers and/or to larger loans.

4.3 We asked whether consultees agreed with the general approach and the way it was applied to specific products and loan sizes. We also asked whether, in order to avoid knowledgeable consumers receiving unwanted explanations, consumers should be allowed to decline explanations and, if so, whether the lender should be required to test the consumer's level of understanding. Finally, we sought views on whether or not the requirements should apply to small business loans and loans over £60,260.

### *Summary of views*

4.4 The majority of respondents, particularly from industry, considered that the information provided should be simple and kept to a minimum. Some considered that explanations could conform to the suggested basic-generic information in the consultation. Several considered lenders should be given flexibility to tailor the level of information provided to borrowers as deemed appropriate. This view was reflected by other respondents who preferred a principles-based approach rather than prescription.

4.5 Consumer groups and enforcement bodies were more supportive of BIS's proposed approach. One Local Authority Trading Standards service considered BIS's proposed approach did not go far enough, suggesting that all adequate explanations should also be given orally.

4.6 Several industry respondents expressed concern about how the provisions would be enforced. Many wanted details of how evidence of compliance should be recorded to be included in OFT guidance, with enforcement by means of the OFT's licensing regime. This view was echoed in the requests of others seeking to minimise the possibility of the law being used to support vexatious claims that agreements had not been executed

properly and were therefore unenforceable. In this regard, some warned that sanctions for non-compliance should not include unenforceability of an agreement.

4.7 Some industry respondents specifically requested that the adequate explanations provision should not apply to business lending. Others thought that the provisions would increase costs without necessarily providing any additional consumer benefit. Some considered that the information already required to be provided by lenders in the UK meant that the UK was not obliged to make any changes at all to its domestic law in this regard. Concern was also expressed that the cost of complying with the provision would cause credit to contract and therefore boost illegal lending.

4.8 Most consumer groups and enforcement bodies considered that consumers should not be able to decline explanations from the lender. One respondent considered that allowing consumers to decline an explanation risked opening the provision to avoidance by lenders and making it more difficult to enforce. On the other hand, the majority of industry respondents considered that consumers should be able to decline explanations from the lender. Some considered that customers already received too much information and would not want to receive more. Others considered it would be condescending to force explanations on customers. Nevertheless, one took the view that the waiver should not be permitted for what it termed “distress lending”, while others considered only business customers and repeat customers should be able to decline explanations.

4.9 Most industry respondents opposed being required to test the consumer’s level of understanding. Some considered such testing would be expensive and onerous on the lender. Others considered that consumers would be likely to feel “patronised or insulted” if tested and that testing would be “humiliating and invidious for customers who failed”. Some were of the view that it was “unreasonable to expect lenders to read the minds of consumers”, while others considered testing would be impractical for call centres or busy department stores and might even lead to abuse of staff.

### **Government response**

4.10 Implementation of other requirements in the CCD will ensure that consumers receive necessary information about credit products, but it is clear that the CCD’s intention is that there should be some degree of explanation in addition to the mere provision of information. It would not therefore be sufficient simply to rely on pre-contractual and contractual information or even simply to refer consumers to this information as some consultees have suggested. There needs to be a degree of explanation.

4.11 However, we recognise that consumers can only take in so much information at the pre-contractual stage and that they will already have the pre-contractual information which they should be encouraged to read. In some situations the consumer will also be given contractual information at the same time and we recognise that, as a number of consultees have said, it is important to avoid information overload by requiring too much explanation to be given, which could undermine the whole purpose of this requirement. We

therefore agree with those respondents to the consultation who said that explanations must be kept to a reasonable level in order to have the desired impact. We have therefore concluded that the most important aspects of agreements must be identified and prioritised in our approach.

4.12 We also recognise that it is desirable that the requirement for the provision of adequate explanation should not become the basis for vexatious claims. It makes sense for lenders to be given a clear understanding of the specific matters which must be explained rather than to impose on them the responsibility to judge a consumer's level of understanding in all cases and to decide what explanations would be adequate in view of a consumer's individual circumstances (although there will be circumstances in which a degree of judgement will need to be exercised). It is not intended that all credit sales should be treated as "advised" sales as this would have a significant impact on industry in terms of cost and consumer convenience as well as the availability of credit.

4.13 We have revised the approach to implementing Article 5.6 to reflect the above conclusions, by introducing less complex requirements for explanations about a manageable number of key features of products (now seven). Broadly speaking the same approach is to be applied to all credit products, although the detail of the explanations to be given will vary depending on the product type. It should be borne in mind that the explanations are required to be adequate "to place the debtor in a position enabling him to assess whether the agreement is adapted to his needs and his financial situation". It is for lenders to judge the amount of detail needed to meet this objective, but clearly it is not the case that lenders would have to explain everything about a proposed credit agreement which might fall under one of the relevant headings.

4.14 We are requiring lenders to explain:

- a) the uses for which credit to be provided under an agreement is not suitable (we would not expect explanations to be given under this heading where appropriate and in view of the overarching requirement for explanations to be adequate to place the consumer in an informed position would expect the explanations, where given, to cover only uses to which a borrower could realistically put the credit );
- b) the cost of the credit (this would bring together in one place an explanation of the various items of cost which could appear under different headings in the standard pre-contractual information proforma and could, indeed, refer to the pre-contractual information);
- c) features of an agreement which might operate in a way which could significantly affect the consumer adversely and which might not be obvious to him/her (again, we would not expect this category of explanation to apply in appropriate cases);
- d) consequences of default, including the possibility of legal proceedings and repossession where relevant;

- e) the advisability of the consumer reading the pre-contractual information and taking this away to consider if he wishes to;
- f) the existence and nature of any right of withdrawal; and
- g) how to obtain further explanation from the creditor

4.15 We believe this approach represents the right balance between a principles-based but potentially wide ranging requirement imposed on lenders, on the one hand, and the risk of unnecessary over-prescription, on the other.

4.16 OFT guidance will provide the necessary detail on a) and c) where these explanations are applicable. We are also requiring that explanations on c), d) and e) should be given orally in face-to-face and telephone situations. Following the formal consultation and in the course of commenting on the initial proposals for draft regulations which BIS published in July, some lenders expressed concern that the requirement for oral explanations could make it more difficult to offer some credit products face-to-face – particularly in a retail environment. However, we believe that the matters to be explained orally are now relatively limited and certain aspects would only apply in appropriate cases. We do not believe that an explanation of these matters could be adequate in a face-to-face or telephone situation if they were merely provided in writing as this would not give them sufficient prominence in comparison with other information – for example about the advantages of credit – which would be likely to be given orally.

4.17 In view of the extent to which the adequate explanations to be provided have been rationalised, we do not believe it would be appropriate to provide for consumers to waive their right to explanations. On the other hand, explanations have to be adequate to place a debtor in an informed position, so a creditor should not have to repeat explanations which have already been given to a consumer and which have already covered the specific matters prescribed.

4.18 The requirement to provide adequate explanations would not apply to larger loans (in excess of £60,260) because such large (unsecured) loans are not offered to ordinary consumers and borrowers at this end of the market will generally have access to expert advice. We are, however, applying the requirement to lending to micro-businesses up to £25,000 in line with our view that business lending of this sort is often mixed with consumer lending and such business lenders are often no better informed than other consumers.

4.19 The requirement to provide adequate explanations would be a relevant matter for the OFT as part of the overall licensing regime. Except in the case of business lending, it could also be enforced under Part 8 of the Enterprise Act 2002, allowing enforcement authorities to seek an injunction where a lender's failure to comply with the provisions harmed the collective interest of consumers.

## 5.0 Article 8 – Creditworthiness

### Question 16

5.1 Article 8 of the CCD requires Member States to ensure that creditors assess consumers' creditworthiness before granting or significantly increasing the amount of credit. Where appropriate lenders should proactively seek information from consumers and, where necessary, they should consult relevant databases. The CCD does not define "creditworthiness".

5.2 In its consultation document BIS recognised that there could be a range of different approaches to implementing this requirement, putting a greater or lesser degree of responsibility on the lender to ascertain the impact which credit would have on the borrower.

5.3 The consultation set out one possible approach to implementing Article 8 for comment, while recognising that other approaches could be equally valid. This proposed three levels of creditworthiness-checking to be applied according to a combination of the size of a loan and the kind of credit offered. According to this approach all lenders (with the exception of pawnbrokers, where the consumer's liability is limited to a pledged item) would have to base their lending decisions on a reasonable assessment of the consumer's creditworthiness, making reasonable assumptions so as to avoid contributing to over-indebtedness. In addition, three levels of more detailed requirements would apply depending on the type and size of loan.

5.4 We proposed that the requirement to check creditworthiness should apply to all consumer credit agreements currently covered by the CCA with the exception of second charge lending and pawnbroking.

5.5 We asked whether consultees agreed with the general approach proposed and for comments on its application to specific consumer credit products and sizes of loan.

### *Summary of views*

5.6 The majority of industry respondents disagreed with BIS' proposed approach for implementing Article 8. Many considered it over-prescriptive, inflexible or unnecessarily complex. One enforcement agency also did not agree with the degree of prescription in the consultation proposals, considering it did not allow sufficient flexibility for the creditor to make an appropriate assessment in individual cases. Many industry respondents warned that the proposed approach would result in a reduction in access to credit, an increase in costs, a reduction in competition through lenders exiting the market and an increase in illegal lending. Some considered it would lead to an increase in unenforceable contract claims against lenders by creating a "defaulter's charter". One claimed BIS's proposals would "de-modernise" the UK lending industry. Several industry respondents contended that the UK's Lending Code, CCA and the impending OFT guidance on irresponsible lending were sufficient to meet the requirements of Article 8. Many recommended a principles-based approach with policing via the OFT's licensing regime. Some industry respondents considered that re-checking

creditworthiness for repeat customers or existing customers seeking to increase their credit was not necessary.

5.7 Many industry respondents were of the view that that an inability to repay a loan usually arose from a change in the borrower's circumstances and was rarely caused by a lender failing to assess the borrower's ability to pay a loan at the outset. Many considered that disposable income was not predictive of a borrower's ability to pay, but that a borrower's past performance in repaying debt was more predictive. One industry respondent considered that the requirement to assess creditworthiness should not be applied to second-charge lending.

5.8 Some respondents noted that not all credit records can be shared due to data protection rules. They considered that access to a reliable electronic source of income data was required and that income data from reliable third parties such as HMRC and DWP would enable more effective affordability calculations. Access to data from water, electricity and gas suppliers was also considered to be of benefit in accurately assessing creditworthiness.

5.9 Most consumer groups and enforcement agencies were supportive of BIS' proposed approach, although some expressed concern about compliance demonstrating that proper creditworthiness assessments had been undertaken. In this regard, one enforcement agency considered that in the event of a challenge, the creditor should be required to satisfy the OFT that the basis on which creditworthiness was assessed in individual cases was "sufficient and appropriate". Some industry respondents agreed with BIS's Level 1 credit-worthiness checking proposal, but disagreed with the proposed Level 3 checking as representing an "intolerable burden on lenders" and one that consumers would regard as an unnecessary invasion of their personal commitments and circumstances. Some industry respondents, who opposed BIS' proposed approach in the consultation paper, were cautiously supportive of BIS's later-issued "strawman".

5.10 Several industry respondents considered that business lending should either be excluded from the requirement to assess creditworthiness or be subject to a lower-level of checking. One considered that applying such checking to business lending only increased "red tape" and did not address the problem of over-indebtedness. An enforcement agency considered that irresponsible lending should make agreements unenforceable.

### **Government response**

5.11 On the basis of responses received, we accept that the proposed approach set out in the consultation would be onerous and could have unintended consequences including a further reduction in the availability of credit for some consumers – especially those regarded as higher risk (many of whom could already be at risk of or bordering on financial exclusion), who might either be forced into seeking more expensive credit or might be excluded from the legal credit market altogether.

5.12 We also accept that a requirement on the face of legislation for lenders to check affordability could create legal uncertainty and that this could

exacerbate the extent to which some consumers would no longer be able to access affordable credit.

5.13 This contrasts with the approach to responsible lending in the CCA, which prohibits irresponsible lending, thereby allowing action to be taken against it without the risk of vexatious claims where lenders have failed to comply with prescriptive legal requirements.

5.14 Finally, we recognise that the specific prohibition on irresponsible lending introduced in the CCA, now the subject of detailed OFT guidance currently in the process of formulation, already deals with these matters. Indeed, safeguarding this provision of the CCA was a key UK objective during negotiation of the CCD. Responsible lending and affordability are complex concepts and cannot be adequately dealt with without lengthy and detailed explanation. This cannot be provided on the face of legislation. Furthermore, unlike guidance, legislation is inflexible and is not easily amended or updated. Guidance can be kept up to date in light of developing practice and can more readily take account of the ongoing representations of key stakeholders in the light of practical experience.

