

## Consumer Credit Directive

The United Kingdom leads the way in protective Consumer Credit legislation, though the European Union has now somewhat reduced this protection through the Consumer Credit Directive (CCD). Following a rise in cross-border transactions, particularly with the launch of internet shopping, a review by the European Commission in 2001 called for a new directive to harmonise the differing laws within the Member States in order to improve the credit market.

The first thing to note is that the CCD is not, in the most part, retrospective and therefore only applies to agreements made after 12 May 2010. It is also worth noting that the UK can not allow legislation to stay in place which gives further protection than the Directive, therefore most of the Consumer Credit Act 2006 will have to be repealed! What a waste of time.

The role of implementing the Directive into UK law falls on the Department for Business, Enterprise and Regulatory Reform (BERR). Astonishingly a consultation has not taken place until April of 2009, the results of which will be communicated in the form of the final legislation in November 2009. This gives creditors only six months to overhaul their systems to become compliant. Despite the importance of the legislation the strict timeline of May 2010 gives the government little choice but to take this action. Due to European Union rules there is absolutely no option of extending the implementation deadline.

### What does the Directive actually change?

Well for a start when it is read in conjunction with our current consumer legislation it becomes complicated to ascertain which provision to apply. The reason for this is that the Directive only applies to agreements between €200 and €75,000 and made after 12 May 2010. Our own Consumer Credit Act would apply for agreements up to €200 or over €75,000 if made after 12<sup>th</sup> May 2010 and any agreement made between 6<sup>th</sup> April 2008 and 12<sup>th</sup> May 2010. It would also apply to agreements for less than £25,000 made before 6<sup>th</sup> April 2008 and business loans (where the business falls within the definition of individual within the act) of less than £25,000 whenever entered. However BERR may choose to amend our consumer law to bring business and other agreements in line with the directive.

The major changes brought in by the Consumer Credit Directive are:

- A duty to assess the consumers credit worthiness
- Credit Reference Bureau access must be granted to creditors from other Member States
- Common advertising provisions
- Standard pre-contract information must be given in the form of the Standard European Consumer Credit Information document.
- The consumer has the right to view a copy of the draft credit agreement
- Pre-contract information must now also be given for overdrafts
- Methods to provide this information in the case of long distance selling
- New prescribed information to be included in credit agreements
- Under a fixed sum agreement the borrower is entitled to request an amortisation table
- The right to withdraw from the credit agreement within 14 days
- Right for the borrower to discharge the agreement early, either partially or in full
- The creditor is entitled to fair compensation for costs directly linked to any early payment of credit; this is not currently a feature in UK law.
- High net worth individuals exemption will be amended so that it applies only to agreements over €75,000
- Overdrafts now require the same pre-contract and agreement information as other agreements. Although as not all of the Articles are to apply it is to be 'light touch'.
- Article 8 demands that should the agreement be changed at a later date the consumers credit worthiness must be re-checked and the file must be updated.

### Consultation

The CCD consultation is open until 10<sup>th</sup> June. The reason for the consultation is that there are a number of opt outs built within the Directive. BERR can also choose to apply the directive to agreements outside of the CCD scope. These include Business Loans, Secured Lending, Hire, Leasing and Hire-Purchase agreements. The current thinking is that all agreements caught by the CCA but not by the CCD will be brought into line with the CCD (with the exception of second charge mortgages). Doing so would help to keep the legislation simpler. However certain information may not have to be given for business loans or loans over €75,000, this is discussed within the consultation.

#### Important points for members

The post contract information requirements brought in by the Consumer Credit Act 2006 would be amended so that a different type of statement would have to be produced for overdrafts. The statement differs in terms of the information that needs to be included. The statement must include the period to which the statement relates, the amounts and dates of drawdowns, the balance from the previous statement, and the date thereof, the new balance, the dates and amounts of payments made by the consumer, the borrowing rate applied, any charges that have been applied, where applicable, the minimum amount to be paid, any increases of the borrowing rate.

Since agreements will now have to be drawn up for overdrafts should you receive a request for a copy agreement for an overdraft executed after 12 May 2010 you will need to provide it.

Another point to consider is that where the creditors rights have been assigned to a third party (debt purchase) it is now a right under the Directive for the consumer to be able to plead against the assignee any defence which was available to him against the original creditor. The consumer must also be informed of the assignment. BERR plan to create a new regulation to cover the requirement which will apply across all consumer credit agreements, both old and new! Again this is raised in the consultation.

I hope you are still awake having read that, if so, you can view the Consultation as well as the CSA's Consultation breakdown by visiting the lobbying section of the member's only section of the CSA website.

The good news is that the Directive will be reviewed in 2013 and every fifth year after that!

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