

Advice on the EU Consumer Credit Directive

A new EU Consumer Credit Directive was voted in on 17 January 2008 by the European Parliament. The new Directive - for the harmonisation of consumer credit laws - has subsequently been adopted by the Council of the European Union and was published in the Official Journal of the European Union on 22 May 2008

The underlying principle of the Directive is to harmonise consumer protection regulation across Member States, opening up markets for credit providers, while maintaining a high level of consumer protection

Timing

BERR is consulting on the Directive's implementation. They will then produce draft regulations followed by final regulations in December 2009. **As the implementation date is May 2010, that may not be enough time to get IT systems ready.** There is probably more here to do than there was in CCA 2006. The BBA and the FLA will be lobbying BERR

Scope

Definition of a "consumer"

This is important because the document is a maximum harmonisation directive. Where the Directive applies member states cannot go beyond its terms and be more prescriptive. So, if a particular agreement falls within the scope of the Directive then the UK regulations must follow the Directive. If an agreement is *not* within the scope of the Directive the UK regulations will subsist. The Directive only covers agreements in relation to a "**consumer**" which is defined as meaning "**a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession**". The UK incorporates small business use into its consumer protection legislation. Will this remain the case?

What is (currently) in scope:

- only consumers (no high net worth exemption)
- only consumer credit (not hire) more than €200 but equal to or less than €75K
- overdrafts (unintended overdrafts) and personal loans more than €200 but equal to or less than €75K
- conditional sale and credit sale

What is (currently) out of scope:

- lending secured on land and buildings
- lending to acquire land and buildings
- hire purchase
- pawn broking

Pre-contract information and forms of agreement

Under the current CCA, the PCI and the front pages of the agreement are identical and can be subject to a single computerised population of data. The format of agreements is very strictly regulated with imperatives as to what has to appear under Key Financial Information, Other Financial Information and Key Information. This will change for agreements that are within scope

Duty to explain

This is one of the new requirements causing the most anxiety to banks and finance companies. Creditors will have to explain (as will credit intermediaries) what a credit agreement is all about so that the consumer is in a position to assess whether it is adapted to his needs or not

What will matter most in relation to this duty is what will be the sanctions for not explaining properly. The Directive will become unworkable if the sanction is an invalidly executed agreement. It is also not difficult to think of awkward situations where a motor dealer salesman tries to explain pre-contract information or the credit agreement to the prospective car purchaser. Nor is it hard to see mutual incomprehension when the explanation is given by a part-time sales assistant in a furniture shop on a Saturday

Cancellation / withdrawal

There will be a 14 day right of withdrawal for all agreements in scope. Again the question of what happens to agreements that are out of scope is going to be very important. The 14 days will run from the making of the agreement or, if later, when the customer gets his terms and conditions and the information about this agreement

Early repayment

In the UK, a customer can repay an agreement early, **in full**, at any time, by giving notice. Under the Directive, he will be able repay **in full or in part** at any time and **will not need to give notice**. The amount of compensation which can be claimed is fixed, subject to an exception

Voluntary Terminations

Conditional sale agreements are currently within the scope of the Directive. Hire purchase agreements are not. The early repayment provisions in the Directive are a complete code and the voluntary termination right under section 99 of the CCA will not apply to agreements which are within the scope. This means conditional sale agreements. Asset finance companies may well want to change from hire purchase agreements to conditional sale agreements despite their other disadvantages

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