5.15 In any case, it would be sensible to allow the new OFT guidance giving effect to the 2006 provision, together with improvements in data sharing to bed in before considering introducing any additional legal provisions to discourage irresponsible lending.

5.16 Against this background it therefore makes sense to limit implementation of this aspect of the CCD to what is strictly necessary – a legal provision requiring lenders to check creditworthiness – and to deal with the more complex issues of irresponsible lending and affordability in OFT guidance. The draft implementing legislation will not, therefore, attempt to describe in detail how consumers' creditworthiness is to be checked or even to define creditworthiness, but, at the same time, neither will it limit the OFT's room for manoeuvre in producing guidance on affordability as an aspect of responsible lending in accordance with the requirements of the CCA.

5.17 A specific question which has arisen following the consultation is whether the implementing legislation should define what is meant by a "significant" increase in the amount of credit provided by a lender. We have concluded that, since the significance of an increase will vary depending on the type of credit offered and the circumstances of the individual to whom it is offered, it would not be sensible to attempt to define this on the face of the legislation.

5.18 Another question has concerned the circumstances in which it will be "appropriate" to seek information from the consumer or "necessary" to consult a credit reference agency. Again, we do not think it would be sensible to try to spell this out in our implementing legislation because, as already indicated, we believe that lenders themselves are best placed to decide how to assess creditworthiness and will know when it is necessary or appropriate to seek further information and where to source that information in order to inform a lending decision.

## **6.0 Article 9 – Database access**

### Question 17

#### *Summary of views*

6.1 Respondents were generally in agreement with the proposals for implementing Article 9, to interpret “database” as a Credit Reference Agency (CRA) database and to introduce a new requirement that consumers who have their applications rejected on the basis of a CRA database search should be told that immediately and without charge and be given the particulars of the database.

6.2 One enforcement agency considered that the term “database” used in Article 9.2 should include internal and external databases consulted in the context of the decision to lend; otherwise there could be opportunities for evasion.

6.3 Some respondents noted that when declining credit it was sometimes difficult to isolate the main reason for the decline. Others suggested that where an application was rejected on the basis of a mixture of CRA and internal data, a letter should only be required where the rejection was based substantially on consultation with the external database.

6.4 Some industry respondents questioned the proposal that creditors should inform the customer immediately of the result of the consultation in the same medium as the credit application. There was a strong preference for notifying customers in writing as declining credit over the telephone or face-to-face can result in difficult conversations.

6.5 Some industry respondents expressed concern that UK lenders might be placed at a disadvantage because their databases were more sophisticated and extensive than those in some other Member States. Others wanted to be sure that the principle of reciprocity would apply with other EU lenders seeking access to CRA databases in the UK.

#### **Government response**

6.6 The responses to the consultation did not indicate general support for a different approach to implementation, and the Government therefore confirms its general approach.

6.7 The Government understands that the result of a database consultation may not be the only reason for declining an application, but when the decision to decline the application has been on the basis of consultation of the CRA database, the consumer must be told that.

6.8 The Government appreciates industry concerns about customer sensitivity when conveying reject decisions, but believes that customers should receive this information promptly. Therefore, the implementing regulations will require the lender to inform the consumer immediately, but will leave it to the lender to decide how best to convey the information in the circumstances.

6.9 All Member States will be bound by the requirement to ensure non-discriminatory access to databases for creditors from other Member States,. It may well be the case that levels of sophistication and amount of data available will vary between Member States, but the CCD does not seek to harmonise CRA databases or the type of information contained in them.

## **Article 10 – Contractual information**

### Questions 18 – 27

#### *Presentation of contractual information*

7.1 The majority of respondents agreed with the proposed approach on the presentation of contractual information, which was to retain the structure of the existing Consumer Credit (Agreements) Regulations (CCAR). While some enforcement agencies and consumer groups expressly agreed with the proposal to apply the required amendments to credit agreements across the board, regardless of whether they were in scope of the CCD, one industry respondent considered that agreements below £160 and interest free agreements should be exempt.

#### *Signatures*

7.2 The majority of respondents agreed with the proposal to retain a signature and signature box on credit agreements. Nevertheless, several industry respondents considered BIS did not have the vires to require signatures, noting that the CCD did not require signatures and that there was “nothing in either English or Scottish law of contract that requires signatures for credit agreements”. Some industry respondents also held that requiring signatures would place UK lenders at a competitive disadvantage with regard to cross-border lending. This concern regarding the impact of the requirement on competition was also echoed by one industry respondent who considered that obtaining signatures could not only delay customer access to credit, but place those lenders who have to rely on the postal service at a competitive disadvantage. Other industry respondents considered that the requirement would “limit innovation” and mean that the legislation would not be “future-proofed”. By contrast, one enforcement agency considered the requirement for a signature helped focus the consumer’s attention on the fact that it is a legally binding document, which should be read carefully and that the signature box should appear after the prescribed information to ensure the consumer had read it.

#### *Electronic signatures*

7.3 Various views were received on whether amendment of the CCAR provisions on electronic signatures would help facilitate the conduct of electronic agreements. Several industry respondents considered that there was currently no certainty regarding the acceptability of electronic signatures on regulated agreements and welcomed amendment of the regulations to clarify the position. Some industry respondents questioned whether there was a need for electronic signatures at all, considering the use of tick/click boxes to be sufficient. One industry respondent argued that in any event, there could be “no certainty as to who made the ‘click’”. In this regard, one legal respondent recommended that lender and borrower agree on a code or PIN in advance. Some enforcement agencies considered that warnings prior to signing electronically might be useful.

#### *Copy of the Agreement*

7.4 The vast majority of respondents considered that the approach outlined in Option 3 of the Consultation document would work best. This involved repealing section 62 of the CCA and replacing section 63(1) of that Act with an obligation to provide a copy of the executed agreement, except where the creditor had already provided a copy of the agreement or draft agreement. Several respondents expressed no particular preference for the options given, but made various recommendations. One industry respondent urged a “simple and straightforward approach”, while another considered that as long as the customer had a copy of the agreement, it did not matter whether it was a signed copy. One legal respondent considered that given the new SECCI, “all that should be provided is a copy of the final form of the agreement post signing”, while another considered it best if things were “left alone”. One industry respondent sought the retention of the section 62 copy as this can be easily system-produced.

#### *Timing of provision of the copy agreement*

7.5 A slim majority of respondents were not in favour of retaining the requirement to provide a copy of the agreement within seven days of the agreement being signed. Several industry respondents noted that the CCD did not specify a time limit for the provision of a copy of the final agreement. Others contended that sending a further copy of the agreement to the consumer within seven days was superfluous and added to operational costs.

#### *Cancellation notices*

7.6 The vast majority of respondents agreed that the requirements in section 64 regarding notice of cancellation rights would be made superfluous given the consumer will automatically be given information on the right of withdrawal in the SECCI. One legal respondent nevertheless questioned the intention to leave the existing provisions in place for agreements not within the scope of the CCD. The view put forward here was that the notice of cancellation rights “is one of the most complex parts of the CCA, and has recently given rise to costly litigation” and therefore its application generally to those categories of credit not covered by the CCD should be reviewed.

7.7 One enforcement agency expressed reservations regarding the loss of the ability to prescribe the prominence of the notice of cancellation rights. In common with another enforcement agency, it also considered that cancellation rights should be sent with the second copy of the agreement to ensure customers were still aware of those rights.

#### *Section 77/78 Consumer Credit Act*

7.8 The majority of respondents, particularly from industry, considered that the section 77/78 provisions of the CCA, which enable consumers to request an additional copy of a credit agreement, should be revised. There were several reasons for this view. Some respondents considered that the section 77/78 provisions fell foul of the harmonisation provisions in Article 22 of the CCD. Many industry respondents expressed concern about a connection between the section 77/78 provisions and a “disproportionate increase in requests from customers to supply copies of credit agreements and account

information” with the aim of attempting to render agreements unenforceable. Some accordingly requested changes to sections 77/78 to remove the automatic unenforceability of agreements attached to non-compliance with section 78. Some also considered section 77/78 should be revised so that the customer was entitled to the current version of their agreement, but not the original, a photocopy of the original or a signed copy of the original.

7.9 By contrast, one enforcement agency considered revision of the current procedures was not necessary as electronic scanning and storage of documents were now common place and made for easy retrieval. Another enforcement agency considered it appropriate to amend the rules regarding the inclusion of signatures so consumers could be sure that any copies they requested were true copies of the agreements they originally signed.

#### *Information on the total amount of credit*

7.10 This question concerned the requirement in Article 10.2(d) on how to express the amount of credit. The majority of respondents agreed with the proposal that the new CCAR should contain similar provisions to the current Regulations (schedule 1 paragraph 8) which anticipates that the credit limit may not be known at the time the agreement is concluded and allows a statement that the credit limit will be determined by the creditor and notice given, or a statement indicating the manner in which the credit limit will be determined. Nevertheless, one enforcer and one consumer body expressed doubts as to whether this would be consistent with the requirements of Article 10.2(d).

#### *Statutory statements*

7.11 There was general support for the proposal to retain most of the statements of the protections and remedies available to consumers that are currently contained in schedule 2 of the CCAR, although some respondents questioned whether their retention was possible given that Article 10 does not include equivalent requirements.

7.12 We also sought views on a proposal to revise the existing warning concerning the consequences of missing payments. A number of respondents were concerned that the proposal to require lenders to refer to the possibility of a charging order being imposed by the court in the event of a missing payment was disproportionate. It was pointed out that a number of lenders do not use charging orders, while this remedy would not be relevant in Scotland. There was particular concern that the inclusion of such a warning would cause unnecessary alarm to consumers or would be irrelevant to those who did not own their own homes.

#### *Modifying agreements*

7.13 Opinion was divided on the approach to modifying agreements. Industry representative bodies and some lenders were of the view that the existing provisions were extremely complicated, and that the concept of a modifying agreement was in any case incompatible with the CCD. On this basis, they suggested that the current rules on modifying agreements should

either be simplified or removed altogether. On the other hand, consumer bodies were in favour of retaining the existing approach and did not favour applying the light-touch treatment allowed in the CCD to the kinds of modifying agreements covered by Article 2.6. One lender also noted that amendments to the current provisions on modifying agreements would result in the need to make substantial changes to systems regarding the way credit agreements are documented.

## **Government Response**

7.14 We propose to introduce new CCAR which will apply in respect of most regulated consumer credit agreements. However, the existing 1983 Regulations will continue to apply to agreements secured on land, agreements over £60,260, and agreements entered into wholly or predominantly for the purposes of business. As with the rules governing pre-contractual information, we believe that it is appropriate that creditors should be free to provide contractual information in different formats in respect of certain categories of out of scope agreements as we consider that the information the consumer will receive through either format is sufficient for them to make an informed decision about the product. Therefore, in respect of the following types of agreements, a creditor may contractual information either by complying with the revised CCAR or by continuing to comply with the requirements of the existing CCAR:

- An agreement entered into wholly or predominantly for the purposes of a business carried on, or intended to be carried on;
- An agreement under which the credit provided exceeds £60,260;
- An agreement secured on land.

7.15 The new CCAR will retain the existing two column approach of schedule 1 of the current regulations whereby the information requirement is set out against particular types of agreement. This would include retention of the current requirements for giving information on the amount of credit, which would not necessarily have to be expressed as a sum of money in the case of running account credit.

7.16 We do not propose any significant changes to the provisions in the CCA regarding the formalities concerning the conclusion of a regulated credit agreement. The requirement that a signature is required by both parties to the agreement remains, although the requirements concerning the signature box have been removed. The document which has to be signed has to include certain key information (the same prescribed terms as required under the 1983 regulations.) On the provision of the copy agreement, we are proposing amendments to sections 62 and 63 of the Act in respect of the duty to provide a copy of the agreement. The intention of the new draft section 63A is that the debtor must always be provided with a copy of the executed agreement unless the debtor already has been provided with a copy of the unexecuted agreement, which contains the same terms and conditions as the executed one, and the debtor has been notified in writing of this fact. We believe this preserves the existing safeguards in the CCA that ensure the consumer has

access to a copy of their agreement, while at the same time helping to ensure that consumers are not sent superfluous copies of the agreement.

7.17 On the timing of the provision of the copy agreements, the CCD does not specify a time limit within which the consumer must be given a copy of the executed credit agreement, we do not propose to retain the rules regarding the seven day period within which a copy of the executed agreement must be given. In any event, we believe it is not necessary to specify a time period given that the 14 day right to withdraw from the credit agreement would not begin until the consumer has received a copy of all the information required in the agreement. The existing section 64 CCA requirements concerning notice of cancellation rights will not apply to agreements covered by the new Regulations (where the CCD's provisions on right of withdrawal will apply). Information on the new right of withdrawal will already have been provided to the consumer via the SECCI and will also be contained in the agreement.

