

Home Credit Market Investigation Order 2007 Variation Order 2011

Background

1. In September 2007, the Competition Commission (CC) published a report on its investigation of the home credit market in the UK. The CC found that there was a detrimental effect on customers resulting from the adverse effect on competition and set out a remedy package intended to address the adverse effect on competition which it had found.
2. The CC decided to implement the remedy package through an enforcement order made under [section 161](#) of the Enterprise Act 2002 (the Act). The Home Credit Market Investigation Order 2007 came into force on 4 October 2007.
3. Under [section 162](#) of the Act, the Office of Fair Trading (OFT) has a duty to consider whether, by reason of any change of circumstances, an enforcement order made under sections [158](#), [160](#) or [161](#) of the Act is no longer appropriate and needs to be varied or revoked. The OFT advised the CC that the coming into force of the Consumer Credit Directive (CCD) constituted a change of circumstances by reason of which it may be appropriate to vary or revoke parts of the Home Credit Market Investigation Order 2007.
4. The CCD has been transposed into UK law via a group of six Consumer Credit Act 1974 Regulations which came into force on 30 April 2010 and 26 August 2010 and which are required to be complied with in full from 1 February 2011.
5. The CC has decided to make an order varying the Home Credit Market Investigation Order 2007 to take account of the change of circumstances advised by the OFT.
6. On 19 January 2011 the CC in accordance with paragraph 2 of [Schedule 10](#) to the Act as applied by [section 165](#) of the Act gave notice of its intention to vary the Home Credit Market Investigation Order 2007 (the Notice).
7. The CC did not receive any representations following publication of the Notice.

The Order

The CC makes this order in exercise of the powers it has in [section 161](#)(4) of the Enterprise Act 2002, for the purpose of varying the Home Credit Market Investigation Order 2007 having received advice from the OFT that by reason of a change of circumstances variation or revocation is appropriate. The Home Credit Market Investigation Order 2007 was made to remedy, mitigate or prevent the adverse effect on competition and any detrimental effects on customers so far as they have resulted, or may be expected to result, from the adverse effect on competition specified in the report of the CC entitled *Home Credit Market Investigation* (28 April 2006).

PART 1

1. Citation, Commencement and Purpose

- 1.1 This order may be cited as the 'Home Credit Market Investigation Order 2007 Variation Order 2011'.
- 1.2 This order shall come into force on 24 February 2011 which is the date the order is signed.
- 1.3 The purpose of this order is to vary the Home Credit Market Investigation Order 2007.

2. Interpretation

- 2.1 The definitions, interpretations and meanings ascribed to words and expressions in the Home Credit Market Investigation Order 2007 apply to this order except where words and expressions are expressly defined.

3. Variations to the Home Credit Market Investigation Order 2007

- 3.1 In Article 2(1):
 - (a) Delete footnote 2 to Article 2(1) and replace with "1974 c.39; relevant amendments are made by S.I. 2004/3236, S.I. 2010/1010, SI 2010/1969 and the Consumer Credit Act 2006 (c.14).".
 - (b) Delete the definition of "the Advertisements Regulations" and replace with "'the Advertisements Regulations' means the Consumer Credit (Advertisements) Regulations 2010.³".
 - (c) Delete footnote 3 to Article 2(1) and replace with "S.I. 2010/1970."
- 3.2 In Article 14(1):
 - (a) add a new definition for 'representative APR':

"representative APR' has the same meaning as in the Advertisements Regulations;"
 - (b) amend the definition of 'rounded APR' to delete the words "Total Charge for Credit" and replace with the word "Agreements" and delete "1980" and replace with "2010"; and,
 - (c) in footnote 5 delete the words "1980/51 as amended by S.I. 1989/596 and 1999/3077" and replace with "2010/1014".
- 3.3 In Article 14(2) delete the "," following 'APR' and add the word "the" immediately before the word "Schedule" and delete the figure "1" immediately following the word "Schedule".
- 3.4 In Article 14(3) delete "1(6)" immediately following the word "regulation" and replace with "1(4)(b)".

