EXPLANATORY MEMORANDUM TO THE

THE CONSUMER CREDIT (MISCELLANEOUS AMENDMENTS) REGULATIONS 2004

2004 No. 2619

1.1 This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for:

- The Joint Committee on Statutory Instruments;
- The House of Lords Select Committee on the Merits of Statutory Instruments.

2. Description

2.1 The statutory instrument amends three statutory instruments laid on 9th June: the Consumer Credit (Agreements) (Amendments) Regulations (S.I.2004/1482); the Consumer Credit (Early Settlement) Regulations (S.I.2004/1483); and the Consumer Credit (Advertisements) Regulations (S.I.2004/1484).

2.2 It addresses a number of typographical and drafting errors; and makes consequential amendments – principally to the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983 – arising from the laying of the Financial Services (Distance Marketing) Regulations 2004.

3. Matters of special interest to the Joint Committee on Statutory Instruments / House of Lords Select Committee on the Merits of Statutory Instruments

3.1 The Consumer Credit (Agreements) (Amendments) Regulations 2004 and the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983 are amended to remove references to liquid petroleum gas vessels in the context of returned goods under cancelled agreements. In its 28th Report of 2003-04 and in a letter dated 29th June to the DTI, the JCSI queried why consumer credit legislation was concerned with health and safety issues. This issue is explored in more detail in paragraph 4.6 below.

4. Legislative Background

4.1 From 31 May 2005, the Consumer Credit (Agreements) (Amendments) Regulations will improve transparency in consumer credit agreements and ensure that consumers have the information they need to understand to what they are committing themselves. They will require key information to be presented clearly and together at the front of the agreement and all terms will have to be equally prominent so that information cannot be hidden in small print. If optional products, such as payment protection insurance, are incorporated in the credit agreement, a second signature will be required.

4.2 From 31 May 2005, the Consumer Credit (Early Settlement) Regulations will restrict the time that lenders can delay the date of early settlement of new consumer loans and will introduce a fairer calculation method for what is owed compared to the previous Rule of 78 formula. Existing loans will be covered in stages from 2007 (if their term is ten years or less) and 2010 (the others).

4.3 From 31 October 2004, the Consumer Credit (Advertisements) Regulations will modernise and simplify the existing rules governing the advertising of consumer credit by providing consumers with the essential information that they need to compare products and make informed purchasing decisions. Specifically, they will set out the circumstances in which advertisers must quote the annual percentage rate (APR), other key financial indicators and appropriate warnings. They will also ensure that, where an APR is quoted, it must be calculated according to a common set of assumptions so that consumers can compare figures with confidence.

4.4 During the administrative procedures for introducing these four Statutory Instruments several typographical errors crept in for which the Department apologises. These are corrected in this amending Statutory Instrument. These are attached at Annex A.

4.5 There is an issue which arises following the laying of the Financial Services (Distance Marketing) Regulations 2004 by the Treasury on 5 August. It concerns the differing cancellation rights in respect of distance and non-distance contracts. Under the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, there are prescribed forms that must be sent to consumers when they enter into agreements which are cancellable under the 1974 Act. Some of these currently require the cancellation period and consequences of cancellation to be stated. If the prescribed forms are not used, an agreement can only be enforced by court order. There will often be doubt at that stage whether an agreement is distance or non-distance and we have amended the forms so that lenders in that position - who choose to give consumers the most favourable cancellation rights that could apply (rather than trying to determine which do apply) – can say so in these Forms.

4.6 A “Your Right to Cancel” box appears in Section 2, Part 1, Form 4 of the Consumer (Agreements) (Amendment) Regs. It states that consumers can take goods back rather than wait for them to be collected, if they cancel the contract. It alternatively warns that certain liquid petroleum gas (LPG) vessels should not be disconnected/taken back. The Joint Committee on Statutory Instruments queried this 1983 derived wording in June. HSE agreed that the LPG wording ill-fitted consumer credit legislation and stated that their warning rules offered sufficient protection. We further feel the statement that consumers can take goods back is self evident. We have hence removed all offending words. The amending SI also amends forms in the Schedule to the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983 which currently use the same wording.

4.7 We are deleting the addition of the final ten words to Regulation 3(2)(d) of the Consumer Credit (Early Settlement) Regulations that were inserted due to an IT problem. We had not consulted on this area but it was part of an internal debate, raised late in the day, concerning the treatment of certain brokers’ fees. We intend to return to this in a proposed review of the area in 2007.