7.18 Although we appreciate the concerns around the use of section 77 and 78 which enable consumers to request a copy of their credit agreement, we do not think it is appropriate to seek to deal with these concerns through implementation of the CCD. It is more appropriate to consider possible reforms of these provisions of the CCA as part of the wider work being undertaken concerning the activities of claims management companies.

7.19 The new CCAR will maintain some of the existing schedule 2 statutory warnings in relation to agreements secured on land and pawn agreements, but the remainder of the statutory warnings will not be replicated in the new schedule 2. In respect of the missing payments warning, we understand the concern expressed about the suitability of a warning that specifically referred to the possibility of a charging being imposed as a result of a missed payment. Therefore, we propose that this warning covers the consequences of missing payments, including, for example, a reference to possible legal proceedings, and, where appropriate the possibility that the debtor's home may be repossessed as well as the possibility of missing payments making it more difficult to obtain credit.

7.20 On modifying agreements, and the possibility of light touch treatment as provided for under Article 2.6 of the CCD, we remain of the view that it is appropriate to maintain the existing distinction between something that constitutes a new agreement on the one hand, and more informal arrangements, including forbearance by a lender on the other and that consumers should continue to benefit from full CCA protection when entering into a new agreement. On this basis we will not be making use of the Article 2.6 provisions concerning "light touch" treatment for certain agreements of this kind. The new regulations will, however, as with Disclosure Regulations require the creditor to provide details to the debtor of any of the provisions of the earlier agreement which have been varied or supplemented, along with a statement that the other information set out in the earlier agreement remains unchanged.

## **8.0 Article 11 – Information concerning the borrowing rate**

### Questions 28 – 35

#### *Scope*

8.1 The overwhelming majority of respondents supported the proposal that the Consumer Credit (Notice of Variation of Agreements) Regulations (CCNVAR) 1977 should be amended in such a way that the existing coverage of these regulations would be maintained and that the amendments should not apply only to agreements within the scope of the CCD, or only to variations of interest rates.

8.2 On the question of whether the CCNVAR should be amended to conform with the Payment Services Directive (PSR) in respect of business lending, opinion was mixed. Consumer bodies, enforcement agencies and some individual lenders were opposed to any such change. On the other hand, an industry representative body and other individual lenders were supportive. Arguments against changes to conform with the PSR included the need to ensure consistent treatment for small businesses and individual consumers. Additionally, some lenders are used to having distinct regimes for business lending agreements that are regulated under the CCA and those that are not, and would prefer to keep this straightforward divide. Arguments in support of such a change included the assertion that there was in fact no real reduction in consumer protection in respect of information regarding variations under the PSR as opposed to the CCA, and that such a change would be easier for those lenders who are geared to operating on a single model for their business customers.

#### *Timing of the notice of variation*

8.3 The majority of respondents believed that the existing rules (which specify that at least seven days notice must be given before a variation comes into effect) should be retained. Support for this position came from a mixture of consumer bodies, enforcers and some individual lenders who thought that the current situation is well understood and provides legal certainty. On the other hand, an industry representative body and other individual lenders did not support the retention of the seven day notice period. Arguments here included the belief that to retain the existing rules would be unnecessary given that lenders are already subject to more general rules in the Unfair Terms in Consumer Contracts Regulations and the Consumer Protection From Unfair Trading Regulations in respect of any changes that would work to the disadvantage of the consumer. Major lenders have also committed to a 30 day notice period in respect of changes to interest rates as part of the statement of fair principles agreed with the Department in December 2008.

#### *Providing individual notice on a periodic basis*

8.4 In respect of changes to the borrowing rate where the change is linked to a change in the reference rate, the CCD allows that such changes can be notified to the consumer individually on a periodic basis. No respondents

identified any particular difficulties with complying with the requirements to give individual notice.

8.5 A clear majority of respondents felt that it would be inappropriate to seek to define the term “periodically” in the legislation and that this would be best dealt with in supporting guidance. Some lenders felt it appropriate that they should be allowed to determine the most appropriate mechanism in terms of the provision of the information. One industry representative body suggested this should be on at least an annual basis, while one enforcement agency suggested that the notice should be given not later than the next periodic statement and in any case within three months of the variation.

#### *Form and content of the notice*

8.6 The overwhelming majority of respondents supported the position that no amendment to the current requirements relating to the form of notices of variation would appear necessary subject to the amended legislation making clear that the special variation procedure applies only to changes to a reference rate where the creditor and the debtor have agreed that notice to changes can be given periodically.

8.7 Some lenders expressed concern about the requirement in Article 11.1 concerning the need to give information about the amount of payment to be made after the new borrowing rate enters into force. It was suggested that such a requirement would not be appropriate or practicable for running account credit and that the implementing regulations needed to take account of this.

#### *Agreed variations*

8.8 The proposition that Article 11 did not apply to variations agreed between the creditor and debtor and would not, therefore, impact on the current provisions relating to modifying agreements met with almost unanimous support. However, some respondents supported a widespread review of the rules concerning modifying agreements. One lender noted that it was not a customer-friendly policy that changes, including those to the benefit of the debtor, have to be imposed in order to prevent the complexity of entering into a modifying agreement. Sometimes this could act as an impediment to helping customers in financial difficulties

#### *Existing agreements and the special variation procedure*

8.9 The consultation document set out BIS’s view that the special variation procedure in Regulation 3 of the Variation Regulations could not be retained in respect of existing open-end agreements that fell within the scope of the CCD. An industry representative body and some lenders thought that lenders should be given an option to retain the use of the existing special variation procedure in respect of out of scope agreements. It was also suggested that the Variation Regulations should be amended to provide that what replaces the special variation procedure is deemed to have been included in all agreements made before the effective date of the new regulations.

8.10 On the other hand, another individual lender could not identify any problems if the current special variation procedure could not be retained. An enforcement agency also commented that it would be confusing for consumers if different rules applied to agreements not within the CCD's scope.

### **Government response**

8.11 Article 11 will involve amendments to the Consumer Credit (Notice of Variation of Agreements) Regulations 1977.

8.12 Although Article 11 only applies to changes to the borrowing rate, the implementing legislation will apply to other forms of variations currently covered by the Variation Regulations. BIS remains of the view that there is nothing in Article 11 that would affect the existing requirements in section 82 of the CCA regarding modifying agreements.

8.13 On the interaction with the Payments Services Directive (PSD), although we appreciate the concerns some stakeholders have about different regimes applying depending on whether or not the agreement is CCA regulated, we do not feel we have a strong enough case to alter the current scope of the Variations Regulations. It is our intention, therefore, that the amended rules on variations should continue to apply to the agreements currently in scope including business lending agreements where the credit limit does not exceed £25,000.

8.14 We accept the point that a number of stakeholders made concerning the difficulty of providing the "amount of repayment" following the variation for agreements such as credit cards since it is not possible to predict the amount of future payments on a running account. On this basis, the regulations will provide that in these circumstances the amount of the repayment due should be expressed as a sum of money where practicable.

8.15 In respect of the period of notice that should be given before the change comes into effect, on balance we believe that it would not be appropriate to retain the existing seven day minimum notice period, given that the CCD does not prescribe such a limit and the more general effect of other consumer protection legislation, such as the Unfair Terms in Consumer Contracts Act. We did consider replacing the requirement for the information to be given "not less than 7 days" with a requirement that it is given "without delay" and "before" the variation takes effect. However, some stakeholders felt this was conceptually problematic since the term "without delay" should refer to a period after a trigger event, rather than before. On this basis, the regulations will be amended to specify that notice should be given before any change takes effect which we believe will provide for an accurate transposition of the Directive, while at the same time provide lenders with sufficient flexibility to determine the appropriate time period required for the notification.

8.16 The special variation procedure in existing Regulation 3, which allows notice to be given by newspaper advertisement and branch notice will be need to be amended. Where there is agreement between the parties

concerning a variation of the borrowing rate, which is the result of a change in the reference rate (which could include an internal reference rate,) the particulars of the variation may be provided periodically via regular statements. This is on the basis that the details of the variation will be made publicly available and the details of the new reference rate are available on the premises of the creditor. On the basis of the response to the consultation, we do not intend to define the term “periodically”. In terms of how the amendments to the special variation period should apply to existing open-end agreements, we considered the suggestion that there should be a provision to enable creditors to rely on the amended special variation period without the parties explicitly having agreed to such an arrangement. However, we believe such a provision may not be compatible with the CCD, given that Article 11.2 specifically refers to the parties agreeing to this procedure. Therefore, we will not be making any provision along these lines.

## **9.0 Article 13 – Open-end credit agreements**

### Questions 36 – 38

#### *Termination/suspension of the right to draw down*

9.1 This section of the document was concerned with the CCD's provisions on the termination of open-end agreements, either by the creditor or the debtor. In respect of the former, we asked whether the legislation should refer to "terminate" or "terminate or suspend". The majority of those who responded to this question, representing a wide range of stakeholders, were in favour of using "terminate and suspend" in the legislation. The principle argument for using the term "terminate or suspend" was based on a reading of Recital 33, as this sheds light on the intention of Article 13. One lender pointed to the interplay with the Payment Services Directive (PSD) section 56(2) which is concerned with the suspension of payment instrument. On this basis, it was argued that the legislation implementing the CCDU and the PSD should be consistent.

9.2 The arguments for referring only to "terminate" were based on the risk of creating confusion and difficulty in interpreting the legislation. There were also responses expressing concern, especially in relation to running account credit, at a formal requirement to notify the consumer of a temporary suspension in every situation when, in many cases, the situation could be resolved satisfactorily by more informal means.

#### *Objectively justified reasons for termination*

9.3 Article 13.2 says that the consumer must be given objectively justified reasons for the termination of their agreement. The vast majority of responses agreed with the proposal in the consultation document to set out in legislation a non-exhaustive list of such reasons. This approach would allow for a more flexible approach. A very few responses expressed concern over the proposal to attempt to set out a non-exhaustive list. This was because the absence of such a definition would provide greater flexibility and also because the term has long been used in other European legislation and that there are emerging case law interpretations of it.

9.4 Other respondents suggested that a "significant change in economic circumstances" should be added to the list, and that we should ensure consistency with the PSR.

9.5 One lender suggested the legislation should not allow verbal terminations of agreements as this would increase the risk of disputes.

#### *Informing the consumer of termination*

9.6 Article 13.2 provides that the consumer should be informed of the termination of their right to draw down, where possible, before the event or at the latest immediately thereafter. We proposed that the implementing legislation did not need to elaborate on this requirement.

9.7 There was a clear majority in support for the proposal among those who responded, some of whom also expressed a preference for not including additional clarifications in guidance. However, some individual lenders did express a preference for including clarification of the phrase in guidance.

### **Government response**

9.8 We propose to implement Article 13 by inserting a new provision in the CCA. The new provisions on termination will continue to apply to existing open end agreements as well as new ones. We intend to define “open end agreements” as agreements of no fixed duration.

9.9 Article 13.2 refers to "termination" of the right to draw down, which suggests something final, but we think this needs to be read in conjunction with Recital 33, which refers to "suspension or termination". Therefore our implementation will also apply to a suspension of the draw down facility. The amended legislation will provide that the creditor may, for objectively justified reasons, terminate or suspend the debtor's right to draw down credit under an open end agreement. “Objectively justified reasons” are not exhaustively defined. Although some stakeholders wanted an expanded list of reasons, we did not think this was appropriate and our approach here was to mirror the PSR which contain similar provisions.

9.10 On the question of prior notification of termination of drawdown rights, we acknowledge that this will not always be practicable. We propose to transpose this part of Article 13.2 by requiring that the debtor must be informed of the termination or suspension beforehand, or if that is not practicable, immediately afterwards.

## **10.0 Article 14 – Right of withdrawal**

### Questions 39 – 41

#### *Summary of views*

#### Scope

10.1 Some industry respondents did not want the right of withdrawal extended to hire purchase agreements, citing a number of difficulties with this. There were questions about what would happen to the goods, who had title to them during the withdrawal period and how the credit aspect of the agreement would be divided from the supply aspect. On the other hand, several consumer groups and enforcement agencies supported the proposal.

10.2 Only a few respondents commented on whether the right of withdrawal should be applied to pawnbroking. Two opposed the proposal due to the nature of the transactions involved, while one saw no reason why customers of pawnbrokers should not have the same rights as users of other types of consumer credit. There was very little comment on the extension of the right of withdrawal to agreements below £160.

10.3 Several consumer groups and enforcements agencies and one industry respondent considered that the right of withdrawal should be extended to consolidation loans above £60,260. One industry respondent commented that it was not common for lenders to offer a loan of that amount on an unsecured basis, particularly if the consumer was showing signs of financial difficulty. Others opposed the extension of the right to consolidation loans above £60,260 because of the difficulty of applying it (in particular where a loan was used partly for debt consolidation and partly for another purpose) and the fact that it might not always be possible for the lender to establish with sufficient certainty whether or not a loan was for consolidation purposes.