- 3.5 In Article 14(5) delete each occurrence of the phrase “debtor-credit” and replace in each case with the phrase “debtor-creditor”.
- 3.6 Delete Article 17 and replace with:
- “(1) The requirements referred to in article 16(1) are that the **advertisement** contains, in addition to information and a representative example required in order to comply with the **Advertisements Regulations**, the information described in paragraph (2).
- (2) The information referred to in paragraph (1) is—
- (a) the duration of such agreements expressed in months (in a case where **repayments of credit** are by monthly instalments) or in weeks (in any other case);
 - (b) the **total charge for credit** per £100 advanced, expressed in pounds and pence (rounded to the nearest penny);
 - (c) the frequency, number and amounts of repayments of **credit**, expressed in pounds and pence (rounded to the nearest penny) per £100 advanced to be made by the **debtor** under such agreements, on the assumption that the **debtor** complies with his obligations;
 - (d) whether or not any **charge** is made for late payments under such agreements and, if so, a description and the amount of the **charges**;
 - (e) whether or not any **charge** is made under such agreements for home collection and, if so, a description and the amount of the **charges**;
 - (f) whether there are any and if so, details of the limitations on the circumstances in which the person is normally willing to enter into such agreements other than limitations relating to—
 - (i) the ability of the **debtor** to meet his obligations under the agreement;
 - (ii) the area or areas in which the **debtor** resides; or
 - (iii) the maximum or minimum amount that can be advanced; and,
 - (g) if the information set out in the above sub-paragraphs concerning agreements falling within the **class** is different in different cases, details of the differences and the circumstances in which those differences arise.
- (3) Where an **advertisement** displayed on the **relevant website** contains a link to other material on the website that other material shall be regarded as part of the **advertisement** for the purposes of this article.
- (4) In paragraph (2)(d) and (e), a reference to a charge does not include any charge taken into account in determining the amounts referred to in paragraph (2)(c).”
- 3.7 In Article 18(1):
- (a) at (b)(iii) delete the word “APR” and replace with “representative APR”;

- (b) at (f) insert the words “(except insofar as this is necessary in order to comply with the requirement to show a representative example under **the Advertisements Regulations**)” immediately after the word “information”; and,
- (c) at (h)(iv) insert the words “article 17 or by” immediately after the words “**advertisement** by”.
- 3.8 In Article 19(2) delete “17(2) and (3)” and replace with “17(2)”.
- 3.9 In Article 24 at footnote 9 insert “as amended by S.I. 2010/1010 and S.I. 2010/1969” immediately following “2004/1483”.
- 3.10 In Article 25(2)(b) delete “regulation 5(a)” and replace with “regulation 5(1)(a)”.
- 3.11 In Article 26:
- (a) at (1)(a) at footnote 10 insert “and S.I. 2010/1010” immediately following “3236”; and,
- (b) at (3) delete (b) and replace with:
- “(b) the 28 day settlement date shall be taken to be the settlement date as determined in accordance with regulation 5(1)(a) of the Consumer Credit (Early Settlement) Regulations 2004.”.
- 3.12 In Article 27:
- (a) insert the words “, ‘**representative APR**’” after “**relevant website**”; and
- (b) delete the words “; and ‘typical APR’ has the same meaning as in **the Advertisements Regulations**”.
- 3.13 In Article 29:
- (a) at (1)(a), delete the words “**typical APR**” and replace with “**representative APR**”; and,
- (b) at (2), delete (2)(b) and (c) and replace with:
- “(b) the wording is given the same prominence in the **advertisement** as any of the items listed in regulation 5 of **the Advertisements Regulations**;
- (c) if the advertisement is in printed or electronic form and includes any item referred to in sub-paragraph (b) above, the wording required under sub-paragraph (a) above is shown in characters of not less than the size of the characters in which those items appear.”.
- 3.14 In Article 30(2)(b) delete (b) and substitute with:
- “(b) if the **advertisement** includes any of the items listed in regulation 5 or regulation 6 of **the Advertisements Regulations**, the wording required under sub-paragraph (a) is shown in characters of not less than the size of the characters in which the items in regulation 5 appear or in any other case not less than the size of characters in Arial font size 11.”
- 3.15 In Article 30 delete paragraph (5).