4.8 We are amending the Consumer Credit (Advertisements) Regulations by deleting paragraph 7(2) to Schedule 2 (Total amount payable by the debtor). This is to correct a drafting error in the Regulations as laid on 9 June which had the effect of requiring the advertiser to quote the total amount payable (the sum loaned plus interest and any fees and charges, excluding default charges) in respect of fixed sum credit to purchase specific goods or services, but not in respect of lending unconnected to a purchase. As a consequence, personal loans and secured lending are excluded from the provisions governing the display of the total amount payable.

4.9 Deleting paragraph 7(2) will have the effect of applying the provisions to all fixed sum credit. We are aware, however, that lenders have prepared for the introduction of the new advertising regime on 31 October 2004 on the basis of the unamended Regulations. To allow them the time to adapt to this amendment, we do not propose to bring it into effect until 31 May 2005.

5. Extent

5.1 This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

6.1 The Parliamentary Under-secretary of State for Employment Relations, Postal Services and Consumers [Gerry Sutcliffe MP] has made the following statement regarding Human Rights:

6.2 "In my view, the provisions of the Consumer Credit (Miscellaneous Amendments) Regulations 2004 are compatible with the Convention rights."

7. Policy background

7.1 A major review of consumer credit law – the first since the Consumer Credit Act was introduced in 1974 – was launched in July 2001 in response to a Manifesto commitment to tackle loan sharks. The review was characterised by an ongoing process of consultation with key stakeholders representing the credit industry, consumer groups and enforcement authorities, and culminated in the publication on 8th December 2003 of the White Paper "Fair, Clear and Competitive – the Consumer Credit Market in the 21st Century".

7.2 A consultation paper "Establishing a Transparent Market" was published alongside the White Paper. This included draft secondary legislation to give effect to the package of measures on consumer transparency, and was the subject of a 14 week formal period of consultation that closed on 15 March 2004.

7.3 Around 100 responses were received to the proposals and the four June 2004 Statutory Instruments reflected comments made both in these responses and during other ongoing discussions with stakeholders. A summary of the responses to the White Paper package was published on the DTI website to accompany the four Statutory Instruments along with relevant Regulatory Impact Assessments.

8. Impact

8.1 The typographic corrections will not alter the cost estimates in the Regulatory Impact Assessments that were produced for the June Statutory Instruments. Likewise allowing lenders to migrate to one style of copy agreement if they wish has no cost implications as it is a voluntary measure.

9. Contact

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LIST OF TECHNICAL AMENDMENTS

THE CONSUMER CREDIT (ADVERTISEMENTS) REGULATIONS 2004:

In Schedule 2, shoulder note delete "Regulations 4(1), 7(6), 8(1) and (6) and insert "Regulations 4(1), 7(6), 8(1) and (5).

In Schedule 3, paragraph 5(2) delete "debtor" in line 1 and insert "hirer" in its place.

In Schedule 3, paragraph 5(3) delete "credit" and "debtor" in line 2 and insert "owner" and "hirer" respectively in their places.

THE CONSUMER CREDIT (AGREEMENTS) REGULATIONS 1983:

In regulation 2(4)(c) for the words "6 to 8B and 11 to 17" substitute "6 to 8B, 11 to 14 and 15 to 17".

In regulation 3(6) for the words "Forms 1 to 3 of Schedule 4" substitute "Forms 1, 4 and 5 of Schedule 4.".

In regulation 7(4)(c) for the words "5 to 7B and 10 to 17" substitute "5 to 7B, 10 to 13 and 14 to 17".

In regulation 7(4)(e)(i) for the words "20 to 23" substitute "20 to 24".

For paragraph 23 of Schedule 1 substitute—

"23.	Agreements that cannot be cancelled by the debtor under the Act, the Timeshare Act 1992 or the Financial Services (Distance Marketing) Regulations 2004.".	A statement that the debtor has no right to cancel the agreement under the Consumer Credit Act 1974, the Timeshare Act 1992 or the Financial Services (Distance Marketing) Regulations 2004.

Part I of Schedule 2 (forms of statement of protection and remedies available under the Consumer Credit Act 1974 to debtors under regulated consumer credit agreements) shall be amended as follows.

In paragraph 4—

delete the words from "[However you may return" to the end of the paragraph;

for "Notes:" substitute "Note:", and

delete the whole of note **.

In column 2 of paragraph 5 for the words "3 or 6" substitute "4 or 6".

In column 3 of paragraph 18 of Part II of Schedule 2 for "£x****" the first time that it appears substitute "£x***".