10.4 A number of industry respondents considered that the right of withdrawal should not be extended to loans up to £25,000 to small business. Reasons given were the greater sophistication of business customers, the potential delay in the provision of goods hampering some businesses operating on tight cash flows and the possible adverse impact on the cost and availability of small business loans. By contrast, several enforcement agencies and consumer groups considered that the right to withdraw should be extended to small business loans for the reasons given in the consultation document, although one did consider that there might be a case for making it optional.

#### Provisions on return of goods

10.5 A number of respondents thought it would be helpful to apply the relevant parts of sections 72 and 73 of the CCA, to provide for the return of the goods where the consumer and supplier had agreed that they would be returned rather than paid for in a different way. However, others felt that it

was more sensible to leave it to the contracting parties to resolve matters as appropriate in the circumstances.

#### Exercising the right of withdrawal and repaying the money

10.6 Several respondents commented that satisfying the requirement to give notice of withdrawal should be dependent on it being received by the creditor, as the creditor may never receive the notice and the consumer could claim he had sent it when he hadn't. There were also concerns about oral notice being permitted, as it would be an additional burden on the lender to be able to prove whether and when oral notice had been given; a permanent written record was safer for both parties.

10.7 Many respondents commented on ways of determining the date to which interest was payable, whether this was the date the consumer transmitted the payment, the date it was received by the lender or the date credited to his account. A significant number of industry respondents considered that the date money was received by the lender should be the effective date of repayment and not the date the money was sent by the borrower. Otherwise, there were issues with automatic processing of payments and the process would be open to abuse by borrowers claiming to have sent repayments when in fact they had not. On the other hand, an enforcement agency considered that money should then be deemed to have been repaid on the date sent or given by the consumer.

10.8 One enforcement agency considered that customers should be able to request statements of the amount owing, which the creditor should send within two working days. On the other hand, an industry respondent took the view that the implementing regulations should not set out how the creditor and consumer should interact to work out the details of repayment or to impose any duty on the creditor to provide specific information about the amount to be repaid, given the wide range of scenarios in which withdrawal could occur.

10.9 A number of points were raised in respect of agreements linked to the purchase of goods. Some wondered about the interaction between the supplier, creditor and consumer in respect of paying for the goods in the event of withdrawal and whether the legislation should include detailed provisions for this. Some thought that suppliers might choose not to release goods until the fourteen-day right of withdrawal period had expired. Others questioned whether the creditor would be entitled to sue for the money or repossess the goods if the consumer refused to repay the credit or return the goods.

10.10 Some industry respondents expressed concern about possible abuse of the right by consumers. Some might try to use it as a cheaper form of short term credit, or if the agreement was linked to the purchase of expensive goods such as a car, might want to return the goods which would have then depreciated.

#### **Government response**

## *Scope*

10.11 The Government appreciates that there are arguments against applying the right of withdrawal to hire purchase and pawn broking agreements. However, it does not consider that the arguments are sufficient to warrant a change of policy. The Government believes that consumers taking out hire purchase or pawn broking agreements should not have lesser rights than consumers taking out other types of unsecured credit agreements regulated by the CCA. In particular we consider that treating hire purchase agreements differently to conditional sales agreements would cause consumer confusion and detriment, as consumers may not appreciate the difference between the two types of agreements and any difference in their rights.

10.12 If a consumer withdraws from a hire purchase or conditional sale agreement, title to the goods would remain with the supplier or lender and it would follow that the consumer is liable to return the goods. However, it may well be that this does not provide the best outcome for the parties. The supplier may well prefer to have the money rather than the goods returned. The transaction then in effect becomes a cash purchase and title passes on payment. It is sensible to leave the parties to arrange this between themselves as appropriate in the circumstances rather than for the implementing legislation to mandate a particular outcome or to make complex provisions for a number of possible outcomes.

10.13 We proposed in the consultation that the right of withdrawal should not apply to agreements for credit above £60,260 except where these were for the purposes of consolidating existing debt. However, stakeholders pointed out that it would be difficult to identify such loans with any certainty. We did then look at introducing a new higher ceiling of £100,000 without reference to the purpose of the loan, but the evidence suggested that it was very unlikely that unsecured loans of a size anywhere near £60,260 would be offered to consumers. The Government has therefore decided not to extend the right of withdrawal beyond the CCD ceiling of loans up to £60,260.

10.14 The Government has decided to apply the right of withdrawal to loans below £25,000 to small businesses currently covered by the. Having considered the comments regarding agreements for credit below £25,000 to certain small businesses, the Government felt that on balance the arguments for doing so – essentially that such small businesses are more akin to consumers in the way they behave and in their financial needs – were stronger than those against.

### Provisions on return of goods

10.15 There were mixed views on whether it would be helpful to make provision for the return of goods where the consumer has exercised his right to withdraw and he and the supplier have agreed that the goods should be returned. Having considered the comments, the Government has taken the

view that on balance it would be more appropriate to leave this to the parties to agree.

#### Exercising the right of withdrawal and repaying the money

10.16 The CCD provides that the point for determining whether notice is within the 14 days is the despatch of the notice by the consumer rather than receipt by the lender. However, it does not provide for the point at which the money is considered to be repaid for the purposes of determining the amount of interest owing. Having carefully considered the comments made, the Government accepts that there are valid concerns about making the effective date of repayment the date that the money was despatched by the consumer. The Government has therefore decided not to make specific provision on this point so that lenders can make appropriate arrangements depending on their own systems and the way the money is to be repaid. The important thing is that this is clear to consumers in the credit agreement so that the withdrawal and repayment process is as easy and quick as possible. Lack of clarity may make it harder for consumers to repay the right amount first time, leading to increased costs for lenders in resolving the matter.

10.17 The implementing regulations will make special provision for running account credit with regard to the requirement for the amount of interest payable per day to be given in the credit agreement. In this case, it would not be possible for the lender to give an amount of interest payable per day because the lender will not know how much credit, if any, the consumer will draw down.

10.18 On the question of whether oral notice of withdrawal should be permitted, the Government considers that this is what the CCD intends and that this is the right outcome for consumers. The process of exercising the right of withdrawal should be as easy and quick as possible for consumers. Having to provide written notice could be a barrier to some consumers. Many are used to dealing with banks, credit card companies and other lenders by phone. While the Government appreciates that there are concerns about the difficulty of providing proof of oral notice, it does not think these are insurmountable.

10.19 In relation to the transfer of money between the consumer, supplier and lender where goods are involved, the Government considers that it is sensible to leave this for the parties to arrange between themselves as appropriate in the circumstances rather than for the implementing legislation to mandate a particular outcome or to make complex provisions for a number of possible outcomes. There will be a business relationship between the supplier and creditor and it should not be necessary for the Government to interfere in this. As to whether the supplier chooses not to release the goods until the 14 day period has passed, this is a decision for him to make; for some types of goods it may well be a viable option.

10.20 The Government does not consider that it is necessary for the implementing legislation to include provisions preventing the consumer from keeping both the goods and the money. If the consumer has drawn down credit, the legislation will require him to repay it (and the accrued interest). If

the credit agreement is for the purchase of goods and the consumer has not drawn down the credit as such, he must still pay for the goods (or return them if the lender agrees).

10.21 If the consumer does not repay the amount borrowed within the stipulated time, the lender will be able to pursue the consumer for the money. If the loan is linked to the purchase of goods, the lender could repossess the goods. It is not necessary for the implementing legislation to make specific provision for these matters.

## **11.0 Article 15 – Linked credit agreements**

### Question 42

#### *Summary of views*

11.1 Respondents were generally in agreement with the proposal to keep section 75 of the CCA unchanged and apply the protection in Article 15.2 to those agreements not covered by section 75 but within the scope of the CCD, i.e. purchases where the cash price of the item is not less than £30,000 and the amount of the credit agreement is not less than £160 or not more than £60,260. However, several respondents felt that it would be better to extend section 75 to credit agreements up to £60,260 and one wanted to see the lower limit in section 75 removed. Several commented that it was important to make it clear to consumers when the new right applied and when the existing right applied.

11.2 Some credit card issuers commented that, as Article 15.2 allowed Member States to determine to what extent and under what conditions remedies against creditors were exercisable, section 75 should be amended to limit the creditor's liability to the amount of credit provided, to cap liability in respect of overseas transactions and to provide that a consumer must first pursue the supplier before claiming against the creditor.

#### **Government response**

11.3 The responses to the consultation did not indicate general support for a different approach to implementation, and the Government therefore confirms the approach outlined in the consultation document.

11.4 Section 75 will remain intact and there will be a new section 75A applying to agreements outside the scope of section 75 but within the scope of the CCD to implement Article 15.2. The new section will apply where the cash price is more than £30,000 and the amount of the credit agreement is not less than £160 or not more than £60,260. Liability under section 75A will relate to the amount of the credit agreement rather than the cash price. The consumer must pursue the supplier first before pursuing the creditor. The intention is that the legislation will provide that the consumer does not have to take legal proceedings against the supplier before he can pursue the creditor but will not otherwise set out in detail what the consumer must do, as what is reasonable may vary considerably depending on the circumstances.

11.5 The Government agrees that it is important to make it clear to lenders and consumers where the existing section 75 will apply and where the new section 75A will apply and will bear this in mind when drawing up guidance on the implementing regulations.

11.6 The Government considers that section 75 provides important protection for consumers and it is not proposing to reduce that protection by making changes to any aspects of section 75.

## **12.0 Article 16 – Early repayment**

### Questions 43 – 50

#### Summary of Views

##### General approach

12.1 The majority of respondents did not object to the proposed general approach to implementing Article 16. However, one enforcement agency considered that Article 16 only allowed the creditor the compensation for early repayment that he could claim under Article 16.2. The current system of deferring the settlement date allowed more compensation than was intended and could lead to consumers paying more to settle early, thereby inhibiting switching. This respondent also considered that retaining the notice requirement inhibited the consumer's right to repay at any time. A consumer group also expressed doubt as to whether the 28 day settlement period was compatible with the consumer's entitlement to repay at any time.

12.2 The majority of those who commented on the proposal to allow notice of early repayment to be given in writing, another durable medium or orally agreed with it. However, some respondents expressed concern about how oral notification would be evidenced, both from the point of view of the lender and the consumer.

12.3 The majority of those who responded agreed with the proposal to replace the 30 days/one month deferral with 30 days/one month's interest on the amount repaid early in the early repayment calculation. Nevertheless, some industry respondents favoured retaining the existing deferral rule to minimise disruption and avoid additional system changes and costs. Only a few respondents commented on whether the 30 days/one month should be standardised at one or the other, but the majority of those who did considered that it should not be standardised as it might require systems changes which should be avoided unless necessary.

##### Partial early repayment

12.4 A number of detailed points were made on the rebate formula for partial early repayment, how it would work in practice and how best to reflect it in legislation.

12.5 A few respondents thought that a formula for working out the rescheduled payment following partial early repayment should be adopted to ensure calculations were done in the same way. Others considered that the formula for calculating rescheduled payments was useful but should not be mandatory; it should be left to lenders to determine a method of calculating rescheduled payments as some would already have their own way of doing this.

12.6 Some commented that it should be made clear that partial early repayment would not trigger the need for a modifying agreement under section 82.

12.7 Some industry respondents commented on the difficulty of having to treat very small payments as partial early repayments. This would be costly and burdensome for the lender, but also might not meet the intentions of the consumer. A consumer might pay an instalment early; if this was treated as a partial early repayment, he would then be in arrears because he would be considered to have missed the next payment. Also some consumers regularly overpaid by small amounts, simply to round up the payment to an even amount. By doing so they were not intending to exercise a right to repay early. It was suggested that there should be a de minimis level, below which an early repayment did not have to be treated as a partial early repayment.

#### Settlement information for partial early repayment

12.8 The majority of those who commented on the proposal that lenders should provide consumers with information on the effect of a partial early repayment agreed in principle but had some reservations. A number commented that it should be clear that the information only had to be provided after a partial early repayment had been made; it would be very costly for lenders to have to respond to requests for information on partial early repayments that were never made. Others commented that, as there was a cost in providing the information, it should not have to be provided unless the consumer wanted it. A few respondents took different views: that it should be optional, that it would be costly for lenders to have to provide any information and that consumers should be able to request the information before deciding whether to make a partial early repayment.

#### Compensation for changes in interest rates under Article 16.2 and exercise of Member State options in Article 16.4

12.9 Of those who commented, the majority agreed with the proposal for implementing Article 16.2. This is to permit creditors to claim compensation for early repayment where it is made during a period for which the borrowing rate is fixed and they have incurred a cost as a result, and not to prescribe any particular method for calculating the compensation. However, two enforcement agencies and a consumer group considered that it should be made clear in the legislation or at least in guidance what costs are recoverable and that lenders should have to justify in full the amount of loss actually suffered.