3.16 In Article 31:

- (a) delete paragraph (4) and renumber (5) to (4); and
- (b) at new paragraph (4) delete the words “paragraphs (3) and (4) and replace with “paragraph (3)”.

3.17 In Schedule 1, delete the line containing “Typical APR...Article 27” and add a line containing “Representative APR...Article 14(1)”.

Signed by authority of the CC

Peter Freeman
Group Chairman
Competition Commission
24 February 2011

Explanatory Note

(This Note is not part of the Order)

1. The purpose of the Home Credit Market Investigation Order 2007 Variation Order 2011 is to vary the Home Credit Market Investigation Order 2007 ('the 2007 Order').
2. In October 2010 the OFT advised that the coming into force of the CCD¹ constituted a change of circumstances making variation or revocation of parts of the 2007 Order appropriate.
3. On 24 February 2011 the CC published a Notice setting out its reasons for deciding that by reason of a change of circumstances it was necessary to vary the 2007 Order.
8. The variations to the 2007 Order are set out in detail in Article 3. Variations were made to the following articles of the 2007 Order:
 - (c) Article 2(1): variation of definitions of '1974 Act' and 'the Advertisements Regulations';
 - (d) Article 14(1): variation of definitions:
 - (i) to add a definition of 'representative APR'; and,
 - (ii) to vary the definition of 'rounded APR';
 - (e) Article 14(2): variation of definition of 'APR';
 - (f) Article 14(3): variation to reflect updated regulations;
 - (g) Article 14(5): variations made to correct misspellings;
 - (h) Article 17: variations made to the nature of the information required to be included in advertisements which are required by Article 16 to reflect the changes

¹Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreement for consumers and repealing Council Directive 87/102/EEC.

to the Consumer Credit (Advertisements) Regulations 2010 made as a consequence of the CCD; and,

- (i) Article 18: variations made to reflect the changes to the Consumer Credit (Advertisements) Regulations 2010 made as a consequence of the CCD;
 - (j) Article 19: variation as a consequence of the variation to Article 17;
 - (k) Article 24: variation to reflect updated regulation;
 - (l) Article 25: variation to reflect updated regulation;
 - (m) Article 26: variations to reflect updated regulation;
 - (n) Article 27: variations to add 'representative APR' and delete 'typical APR';
 - (o) Article 29: variations to refer to 'representative APR' and to reflect updated regulations;
 - (p) Article 30: variations to reflect updated regulations and to delete a reference to the Consumer Credit Act 2006 coming fully into force as this Act is now fully in force; and,
 - (q) Article 31: deletion of a reference to the Consumer Credit Act 2006 coming fully into force as this Act is now fully in force.
 - (r) Schedule 1: variations to reflect the use of the term 'representative APR' in place of 'typical APR'.
9. Changes have also been made to the Explanatory Note that accompanies the 2007 Order so as to reflect the variations set out in this order.
10. [Section 167](#) of the Enterprise Act 2002 places a duty on any person to whom this order applies to comply with it. Subject to the defences in the section, any person who suffers loss or damage due to a breach of this duty may bring an action.
11. [Section 167](#) of the Act also provides that the OFT and the CC can seek to enforce this order by civil proceedings for an injunction or for any other appropriate relief or remedy.
12. The OFT has a general duty to monitor the operation of a CC enforcement order under [section 162](#) of the Act. This includes the duty to consider, from time to time, whether an enforcement order should be varied or revoked in the light of a change of circumstances.
13. Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and the provisions of the Order, the Order shall prevail.