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## New Consumer Credit Advertising Regulations

### Introduction

The Consumer Credit (Advertisements) Regulations 2010 were laid before Parliament on 30 March 2010, and come into force on 1 February 2011.

All companies advertising credit to consumers must adhere to the new rules, which replace the Consumer Credit (Advertisements) Regulations 2004. The new rules do not apply to companies offering credit to businesses only.

### What do the new regulations require?

Firstly, all consumer credit advertising must use “plain and intelligible” language, must be easily legible (or audible, where relevant) and must include the name of the advertiser. This is unchanged from the 2004 Regulations.

Secondly, if the credit advertisement includes a rate of interest, or any amount relating to the cost of the advertisement, then the advertisement must also include a “representative example” (see below) and, except for point-of-sale material and radio or television commercials, a postal address where the advertiser can be contacted.

It is this trigger for including the representative example that has been changed significantly from the previous 2004 Regulations. Under the old regime, the inclusion of the frequency, number of amounts of repayments, or the inclusion of other payments or charges, or the inclusion of the total amount payable by the debtor triggered the requirement to include further information similar to the representative example.

Now, however, it is the inclusion of “a rate of interest or any amount relating to the cost of the credit” that acts as a trigger. This appears to suggest that the representative example may be required on fewer occasions than before, but it is unclear, however, exactly how widely defined the phrase “any amount relating to the cost of the credit” will be.

### What is a “representative example”?

A representative example under these new Regulations must include the following items:

- a) the rate of interest, whether fixed, variable or both;
- b) the nature and amount of any other charge;
- c) the total amount of credit;
- d) the representative APR (except in advertisements for authorised overdrafts);
- e) for “buy now, pay later” advertisements, the cash price and any required advance payment; and
- f) unless the credit is open ended, the length of the agreement, the total amount payable and the amount of each repayment.

Items b, c, d, e and f were all required to be included in one way or another in the previous 2004 regulations (although some information which under the previous regulations was required has now been excluded).

All the information contained in the “representative example” should be marked as such and set out in a clear and concise way. All the information should be presented together and equally prominent. It should also be given greater prominence than any other information relating to the cost of credit in the advertisement and any incentive. Advertisements for overdraft facilities, however, do not need to include the representative APR.

In the case of the rate of interest referred to in a) above, if the credit agreement provides different ways of drawing down credit with different rates of interest, the advertiser should quote the highest rate applied to the most common draw down mechanism for the product.

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### **The representative APR**

The APR should be denoted as "%APR". If it is variable, then the word "variable" should be included. If it is representative, then the word "representative" should be included.

In addition to the above, the representative APR should always be included in any advertisement (except those for authorised consumer overdraft facilities) which:

- i) includes an incentive to apply for credit; and/or
- ii) indicates that credit is available to individuals who would normally consider their access to credit to be restricted; and/or
- iii) indicates that any of the terms on which credit is available is more favourable than other terms or competitors' terms.

In these cases the representative APR should be given greater prominence than the indications or incentives referred to above.

An important point to note though in the new Regulations is that if an advertisement includes the indication or incentives listed above and it only refers to the representative APR, and no other rate of interest, then the representative example is not required.

The representative APR is to be calculated in accordance with the Consumer Credit (Total Charge for Credit) Regulations 2010, the scope of which are outside the remit of this note. These Regulations can be found at the following link:

[http://www.opsi.gov.uk/si/si2010/uksi\\_20101011\\_en\\_1](http://www.opsi.gov.uk/si/si2010/uksi_20101011_en_1)

### **Ancillary Services**

Apart from advertisements for authorised consumer overdraft facilities, any obligation to enter into a contract for other ancillary services in order to obtain the credit, or to obtain the credit on the advertised terms, should be made clear in a concise statement on the face of the advertisement, which itself should be of equal or greater prominence to the representative example information and should be situated "together with" any representative APR featured.

### **Security**

The new Regulations remove the long list of proscribed wealth and security warnings which were set out in the 2004 Regulations. Instead they simply require that, if the consumer is required to provide security to obtain the credit, the advertisement should state this fact and specify the nature of the required security.

### **Grace period**

The new Regulations come into force on 1 February 2011, but credit advertisements published before that date need not comply provided they cease publication before 1 March 2011. Catalogues and works of reference that consist of at least 50 pages published before 1 March 2011 need not comply with these new Regulations, but should contain a prominent date of publication and, if relevant, the period the catalogue is intended to cover.

### **Final Thoughts**

There seem to be few substantive changes with the new Regulations, but a lot of minor tweaking. It is not clear, for instance how changing the word "typical" to "representative" will help consumers.

No doubt to the pleasure of advertisers, it does appear that the requirement to include a representative example will be rarer, but the devil is in the detail, and the OFT, if it sticks to its usual practice, will construe terms as widely as possible.

Additionally, it is unfortunate that there is still no exclusion from these rules for advertisement which feature 0%APR rates. That is still a rate of interest and therefore, by strict application of the new Regulations, the inclusion of such a rate would trigger the need to include all the other information, which seems a little otiose.

The new Regulations are designed to give greater protection to consumers, but it is doubtful that this will be achieved. Several surveys show that consumers do not understand the required information on credit advertisements, ignoring it in the belief that it is there simply to protect the advertiser. Indeed in one survey 77% of consumers thought APR stood for April.

In essence, the over-arching advice will in essence remain the same. The less detail you include in the advertisement, the less additional information will be needed. Less is more....

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