12.10 There were questions about whether “credit repayment guarantee” in Article 16.3(a) was intended to refer only to a policy taken out with the creditor or to any policy. Some respondents thought it was reasonable that the creditor should not claim the compensation if he had sold the policy because he earned revenue from it whereas the creditor did not earn revenue from a policy sold by a third party. Others commented that their systems would be unable to distinguish where the payment came from and they might therefore claim compensation when they should not have done so.

12.11 Most of the industry respondents who commented considered that the proposed €10,000 (£8,000) threshold for creditor compensation claims should not be imposed, and that it should be possible to claim higher compensation

where costs exceeded the amount allowed by Article 16.4. By contrast, the enforcement agencies and consumer groups who responded supported the proposals to impose a threshold and not to allow higher compensation. There were questions about how the threshold would work in practice in terms of the amount on which the compensation could be claimed.

#### Application of section 96 to partial early repayment

12.12 Responses were limited on whether section 96 of the CCA on the effect of early repayment on linked transactions should be applied to partial early repayment. Several industry and legal respondents saw difficulties and unintended consequences arising from the proposal but were not specific about these. Another industry respondent questioned whether it would be possible to measure proportionately reducing liability in relation to a linked transaction. One enforcement agency considered that it may not always be appropriate for liability under a linked transaction to be reduced proportionately with the partial payment, as the liability may be irrespective of the amount of credit advanced.

#### Scope

12.13 There were few comments on scope in relation to Article 16. Several respondents thought that partial early repayment might be difficult to apply to pawnbroking and would have relatively limited consumer benefit, but others thought that the right of partial early repayment should apply to pawnbroking.

12.14 Some industry respondents questioned how the voluntary termination provisions in the CCA could sit alongside the right to repay early and the right of withdrawal.

### **Government response**

#### General approach

12.15 The consultation did not indicate widespread support for a different approach to implementing the requirements on early repayment and the Government therefore confirms the approach outlined in the consultation document, to maintain the current framework for full early repayment and extend this to partial early repayment as far as possible. The Government considers that the current regime offers a helpful framework which provides an appropriate and fair balance between the interests of consumers and creditors overall.

12.16 It does not consider that aspects of the framework inhibit the consumer's right to repay at any time during the life of the agreement (it would not be reasonable to interpret "at any time" as meaning not that the consumer has the right to make an early repayment which has immediate effect at any time of the day or night). The notice requirement and the 28 day settlement period are important parts of making the early repayment provisions work in practice. It seems entirely reasonable to expect consumers to make their intentions clear to the lender. To have a set date at which calculations are

made ensures consistency and allows time for any administrative procedures to be completed.

12.17 The Government appreciates the concerns about oral notice and the difficulty of proof but does not think these are insurmountable. It believes that oral notice should be an option for consumers, and indeed often already is in practice. Many consumers are used to dealing with banks, credit card companies and other lenders by phone and requiring written notice could present a barrier to some consumers.

#### Partial early repayment

12.18 The rebate formula for partial early repayment proposed in the consultation document has been amended to make it a little simpler and to describe the calculation more fully.

12.19 It was thought that switching from the 30 day/one month deferral to a 30 day /one month interest charge would not make any difference in the outcome of the rebate calculation, all other factors being equal. However, while revising the rebate formula for partial early repayment, it became clear that the change would in fact be more complex than envisaged. Applying the figure at difference points in the calculation produced different results and it was difficult to capture in the legislation exactly how and where it should be applied, particularly taken together with the Article 16.2 compensation. As it was not the intention to make things more complicated, we have decided to revert to the 30 day/one month deferral for both full and partial early repayment. There was no support for standardising on either 30 days or one month, so lenders will continue to have both options.

12.20 Lenders will not be required to use a specific formula to work out rescheduled payments after partial early repayment, but one will be provided in guidance for those who wish to use it. We do not believe that different methods of calculating rescheduled payments give sufficiently different outcomes to cause consumer detriment, and for those lenders who may already accept partial early repayment on some credit products there would be a cost involved in mandating a particular method of calculation.

12.21 The implementing regulations will not deal with the question of what happens after a partial early repayment – whether the term of the agreement or the amount of the individual repayments are reduced; this will be left to the parties to agree. If the agreement specifies which of these two things will happen in the event of early repayment, a modifying agreement under section 82 of the CCA would not be triggered. However, if the agreement did not specify, but left it open for the lender and borrower to decide at the time, the variation of one or both would trigger a modifying agreement. We do not wish to push the lender into only offering one option so as to avoid the additional work of a modifying agreement. Therefore, the implementing regulations will amend section 82 so that a modifying agreement is not triggered if the duration of the agreement or the amount of the repayments are varied as a result of partial early repayment.

12.22 The worked examples of early repayment will be removed from the regulations and instead included in guidance to allow more flexibility in providing examples.

12.23 The Government recognises that having to process small early repayments could be disproportionately costly for creditors. However, we found it difficult to see how a de minimis threshold could be compatible with the CCD, and there was in any case no consensus on what level would be helpful for lenders. It might have been possible to make a case for a low threshold on the basis that the cost of processing a small amount as a partial early repayment exceeded the amount of the early repayment itself. However, it was clear that lenders had in mind a threshold some way in excess of the possible processing cost. The requirement for consumers to give notice of early repayment, thereby making their intentions clear, should go some way to addressing the issue.

#### Settlement information for partial early repayment

12.24 In view of concerns about the cost of providing consumers with information they may not want, the Government has decided to give consumers the right to request information on the effect of a partial early repayment they have made rather than to require lenders to provide it in all cases. The implementing regulations will set out the information the lender must provide but not require this to be in any particular format. The intention is to enable the consumer to understand his position once he has made the early repayment. Therefore the lender will not have to fulfil the request until the payment has been made. If the request is made some time after the early repayment, the lender will not have to recreate the position at the time of the early repayment but can instead give the amount owing at the time of the request. However, he must still give the amount of the rebate applied and any Article 16.2 compensation claimed.

#### Compensation for changes in interest rates under Article 16.2 and exercise of Member State options in Article 16.4

12.25 The Government confirms the approach set out in the consultation document to implementing Article 16.2. The implementing regulations will not set out how the compensation for changes in interest rates should be calculated or what factors should be taken into consideration. However, the implementing regulations will make it clear that the compensation is claimable only if certain conditions are met, including that the compensation is fair and objectively justified. This will put the onus on lenders to justify their claim. It will also cap the compensation at a maximum of 1%/0.5% (depending on the remaining term of the loan) of the amount repaid early.

12.26 The Government is not minded to change its position on exercising the Member State options in Article 16.4 as a result of the consultation. Given that the existing framework for early repayment is being maintained, and this does give lenders the opportunity to recoup some costs, the Government does not consider that there is a case for allowing additional compensation beyond what is required by the CCD.

12.27 The term “payment protection insurance” rather than the CCD term of “credit repayment guarantee” will be used in the implementing regulations as that is the term commonly used in the UK. The Government does not see that making the Article 16.2 compensation claimable for payments made under third party payment protection insurance but not under insurance sold by the lender would be consistent with the CCD or the right outcome for consumers. This could make payment protection insurance provided by third parties more expensive because it would potentially have to cover a larger amount, and hence less competitive. However, we do not consider that the term payment protection insurance would cover a policy that was designed simply to provide the consumer with a lump sum, unrelated to his debts: the origin of the payment will not be an issue with those policies that meet monthly payments rather than provide a lump sum.

12.28 As to how the £8,000 threshold will work in practice, the Article 16.2 compensation can only be claimed when the trigger point of £8,000 has been passed. It can be claimed on the whole of the payment that passes this point and on any subsequent payments, but not retrospectively on payments made before the trigger point has been reached.

#### Application of section 96 to partial early repayment

12.29 In view of the potential drawbacks and difficulties associated with extending section 96 to partial early repayment, and the lack of evidence of any benefit in doing so, the Government has decided not to extend section 96 to partial early repayment.

#### Scope

12.30 There has been no change in our proposals regarding the scope of the early repayment provisions. We appreciate that there are some issues for pawnbrokers in allowing partial early repayment. However, the Government does not believe that consumers taking out pawnbroking agreements should not have the same right to partial early repayment as consumers taking out other types of agreements. We understand that pawnbrokers sometimes offer a form of partial early repayment now, by rolling over the contract into a new agreement. We see no reason why pawnbrokers cannot continue to operate in this way. It did appear that there could be a potential consumer disadvantage if the amount of the loan fell below £75 as a result of making a partial early repayment and the consumer was then unable to redeem the pledge (in which case title to the pawn would pass to the pawnbroker and the consumer would not be entitled to any money on sale of the pawn). We are therefore intend to amend section 120 of the CCA so that if the amount borrowed falls below £75 as a result of partial early repayment, the provisions in the Act on the consequences of failure to redeem the pawn will apply as if amount of agreement was still above £75.

12.31 The Government does not believe that the voluntary termination provisions in the CCA are incompatible with the right to repay early and the right of withdrawal in the CCD. Early repayment is about early performance of the contract rather than termination whereas the exercise of the right of

withdrawal can be most correctly described as cancellation of the agreement. Articles 14 and 16 are intended to make provision for the contract to come to an end in these two particular situations. We do not believe that the area of maximum harmonisation of the CCD extends to all situations in which the contract might come to an end.

## **13.0 Article 17 – Assignment of rights**

### Questions 51 and 52

#### *Summary of views*

13.1 The majority of respondents had no concerns regarding which party provided notice of assignment and whether this required clarification in legislation. However, most of the consumer groups and enforcement agencies who responded considered that the assignor should provide notice to the borrower of any assignment of the creditor's rights to a third party. One took the view that any exception to the requirement to give notice should be limited to cases where the original creditor (or agent) remains wholly responsible for the servicing of the credit, and should not apply where responsibility is shared with the assignee. Another thought that both parties should be obliged to write to the borrower explaining who would be collecting repayments.

13.2 The majority of respondents agreed that no additions or changes to UK law were required to implement Article 17.1. However, a few stakeholders disagreed, taking the view that some changes or clarifications were necessary to provide better consumer protection on assignment. In particular, several stakeholders commented that the definition of "creditor" in section 189 of the CCA appears to say that an assignee becomes a creditor only if rights and duties are assigned, which is contrary to the general rule that duties cannot be assigned without express agreement; this may mean that an assignor remains the creditor for CCA purposes.

#### **Government response**

13.3 The Government considers that it is sensible to provide flexibility as to which party notifies the debtor, so the parties can do what is most appropriate in the circumstances. The important thing is that the debtor is notified. The implementing regulations will therefore put the onus on both parties to ensure notice is given but leave it flexible as to who actually does it.

13.4 In addition, the Government does not believe it is necessary to be prescriptive as to the nature of the changes to the administrative arrangements that trigger the requirement to give notice. The key point is that it should be the consumer-facing arrangements; those in which the consumer would notice a change. The Government proposes to make this clear in the implementing regulations.

13.5 The Government is very firmly of the view that the definition of "creditor" in section 189 of the CCA means that when an assignee purchases debts it also acquires certain obligations to the debtor including the duty to comply with the CCA requirements on post-contractual information. Essential consumer protections under the CCA cannot be circumvented by assigning the debt to a third party.

## 14.0 Article 19 – APR calculations

### Questions 53 – 56

14.1 Article 19 and Annex I of the CCD provide relatively few issues on which to consult in respect of our approach to implementing them. Nevertheless, we asked stakeholders whether they thought there were any gaps in the assumptions or situations in which the outcome of the APR calculation might vary because the CCD's assumptions were slightly less detailed than the existing UK assumptions. Although the CCD does not explicitly distinguish between running account and fixed-sum credit, we proposed that certain assumptions were more suited to one or other type of credit.

14.2 In particular, we proposed that the assumption at Annex I Part II (d) of the CCD (where there is no fixed timetable for repayment) should be applied to running account credit, while the assumption at Annex I Part II (e) (where there is a fixed timetable, but flexibility with regard to the amount of repayments) should be applied to fixed-term agreements. We also proposed to clarify that the reference to "credit" to be repaid in 12 equal instalments in Annex I Part II (d) should be read as including repayment of interest and other charges.

14.3 We proposed to apply the £1,200 assumption to the amount of credit where the credit limit or amount of credit has not been agreed – this is covered in more detail in the section on advertising.

14.4 We also asked whether the tolerances permitted in existing UK law when indicating the APR should be retained.

14.5 We proposed that the total cost of credit should continue to include charges payable by or on behalf of the debtor or a relative of his whether to the creditor or any other person in line with existing practice in the UK.

14.6 Finally, we proposed that the provisions implementing Article 19 and Annex I of the CCD should be applied to all credit agreements regulated by the CCA and for which APRs are currently required with the exception of second charge lending.

### *Summary of views*

14.7 Several industry respondents and one local authority trading standards department agreed that there were no gaps in the assumptions set out in Article 19 and Annex I of the CCD. However, a number of industry respondents considered that there were some discrepancies between the assumptions in Article 19 and Annex I and current UK law. In particular, some noted that the exemption for packaged accounts provided for in Regulation 5(1)(d) of the Consumer Credit (Total Charge for Credit) Regulations 1980 (TCCR) was not replicated in the CCD. These respondents contended that this exemption should be retained so that the APRs of packaged accounts were not artificially inflated. One enforcement body expressed concern that broker fees did not appear to be included. It noted that the TCCR were quite

specific about which charges should be included in the total charge for credit (TCC) and suggested that any deviation from this could introduce confusion about which charges should be included. A trading standards officer also said that lack of clarity regarding TCC would lead to differing APRs.

14.8 Several industry respondents and one enforcement body agreed with BIS's proposed positions on the APR assumptions in Annex I, Part II, (b), (d) and (e) of the CCD. A legal respondent took the view that basing the "most common drawdown mechanism" on volume of activity rather than value did not address the situation where a creditor was commencing fresh business and did not have a population of existing active accounts. An industry respondent also disagreed with BIS' proposal, suggesting that retention of the existing UK regulatory assumption that purchases are the most common drawdown type for credit cards would provide more comparable APRs. This respondent thought that there must be a consistent approach to using the "most common drawdown" interest rate for calculation in order to defend against claims that an agreement included an incorrect APR.

14.9 A legal respondent considered that it was wrong to equate "repayment of credit" with repayments that included interest and charges, contending that UK consumer credit law and Article 3(c) & 3(h) of the CCD indicated that "credit" was exclusive of charges and was not the total amount payable. This respondent also thought that, contrary to the view expressed in the consultation document, credit was defined in Article 3(c) of the CCD, albeit in terms of "credit agreement". Some industry respondents expressed concern that there was a need for clarification on the definition of the term credit, with two considering that it should include interest and other charges, as well as the amount borrowed, in order to preserve current UK arrangements.

14.10 Several enforcement agencies saw no issue in removing the existing UK APR tolerances. One considered that the requirement that the result of the calculation be expressed with an accuracy of at least one decimal place (Annex I Part 1(d)) precluded the retention of existing APR tolerances. An industry respondent considered removal of APR tolerances would ensure APRs were more accurate. A legal respondent also saw no issue, although thought the implementing legislation should indicate whether rounded figures were permitted.

14.11 On the other hand, a significant number of industry respondents opposed the removal of APR tolerances. Many considered that removing tolerances would cause them significant cost in reprogramming systems. Others considered that tolerances provided certainty for lenders that slight errors made in good faith in advertised APRs would not breach the new Advertisements Regulations. Some industry respondents similarly were of the view that tolerances would avoid providing vexatious claimants with technical breaches enabling them to challenge consumer credit agreements. An enforcement agency cautioned that removing tolerances could lead to "absurd APRs being quoted to many decimal places" and suggested that in the absence of tolerances there should be guidance along the same lines as the UK's existing legislation.

14.12 Many industry respondents agreed with the proposal to extend the scope of Article 19 to all CCA-regulated credit agreements for which APRs are required (with the exception of second charge lending). However, some industry respondents expressed concern at what they saw as costly changes to systems and procedures with no or little benefit to small business. One industry respondent also considered that the proposal would not assist business customers seeking to compare preferential rates or to understand the true cost of their credit. One enforcement agency agreed that the APR rules should apply to all CCA-regulated agreements except second charge lending, although another did not understand why second charge lending should be excluded.

14.13 An industry respondent expressed the view that the assumed amount of £1,200 for calculating the APR was inappropriate for fixed-sum credit where the minimum amount of credit made available would be far in excess of that amount.

14.14 An industry respondent considered that the assumptions set out in Article 19 and Annex I should not be mandatory. Another industry respondent considered that an APR should not be required where a loan was incapable of lasting a year.

### **Government response**

14.15 As already indicated, the formula and the assumptions set out in the article and in Annex I and in Article 19 must be replicated. On the basis of responses to the consultation, we believe it is unlikely that these new provisions will lead to a significantly different result in calculating the APR. Implementing regulations have been drafted on this basis.

14.16 We think it is right that, where a credit agreement provides for different charges or borrowing rates depending on the way in which credit is drawn down, lenders should ascertain which is the most common drawdown mechanism for a particular type of credit product. This appears to be a helpful refinement of the existing position given that different credit products may be used for different purposes depending on their terms and conditions. We think that the natural sense of the term "most common drawdown mechanism" relates to frequency of use rather than the cumulative size of transactions. To ensure that lenders base their assessment on reasonably current data, we are providing that in the case of existing products lenders should have regard to data relevant to the preceding 12 months and in the case of new products lenders will need to make a reasonable estimate of expected usage.

14.17 We are providing that repayment of "credit" for the purposes of (d) of Part II of Annex I to the CCD should, in line with current practice, include repayment of interest and other charges. (The European Commission is considering whether the CCD needs to be clarified to make this clear and whether there needs to be an additional assumption covering the way in which one-off charges should be treated. However, any amendment to the CCD would be unlikely to be made by the date at which our implementing legislation is due to come into force and we must therefore proceed on the basis of the existing text.)

14.18 We have concluded that, for the purposes of assumptions (d) and (e) of Part II of Annex I, the implementing legislation should clarify that there is no fixed timetable for repayment under a consumer credit agreement unless there is an agreed date by which the credit must be repaid. We think it necessary also to distinguish between total repayments of credit, on the one hand, and individual repayment instalments, on the other.

14.19 We are applying the £1,200 assumption in Annex I Part II(g) to running account credit where the amount of credit is not known, but not to fixed sum credit. This is in recognition of a key difference between the two types of credit: in the case of running account credit, even where the ceiling is agreed, the individual consumer will not necessarily borrow the whole amount, whereas in the case of fixed sum credit this distinction does not exist. Given that it is therefore possible for consumers to draw down the same amount of credit under different running account agreements, it makes sense to require a common basis for comparisons between running account products such as credit cards. However, where the ceiling will invariably be less than £1,200, the advertising, pre-contractual and contractual information regulations require the lower ceiling to be used.

14.20 The response to the consultation on implementing the Directive indicated that the cost of removing tolerances was likely to be significant while no evidence of consumer benefit was forthcoming. We believe that we should continue to provide that a very small degree of variation in the APR quoted in advertisements and pre-contractual and contractual information does not constitute a breach of the relevant legislative provisions. This is in line with Article 23 of the Directive which requires penalties to be proportionate and would, in our view, constitute a legitimate means of giving practical effect to the Directive's requirements in respect of quoting the APR in credit advertisements, pre-contractual information and in the credit agreement.

14.21 We do not believe that we can retain any assumptions or exemptions in the existing TCC which are not provided for in the CCD. Nor do we believe that the assumptions set out in the CCD are optional – they are to be applied where relevant: the value of common assumptions is that they enable meaningful comparison between APRs and this would be lost if assumptions were optional.

14.22 During the course of our informal consultation on initial proposals for draft regulations in July-August we asked whether the wording of Article 19.1 needed to be replicated, but stakeholders thought that this was unnecessarily wordy and unclear and we are therefore taking a more simplified approach.

14.23 Informal consultation on initial draft regulations also highlighted uncertainty around the application of the TCC requirements to overdrafts repayable on demand or within three months, for which an APR is not required but the TCC is required at the contractual stage. We have therefore clarified that the general provisions regarding what to include in the TCC as well as the assumptions set out in our draft implementing regulations are to be used (where relevant) in calculating both the TCC and the APR. In any case, it is inevitable that these requirements will generally apply in both cases. In

the case of overdrafts this means that the TCC will be based on the assumption that the whole amount of credit is drawn down in full and repaid at the end of the agreed period. Where the amount of credit is not known it will be assumed to be £1,200 and where the duration of the agreement is not known it will be assumed to be three months.

14.24 In line with our general approach to second charge lending, we are not applying the new rules on calculating the TCC and the APR in this case.

## **15.0 Article 21 – Credit intermediaries**

15.1 The majority of those who responded agreed with the proposals for implementing Article 21, although a few thought the legislation should define in detail exactly what the intermediary had to disclose in what situations.

15.2 There was no clear majority of support for using the CCD definition of credit intermediary or for using an extended definition of the CCA term “credit broker” incorporating the definition of credit intermediary. Relatively few respondents commented on the differences and similarities between credit brokers and credit intermediaries but among those who did opinions varied widely. Consumer groups and enforcement agencies considered that in the UK the terms were largely interchangeable; they supported the option of extending the CCA definition of credit brokerage so that it covered all activities falling within the CCD’s definition of credit intermediary as it would make enforcement easier. On the other hand, another respondent considered that there was a clear distinction that should be preserved between credit brokers who advise the consumer on the most advantageous offers available, and other small scale or more amateur operators like mail order agents. Another respondent advised that it had no real feel for how many businesses would fall into one definition rather than the other.

15.3 Several consumer groups and enforcement agencies and some industry respondents considered that “independent” should be defined in the legislation. One enforcement agency had no strong views on whether it should be defined in legislation or guidance while another felt the term should only be defined in guidance as a statutory definition would be too inflexible. Several industry respondents and a legal respondent also opposed defining the term in the legislation on the grounds that it could be confusing rather than helpful. Some respondents commented that BIS and the Financial Services Authority should take a common approach regarding use of the term. There were no suggestions as to what the definition should be.

15.4 The majority of respondents agreed with the proposals regarding the scope of Article 21. One industry respondent did not see the need to go beyond the scope of the CCD and apply the requirements to small business lending.

### **Government response**

15.5 The responses to the consultation did not indicate general support for a different approach to implementation, and the Government therefore confirms the approach outlined in the consultation document.

15.6 On the issue of whether to use the CCD term of “credit intermediary” or an extended CCA definition of “credit broker” incorporating the definition of credit intermediary for the new requirements, the consultation produced little useful evidence. There were only a small number of comments on how far the two groups overlap, and those were somewhat contradictory. Although there was no clear evidence that extending the CCA definition of credit broker would bring numbers of additional businesses within the definition, it is possible that the consultation did not reach those who would fall within the

definition of credit intermediary but not credit broker. In the absence of any clear evidence as to the impact of extending the definition of credit broker to cover credit intermediaries, the Government has decided to use the CCD definition of credit intermediary for the Article 21 requirements.

15.7 Comments on the term “independent” did not indicate general support for any particular definition, and the Government notes particularly the comment about the inflexibility of a statutory definition. The Government does not propose to define the term “independent” in the implementing legislation but will consider how best to do this in guidance. This is also the case for the terms “extent of his powers” and “documentation”.

15.8 In respect of the proposals on the scope of the Article 21 requirements, the Government recognises that none of the advertising provisions of the CCA apply to business lending and will not therefore apply the requirement to disclose information in advertising in respect of business lending.

## 16.0 Overdrafts and overrunning

### Questions 61 – 66

#### Overdrafts

16.1 In the consultation document we explained that the light touch regime set out in the CCD could only apply to overdrafts repayable on demand or within three months. We did not propose to exempt overdrafts repayable within a month from the requirements of the CCD altogether (as the CCD permits), instead proposing that they should be treated in the same way as overdrafts repayable on demand or within three months. We also proposed to continue to define "overdrafts" as being offered by banks. We asked whether consultees agreed with this approach.

16.2 We also asked whether stakeholders agreed with our proposal not to require an APR to be indicated in advertising, pre-contractual and contractual information in the case of overdrafts.

16.3 We proposed that providers of overdrafts should if they wish use the European Consumer Credit Information (ECCI) form (although, in line with the CCD's requirements, it would not be mandatory).

16.4 In line with the CCD, we proposed that only the amount of credit, the borrowing rate, any applicable charges (as well as the conditions under which those charges might change) and the fact that the borrower could be requested to repay the credit in full on demand would have to be communicated to the borrower where the borrower requested an overdraft with immediate effect (regardless of whether or not the request was made face-to-face or at a distance). This information would not necessarily have to be given in writing, although it would have to be followed up with full written contractual information. We proposed that, except where the borrower specifically requested an overdraft at some future date and, for example, where an overdraft facility was proposed at the point at which a customer was opening a current account, it should be assumed that an overdraft was being requested with immediate effect.

16.5 In those cases where an overdraft was not being requested with immediate effect, other than in the case of distance sales, full pre-contractual information would have to be provided in accordance with Article 6.

16.6 We asked consultees whether they agreed with our approach to the provision of pre-contractual information. We also asked whether stakeholders foresaw any problems with the new contractual information requirements set out in Article 10.5 of the CCD.

#### *Summary of views*

16.7 A number of respondents, particularly banks, agreed with the proposed intention to restrict the CCD light touch regime to overdrafts provided only by banks and repayable on demand or within three months. While being in agreement generally, however, some of these respondents considered that

overdrafts repayable within one month should be exempt from the CCD's requirements, in line with the exemption in the CCD.

16.8 Other industry respondents considered it unfair and anti-competitive to impose regulations on some lenders while simultaneously applying a light touch approach to bank overdrafts. In this respect, some industry respondents called for a clear definition of the term "bank", with one in particular requesting an express reference to building societies in addition to banks, as the two are legally distinct structures. One consumer group also called for the term "bank" to be defined, noting in particular that Credit Unions offered current accounts capable of producing "tacit" overdrafts, yet they were explicitly excluded from the FSA's definition of a bank.

16.9 A number of respondents agreed with the proposal not to require APRs to be shown in advertisements relating to overdrafts. Some industry respondents went on to question the necessity of providing the total cost of credit to customers as well. They said that having to show the total cost of credit would introduce a significant cost to lenders and yet be of little use and potentially misleading to consumers. These respondents considered that showing interest rates and charges instead would be clearer and of greater benefit to business customers. One industry respondent said that the ongoing nature of overdrafts, the short periods for which they are outstanding and differing consumer behaviour made it impossible to decide on the standard assumptions necessary to make an APR calculation. By contrast, an enforcement agency and a consumer group considered APRs were increasingly important in terms of cost transparency, contending that, as they were required for other short-term loans – such as pay-day lending – they should also be required for overdrafts.

16.10 Respondents were generally in agreement with the proposals relating to the provision of pre-contractual information in respect of overdrafts. One industry respondent questioned the proposal that the total amount of credit be provided, suggesting that where the total amount of credit is not known at the pre-contractual stage, the lender should be permitted to state that the amount is to be confirmed. One consumer group disagreed with the intention not to require use of the ECCI for overdrafts, contending that it would not make sense to require a standardised pre-contractual information format for all products but one. This respondent also considered that pre-contractual information given for overdrafts should make reference to any security required in relation to the overdraft. An enforcement agency also considered that full information should be provided in face-to-face situations.

16.11 Many respondents did not see any difficulties stemming from the proposed changes concerning contractual information. However, several industry respondents raised concerns regarding the requirement to provide the total cost of credit to the consumer. One of the difficulties identified here was that, unlike the assumption in the CCD that the full amount is drawn down for the duration of the agreement, overdrawn balances fluctuated widely over three months. These industry respondents considered, therefore, that calculating the total cost of credit over an assumed three month period would result in a disproportionately high figure which would not reflect the likely use

of the product. As BIS was proposing not to apply an APR to overdraft borrowing, it seemed illogical to require a total cost of credit figure. Others stated they would prefer to provide details of interest rates plus any charges rather than what they saw as artificial assumptions which could result in a misleading total cost of credit.

16.12 Some respondents recommended adopting the exemption in the CCD for overdrafts of less than one month (Article 2.2(e)) and instead applying a lighter-touch approach on the lines of that which applied to overrunning. One industry respondent considered that customer and bank signatures should not be required for overdrafts, so that consumers could be provided with an immediate overdraft facility for their pending payments. This respondent also considered that it would be costly and onerous to provide more than one copy of an agreement to joint current account holders or to all partners of a business.

#### Post-contractual information

16.13 The consultation document outlined the CCD's provisions concerning post-contractual information, including the requirement to provide regular statements. We suggested that existing practice would fulfil the requirement in Article 12 to state the precise period to which a statement related and that the requirement to show the minimum amount to be paid would not be relevant to existing UK overdrafts. We proposed to copy out the CCD's requirement to keep debtors regularly informed rather than to specify a maximum period between statements -- a point on which we specifically sought feedback. Finally we suggested that the existing UK requirements on the content of running account credit statements set out in Section 78 of the CCA would need to be supplemented with a requirement to indicate the relevant borrowing rate, but recognised that one of the options in the Schedule to the 1983 Consumer Credit (Running Account Credit Information) Regulations would fulfil this requirement.

#### *Summary of views*

16.14 A number of respondents agreed with the proposal that statements should be supplied on a regular basis. Industry respondents considered that "regularly informed" did not need to be further defined and expressed a preference for a flexible approach in which lenders and customers agreed when and how they received statements. It was suggested that lenders should not have to require customers to receive monthly statements against their wishes, noting that some business, high-net-worth and non-UK resident customers had expressly opted not to have monthly statements. It was also suggested that statements should not have to be provided by post to the customer's home address, but that they should also be capable of electronic delivery.

16.15 By contrast, most of the consumer groups and enforcement agencies who responded were of the view that the term "regularly" should be defined, considering that by itself it did not guarantee any minimum frequency. One enforcement agency considered that statements should be sent quarterly where there is a debit or credit balance on the account, along with a summary

sent annually detailing total charges for the year. A consumer group, while being reasonably content with some flexibility in the way “regularly” was interpreted, nevertheless considered that the implementing regulations should include a maximum period between statements to protect against possible abuse.

### Overrunning

16.16 We proposed a number of amendments to existing UK information requirements on unauthorised overdrafts. We proposed that, where current accounts allowed for the possibility of unauthorised overdrafts, account opening agreements would need to include information on borrowing rates and the conditions governing when these rates would apply, any index or reference rates applicable as well as any charges and conditions governing changes in such charges. We also proposed that, in recognition of the Directive's requirement that this information should be provided on a regular basis, it should additionally be provided to account holders at least annually.

16.17 In accordance with the provisions of Article 18.2, we proposed that consumers should be informed of a significant overrunning after the first month with quarterly reporting thereafter. We suggested that "significant overrunning" should be defined as overrunning in excess of £100. We sought stakeholders' views on these proposals.

### *Summary of views*

16.18 Many respondents agreed with the proposal that the consumer should be informed of a significant overrunning after the first month, with quarterly reporting thereafter. Some industry respondents noted that overrunning appeared on regular current account statements anyway. Many industry respondents considered that lenders needed flexibility to determine what constituted “significant” overrunning, noting that what would be significant varied depending on the level of borrowing and the risk associated with an individual customer. Some industry respondents considered the proposed “in excess of £100” figure for significant overrunning to be too low, with one claiming that customers may consider notification from their bank for being £100 overdrawn as an “over-reaction”. While some enforcement agencies also queried whether the £100 figure was appropriate in all circumstances, others agreed with the figure.

16.19 Various other views were expressed concerning unauthorised overdrafts and implementation of the CCD. Some industry respondents considered that Article 18 should not apply to business lending as it was already covered under the PSR. An industry respondent considered that fees and charges that caused overruns should be excluded from the notification requirements, as these were “charges for using the facility”. An enforcement agency considered that Article 18.3, allowing creditors to offer an alternative credit product when the duration of overrunning was significant, would be useful in the interests of responsible lending. A retailing respondent advised against implementing a light touch with respect to unauthorised overdrafts, considering that they would enjoy an “unfair competitive advantage” over other forms of credit.

## **Government response**

### Overdrafts

16.20 In the light of further consideration of the CCD's requirements, we are applying the CCD's lighter-touch regime for overdrafts to all overdrafts, rather than only to bank overdrafts. Although there is no evidence that "non-bank" overdrafts exist in the UK, we believe that we nevertheless have to make provision for the possibility in case the position changes in future, as the CCD does not limit the lighter touch treatment only to overdrafts offered by banks (but it does make clear in Article 3 that overdrafts are integrally linked to current accounts). We are also treating all overdrafts to small businesses caught by the CCA as qualifying for the lighter-touch regime, regardless of whether they are repayable on demand/within three months or not.

16.21 In addition, we are extending the "super-light" touch pre-contractual information regime for overdrafts applied for via telephone or overdrafts with immediate effect applied for face-to-face to all business overdrafts caught by the CCA.

16.22 We are making provision for overdraft-providers to use the ECCI, although there has been only limited interest in it.

16.23 As allowed by the CCD, for the purposes of implementing the CCD we are not requiring overdraft-providers to indicate an APR in advertising, pre-contractual or contractual information. On the other hand, we are not persuaded that the CCD allows Member States not to require lenders to indicate the total cost of credit in contractual information and, although this is closely linked to an APR and therefore raises many of the same issues with regard to the way in which it is to be calculated, we must nevertheless require an example illustrating the total cost of credit to be provided in the agreement. The relevant assumptions in the new TCCR will apply, including the assumption that the full amount of credit will be drawn down for three months where the duration of the overdraft is unknown and, where the amount of credit is not known, that it shall be assumed to be £1,200.

### Post-contractual information

16.24 We agree with those respondents who said that consumers should not be required to receive monthly statements where they have opted for statements less frequently. Nevertheless we recognise that there should be the safeguards of at least annual statements. We are therefore retaining the existing requirement in the 1983 Running Account Credit Information Regulations for statements to be provided at least annually.

### Overrunning

16.25 We are requiring information about the charges which would apply to overrunning to be included in account opening information where an agreement would allow a consumer to overdraw on a current-account without an authorised overdraft agreement. This information would additionally have to be provided at least annually.

16.26 We are not defining a "significant" overrunning because, as stakeholders have pointed out, whether or not an overrunning is to be considered significant will depend on a number of factors, including the consumer's overall financial circumstances. However, we are providing that any overrunning which would incur a charge or which could have an adverse impact on a consumer's credit rating should be treated as significant since the imposition of a charge suggests that the lender regards an overrunning as significant and whether or not an individual's credit rating is affected by an instance of overrunning will depend on that individual's overall financial standing.

16.27 Finally, in recognition of our view that lending to micro businesses up to £25,000 already caught by the CCA is often similar to private borrowing and that such borrowers are often no more financially literate than average consumers, we are applying the provisions on overrunning to business lending caught by the CCA.

16.28 A question which arose following the formal consultation concerned whether or not lenders have to inform borrower's of a significant overrunning at or after one month even if they have already informed the borrower earlier on. We have concluded that lenders cannot leave it later than this, but that lenders who have already informed borrowers earlier would not have to inform them again once the one month period had been reached.

## **17.0 Transposition, implementing measures and impact assessment**

### Question 67

#### *Transitional arrangements*

17.1 In this section of the consultation, BIS asked for comments on whether there are provisions in the CCD that lenders should be allowed to comply with before June 2010. As well as responses to this question specifically, we have also captured here more general comments which did not address any of the other questions. The main themes included timing of the implementation; draft regulations; the creation of a single market; and penalties.

17.2 The main issue in responses from the UK lending industry was timing of the implementation. Many expressed concern about making the June 2010 deadline, due to the changes required to computer systems and amount of training for staff. The most common approach to mitigate this problem was to allow for a transitional period following 11 June 2010.

17.3 A few respondents did however suggest areas of the CCD where provisions could be operational prior to the June date. The SECCI was seen as the key thing that needed to be introduced early in order to provide an orderly transition between the two regimes. However, lenders felt that there was too much uncertainty about the look and feel of the SECCI to say whether it would be possible to introduce this early.

#### *Draft regulations*

17.4 Some respondents also regretted the fact that draft regulations were not available as part of the consultation. They felt this made it harder to assess the time and effort required to implement the changes.

#### *Payment Services Directive*

17.5 The preparation for the CCD has coincided with the implementation of the PSD, and it has been recognised that there are overlaps between these two directives. Consultees called for consistency between the two directives to prevent having to double efforts for two implementations in a short space of time.

#### *Single Market*

17.6 The CCD aims to establish a single European market for consumer credit, however it has been recognised by BIS and an independent study (Copenhagen Economics, May 2009) that there are probably too many other barriers for the CCD to achieve this on its own.

#### *Penalties*

17.7 Some comments were made regarding penalties, primarily from respondents in the lending industry. Although recognising that the CCD is introducing new requirements, and therefore also new penalties, one respondent called for the penalties regime to be completely overhauled, with a



emergence of cross border trade, they felt the benefits analysis lacked evidence and was unsubstantiated.

17.14 A number of industry stakeholders said that the proposed approach to implementing Articles 5.6 and 8 would make operations for some lenders impractical. One respondent also said that implementing aspects of the CCD to products outside its scope would create additional cost.

17.15 Some respondents queried whether the implementation of the CCD could make any contribution to establishment of a single market.

### **Government response**

17.16 Although many respondents disagreed with the analysis in the impact assessment, few provided alternative figures.

17.17 BIS recognise that the CCD alone will not achieve to establish a single market for consumer credit. However, it is a step in the right direction. A number of barriers that must be overcome on the way towards a single market were flagged in the report provided by Copenhagen Economics.

17.18 A revision of the impact assessment and a finalised equalities impact assessment are under development for presentation along side the statutory instruments in Parliament.

## **Next Steps**

1. The next key step in the implementation of the Directive is to lay the regulations in Parliament. To this end BIS is currently seeking Parliamentary Counsel's approval in order to finalise the regulations. BIS will continue to liaise closely with stakeholders in the time leading up to the laying of the regulations.
2. BIS will aim to publish a high-level regulatory guidance at the time of laying the regulations in Parliament or shortly thereafter.
3. BIS recognises that the indicative timetable has slipped and that the amending regulations could not be laid in Parliament before early March 2010. We are aware of the additional challenge this adds to an already tight compliance timetable, and are exploring ways of managing this.

## Appendix A

### List of respondents

Advertising Association  
Advertising Standards Authority  
American Express  
Association of British Credit Unions Ltd  
Association of British Insurers  
Aviva  
Barclays  
Brachers Law  
British Bankers Association  
British Cheque Cashiers Association  
British Retail Consortium  
British Vehicle Rental and Leasing Association  
BT Retail  
Building Societies Association  
Callcredit  
Cattles PLC  
Central Trading Standards Authority  
Citizens Advice  
Confederation of British Industry  
Consumer Credit Association  
Consumer Credit Counselling Service  
Consumer Finance Association  
Council of Mortgage Lenders  
Credit Services Association  
Dennis Rosenthal  
Direct Marketing Association  
EA Consulting Group  
East England Trading Standards Authority  
Equifax  
Essex and Southend Trading Standards  
European Coalition for Responsible Credit and Debt on our Doorstep  
Eversheds LLP  
Experian  
Express Finance  
Field Solutions  
Finance and Leasing Association  
General Council of the Bar  
Hitachi Capital  
Home Retail Group  
HSBC  
Institute of Credit Management  
Irish League of Credit Unions  
LACoRS  
Lloyds TSB  
MBNA Bank of America  
Money Advice Trust

Money Shop  
Mutual Clothing and Supply  
National Australia Group/Clydesdale Bank  
National Pawnbrokers Association  
Nationwide Building Society  
Newspaper Society  
Office of Fair Trading  
Provident Finance  
Radio Advertising Clearance Centre  
Retail Motor Industry  
Robert Owen  
Royal Bank of Scotland  
Santander Cards UK Ltd  
Schroder & Co. Ltd  
Suffolk County Council  
Tesco Personal Finance  
UK Cards Association  
Wells Fargo Bank  
Which?  
Wonga.com  
Wye Finance Ltd

## Appendix B

### Consultation questions

#### Scope, definitions and subject matter

Q1. Do you agree with the approach in relation to the exemptions set out in Article 2.2?

Q2. Should the requirements concerning adequate explanations and right of withdrawal be applied to business lending agreements; and should the requirements concerning adequate explanations be applied to loans above €75,000 (£60,260)?

Q3. Do you agree with the approach to specific products which fall outside the scope of the CCD? Are there other specific categories of agreements outside the CCD's scope that would justify distinct treatment under the amended legislation? If so, how?

Q4. Do you agree with the approach to the existing UK exemption regime?

#### Article 4 – Standard information to be included in advertising

Q5. Do you agree that the Advertisements Regulations (as amended to implement the CCD) should continue to apply to the existing range of credit agreements?

Q6. Should an APR be required for all credit advertisements? If not, would there be merit in requiring it for any specific categories of loan – e.g. high-cost loans?

Q7. Do you agree with the proposals concerning the requirement for a representative example of the standard information for advertising - and in particular the proposals concerning the representative APR and the use of the €1,500 (£1,200) assumption in respect of the representative APR? Should a different figure be considered?

Q8. Do you have views on the presentation of information required under Article 4.2?

Q9. Do you have views on the proposals to amend Regulations 5 and 6 of the Advertisements Regulations, while retaining other requirements concerning matters not in scope, e.g. health warnings?

Q10. Do stakeholders envisage any particular problems in this sector (TV/radio/internet)? If so, how should these be addressed within the confines of the CCD?

#### Articles 5, 6 and 7 – Pre-contractual information

Q11. Do you agree with the proposal to allow lenders the flexibility to provide pre-contractual information either via the SECCI or under the existing Disclosure of Information rules in respect of the agreements outside of the scope of the Directive as referred to in paragraph 3.14?

Q12. Do you have views on whether there should be special treatment for particular categories of agreements not within the scope of the CCD, such as pawnbroking? If so, which categories should benefit and how?

Q13. Bearing in mind the constraints regarding presentation and order of information, do you have views on the language used in the SECCI and any suggestions that would help improve consumers' understanding of the form?

#### Article 5.6 – Adequate explanations

Q14. Do you agree with the proposed approach to implementing Article 5.6? Please comment on the general approach as well as its application to specific products and loans sizes.

Q15. To avoid a situation in which knowledgeable consumers are nevertheless forced to receive unwanted explanations, should consumers be allowed to decline them? If so, should the lender be required to test the consumer's level of understanding or should he probe if he has reasonable grounds to suspect that the consumer has not understood key features of a credit product?

#### Article 8 – Creditworthiness

Q16. Do you agree with the proposed approach to implementing Article 8? Please comment on the general approach as well as its application to specific products and loans sizes.

#### Article 9 – Database access

Q17. Do you have any comments on our proposals for implementing Article 9?

#### Article 10 – Contractual information

Q18. Do you agree with the proposed approach on the presentation of contractual information?

Q19. Do you agree with the proposal to retain a signature and signature box?

Q20. Would amendment of the Agreements Regulations' provisions on electronic signatures help facilitate the conduct of electronic agreements? Can you suggest any alternative approaches?

Q21. Which approach do you think would be best regarding the proposals to reform the requirements to provide a copy of the credit agreement? Can you suggest alternative approaches?

Q22. Should we retain the requirement to provide a copy of the agreement within seven days of the agreement being signed?

Q23. Do you agree with the proposal to amend the section 64 requirements regarding the provision of cancellation notices?

Q24. Do you agree that the section 77/78 provisions to request an additional copy of a credit agreement should be revised? If so, how?

Q25. Should the approach to the description of the total amount of credit as set out in Schedule 1 Paragraph 8 of the Agreements Regulations be retained?

Q26. Do you agree with the approach regarding statutory statements, in particular the proposal to revise the missing payments warning?

Q27. Do you agree with the proposal to retain the approach to the provision of information on modifying agreements as set out in schedule 8 of the Agreements Regulations?

#### Article 11 – Information concerning the borrowing rate

Q28. Do you agree with the proposals concerning the scope of the Variation Regulations?

Q29. Should the Variations Regulations be amended in respect of business lending in order to conform more closely with the draft Payment Services Regulations?

Q30. Should we retain the existing rules regarding a 7 day notice period? If a time period is not specified should guidance be issued as to what would be considered good practice in terms of the length of the notice period?

Q31. Are there any particular issues raised by the need to give individual notice or by the content requirements?

Q32. Should the legislation seek to define the term “periodically” in Article 11.2, or is this best dealt with in guidance?

Q33. Do you agree with the approach in respect of the giving of notice by newspaper advertisement and branch notice?

Q34. Do you agree with the approach in respect of agreed variations?

Q35. What problems could arise if the Regulation 3 procedure cannot be retained in its current form for existing agreements; and should the above procedure remain in place for agreements not falling within the scope of the CCD?

#### Article 13 – Open-end credit agreement

Q36. Should the legislation refer to “terminate” or “terminate or suspend” in respect of the consumer’s right to drawdown? What are the advantages/disadvantages of these alternatives?

Q37. Do you agree with the approach in respect of defining “objectively justified reasons”? Are there other reasons that should be listed?

Q38. Do you agree with the approach in respect of informing the consumer of a termination in the right to drawdown on an agreement?

#### Article 14 – Right of withdrawal

Q39. Do you have any comments on our proposals to extend the right of withdrawal in Article 14 to certain agreements outside the scope of the CCD? Please be specific about the type of agreement in your comments. In particular, do you think that the right of withdrawal in Article 14 should be extended to loans up to £25,000 to certain small businesses? Please explain why or why not.

Q40. Would it be helpful if we provide that the relevant parts of sections 72 and 73 on the return of goods will apply where the consumer has exercised his right to withdraw and both the consumer and the supplier agree that the goods will be returned?

Q41. Do you have any comments on our proposals on exercising the right of withdrawal and repaying the money?

#### Article 15 – Linked credit agreements

Q42. Do you have any comments on our proposal to implement Article 15.2? In particular, do you think the split between the two parts of the new regime will be clear? Can you think of any situations where it won't be clear whether an agreement is covered or by which part? Do you think the legislation should be specific about what extent and under what conditions the new Article 15.2 right can be exercised? If so, please explain in what way it should be specific.

#### Article 16 – Early repayment

Q43. Do you agree with our proposal to replace the 30 days/one month deferral with 30 days/one month's interest on the amount repaid early in the early repayment calculation (where the credit is to be repaid over more than a year)? If not, please explain why. Should this now be standardised as 30 days or one month? Do you agree with the proposal to apply this and the 28 day settlement date to partial early repayment? If not, please explain why.

Q44. Do you have any comments on the proposed formula for partial early repayment? Do you think it would be helpful for consumers and lenders if we specify a method of calculating the rescheduled payments following partial early repayment? Please explain why or why not. Do you agree that this formula works? If not, please explain why and suggest an alternative if possible.

Q45. Do you agree with the proposal to allow notice of early repayment to be given in another durable medium or orally as well as in writing? If not, please explain why.

Q46. Do you agree with our proposal to require lenders to provide consumers with information on the effect of a partial early repayment notified or made? If not, please explain why.

Q47. Can you suggest any other costs that would be directly linked to early repayment but only be incurred where the early repayment falls within a

period for which the borrowing rate is fixed? Do you agree with our proposal to leave it to creditors to decide how to calculate compensation for changes in interest rates in the event of early repayment, where this is being claimed? If not, please explain why.

Q48. Do you have any comments on our proposals regarding the Member State options in Article 16.4?

Q49. Do you agree that section 96 should cover partial early repayment on the basis we have proposed? Can you see any problems with this? If so, please give details.

Q50. Do you agree with our proposals to extend the scope of the agreements to which the right of early repayment will apply? If you do not agree, please be specific about the type of agreement that should not be covered and why. Are there any particular difficulties with extending the right to partial early repayment to pawnbroking? If so, please explain why.

#### Article 17 – Assignment of rights

Q51. Do you have any concerns regarding which party provides notice of assignment and whether this requires clarification in legislation?

Q52. Do you agree that no changes to UK law are required to implement Article 17.1? If not, please explain why and give an indication of the changes that you think are needed.

#### Article 19 – APR calculations

Q53. Do you agree that there are no gaps in the assumptions set out in Article 19 and Annex I and/or do you think that in any given situation there could be significant variation in the answer produced by the APR calculation given the higher level assumptions of the CCD?

Q54. Do you agree with our proposed positions on the APR assumptions (b), (d) and (e) in Annex I? If not, please explain why.

Q55. Does the removal of the existing UK APR tolerances raise any issues?

Q56. Do you agree with our proposal to extend the scope of Article 19 to all CCA-regulated credit agreements with the exception of 2nd charge secured loans? If not, please explain why, with reference to different types of credit agreements outside the CCD scope.

#### Article 21 – Credit intermediaries

Q57. Do you think businesses in this sector would fall within both the definition of credit intermediary and credit brokerage? If not, how many businesses would fall within the definition of credit intermediary but not credit brokerage? What kind of services are these businesses currently offering? What would be the impact on individual businesses of being brought within the definition of credit brokerage?

Q58. Do you think it would be helpful if we defined the term “independent” in legislation or would an explanation of the term be better left to guidance? Do you have any comments on a possible definition? Do you think there is a better way to ensure that the requirement is applied consistently than to define the term?

Q59. Do you have any comments on our proposals for implementing the requirements in Article 21? If you do not agree with our proposals, please explain why and where possible suggest an alternative proposal.

Q60. Do you have any comments on our proposals regarding the scope of Article 21? If you do not agree with our proposals, please explain why.

#### Overdrafts and overrunning

Q61. Do you agree with our intention to restrict the CCD light touch regime available for Overdrafts to those overdrafts provided by banks only, which are repayable on demand or within 3 months?

Q62. Do you agree with our proposal not to require APRs to be shown in Advertisements relating to overdrafts and if not, why?

Q63. Do you have any comment to make on our various proposals relating to the transposition of the CCD’s requirements on the provision of the pre-contractual information?

Q64. Do you foresee any difficulties stemming from the changes proposed to contractual information on overdrafts?

Q65. With regard to frequency of statements, do you agree with the proposal that such statements should be supplied on a “regular” basis?

Q66. Do you agree with the proposal as to when the consumer should be informed of a significant overrunning; and - Do you agree with the proposal that the statements required under Article 18.1 should be supplied on an annual basis?

#### Implementing Measures (Transposition)

Q67. Do you think there are provisions in the Directive with which lenders should be able to comply before June 2010? If so, which provisions?

#### Impact Assessment

Do you agree with the assumptions, figures and impact assessments made in the Impact Assessment at Annex B? This Impact Assessment is based on initial consideration of the key issues for the UK of the original CCD draft. Do you have any comments on the costs and benefits of the options for implementation discussed in the Impact Assessment and in the consultation document? Please provide as much supporting evidence as possible.